

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-A-1896-MA-2014 O&M)

Date of Decision: April 23, 2018

Suman

...Applicant

Versus

Karamjit and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sandeep Singh, Advocate for
Mr. Rajesh Sheoran, Advocate
for the applicant.

JAISHREE THAKUR, J. (Oral)

1. The instant application has been filed under Section 378(4) Cr.P.C. seeking leave to file the appeal against the impugned judgment dated 29.09.2014 passed by learned Judicial Magistrate Ist Class, Hissar, in Criminal Complaint No.73-1 dated 25.04.2011, under Sections 498-A, 406, 323, 506 of Indian Penal Code.

2. In short, the facts of the case are that, the marriage of applicant-complainant was solemnized with Karamjit son of Rameshwar Singh according to Hindu rites and ceremonies and on the same day, marriage of her elder sister Bimla was solemnized with Dalip son of Rameshwar Singh. It is alleged that Muklawar ceremony of complainant was solemnized in the year 2003. At the time of marriage, father of the complainant spent sufficient amount on the marriage and gave sufficient household articles, but the accused persons were not happy with the dowry and they started maltreating the complainant for their demand of dowry. It is further alleged

that a sum of ₹ 5 lacs was demanded for securing a job for respondent No.1 in the police department. As per complainant, the accused persons also tried to force her to leave the matrimonial home and also tried to cause her abortion. Thereafter, the complainant filed an application before Nodal Cell, Hissar in November, 2007, however, she was threatened to withdraw the said complaint. It is also alleged that Karamjit Singh obtained a decree of divorce from District Court, Jind in connivance with her counsel, against which she has filed an appeal. Thereafter, the complainant approached the police for taking action and when no action was taken by the police, the instant complaint came to be filed under Sections 498-A, 406, 323, 506 of Indian Penal Code.

3. In her preliminary evidence, the complainant examined herself as PW1, Bimla as PW2, Bijender as PW3 and Satish Kumar as PW5. Thereafter, the preliminary evidence was closed and the accused persons were ordered to be summoned to face trial for the offences punishable under Sections 498-A, 406, 323, 506 of Indian Penal Code.

4. Thereafter, in her pre-charge evidence, the complainant examined Bimla as PW1, herself as PW2, Satish @ Kala as PW4 and closed the same. On finding a prima facie case, the accused were charge-sheeted for the commission of offence under Sections 498-A, 406, 323, 506 of Indian Penal Code. After that, learned counsel for the accused made a statement that he did not want to further examine any witness, who are already examined in pre-charge evidence, as such, after charge evidence was closed and statement of accused was recorded under Section 313 Cr.P.C. wherein the accused pleaded their innocent. In their defence, the

accused persons examined Dalbir Singh as DW1 and closed the same.

5. After hearing arguments of both the sides, the learned trial court acquitted the accused persons of the charge framed against them by giving them benefit of doubt, which resulted in filing the instant application under Section 378(4) of Cr.P.C.

6. Learned counsel for the applicant argues that the trial court has not considered the evidence of independent witnesses, wherein they have stated that the accused persons demanded motorcycle at the time of marriage. It is submitted that there is sufficient evidence as well as documents placed on the record to prove the case, but the trial court has wrongly held that the applicant has failed to prove her case. It is contended that the trial court has passed the judgment on conjectures and surmises, therefore, the same is not sustainable.

7. I have heard learned counsel for the applicant, apart from perusing the record.

8. The learned trial court, while dismissing the complaint of the applicant by the impugned judgment dated 29.09.2014, has observed as under;

“17. Moreover, the main allegation against the accused are that they demanded motor-cycle and Rs.5 lakhs, perusal of complaint as well as evidence shows that except from these demand accused persons has never ever raised any demand from the complainant. The allegation in that regard are very general in nature. Complainant as well as the witness examined by the complainant had not in any manner specify the date, time and the year of demand of dowry. It is alleged by the complainant that the accused persons caused harassment and gave beatings to her for not fulfilling the demand of dowry. It is alleged by the complainant that the accused persons demanded Rs.5 lakhs for the selection of accused No.1 in the police but perusal of evidence shows that no such amount was

given by the complainant. It is also clear from the evidence on the record that the accused persons had himself arranged for the money for getting the accused No.1 selected in the police services. It is admitted fact that the accused No.1 selected in the police service in the year 2004 and thereafter he was doing job in the police and started doing job at a place of different from the place of residents of accused. As per version of complainant it was in the year July 2006 the accused came on vacation. Therefore, it is manifestly clear that accused was not on routine basis staying with complainant during the period from 2004 to 2006. Complainant further levelled generalized allegation against accused No.2 to 4 but has not led any specific evidence in order to substantiate her allegation. From the perusal of complaint as well as evidence on the record, it is clear that all the allegation are very general in nature and no clear and specific allegation are levelled against the accused. As far as the allegations of causing beating there is no medical proof on the case file in order to substantiate the averment of complainant. Complainant alleged that the accused persons caused beating to her on daily basis but there is no medical evidence on the case file in order to support the allegation of complainant. It could not be reasonable supposed that a person who was subjected to beating on daily basis, could have remain silent for such a long period. Therefore, this court considered that from the allegation as well as the evidence on record that the allegations are levelled in a routine course without specifically mentioning date of incident or date of demand of dowry. In complaint cases onus is on the complainant to connect the chain of evidence by connecting the linking pins in such a manner in order to prove allegations of cruelty and harassment of complainant. But perusal of case file shows that there is no specific evidence as to cruelty and harassment, therefore, in such circumstances a major doubt is created as to the version of complainant.

18. Moreover, it is admitted fact that the accused had obtained an ex parte divorce from the complainant from the Sessions Court, Jind. It is also admitted fact that the complainant is receiving a maintenance of Rs.4500/- per month from the accused. It is also that the complainant had filed an appeal before the Hon'ble High Court for setting aside the ex parte divorce. From the perusal of all these facts it is evidently clear that the complainant had filed the present complaint, after the accused had obtained ex parte divorce from her. The present complaint is

consequent upon the ex parte divorce. There is no reasonable explanation on the case file in order to explain, why complainant had not filed the complaint earlier and waited for so long. Therefore, it appears that the present complaint is a counter blast. There is also no reasonable basis that a person who is subjected to the cruelty could not initiate any legal action against the accused for such a long time. It is admitted fact that the complainant is in the house of her father since 2006. There is no reasonable explanation to explain the delay. Perusal of case file shows that present complaint has been filed in the year 2011 i.e. after a gap of five years. In this regard complainant submitted that she had filed a complaint in the year 2007. But perusal of case file shows that thereafter there is nothing to prove why the complainant remain silent for such a long time. The present complaint is filed after a gap of five years and that gap remained unexplained by the complainant. This court is not able to understand that a person who is subjected to cruelty and harassment how could remain silent for such a long time. Though the complainant averred that the two panchayat were convened but there is no such specific evidence in that regard. The complainant miserably failed to prove his averment as to holding of panchayat. Moreover even if for the sake of argument it is admitted that panchayat was held but still it could not be reasonable infer that a person remain silent for such a long time. Therefore, all these facts and circumstance further created a doubt as to the version of prosecution.

19. *Therefore, in view of the above discussion, this court is of the considered view that the present complaint is filed in consequences upon the ex parte divorce obtained by the accused persons. The complainant is aggrieved by the ex parte divorce but obtaining an ex parte divorce itself does not amount to cruelty within the Section 498-A of Indian Penal Code. In order to hold the accused guilty under Section 498-A of IPC the complainant must prove cruelty within the ambit of 498-A but perusal of evidence shows that the allegation are general in nature without any specific proof and corroboration. Therefore, offence under Section 498-A of IPC is not at all proved against the accused as far as allegation under Section 406 of IPC is concerned, there is no specific allegation as to entrustment of dowry articles and reasonably explain the same. As far as allegation of breach of trust, it is for the complainant to prove that she had entrusted the accused with the dowry article and which were later on misappropriated by them. But perusal of evidence*

brought on record shows that there is no such specific evidence as to entrustment. It is first and foremost required that entrustment should be specifically proved by way of material and reliable evidence. Perusal of file shows that there is no such specific allegation, therefore, this court considered that offence under Section 406 is not proved against the accused.

20. *As far as allegation under Section 323 of IPC is concerned, there are merely oral averment without any specific date, time and year. The complainant made general allegation against the accused but general allegations could not be considered in order to hold a person guilty. The allegation must be specifically proved but perusal of case file shows that there is no medical evidence in order to corroborate the version of complainant. Moreover complainant failed to provide detail as to time, place and year of causing beating to her. She herself failed to explain the injuries. Therefore, this court is of the considered view that Section 323 of IPC is not proved against the accused.*

21. *Now comes the question as to whether offence under Section 506 of IPC is made out against the accused or not. The law is quite explicit that mere empty threats do not constitute the offence punishable under Section 506 of IPC. The threats issued make out the offence under Section 506 only when the said threats cause alarm to the person to whom it are issued. The allegations of the complainant, as find reflection in the evidence, are only that the accused issued threats. There is no evidence that accused caused alarm to the complainant. There is no mention that the said threats caused alarm to the complainant or to any other person. Hence, offence u/s 506 IPC is not made out against the accused. The witnesses examined by the prosecution have not deposed that any such threats caused alarm to the complainant. In the absence of any evidence or deposition with regard to the alarm to the victim in consequent to the alleged threats the offence under Section 506 of IPC is not constituted. Hence, it can be said that the prosecution has failed to prove the offence under Section 506 of IPC against the accused."*

9. On going through the impugned order passed by the trial court, it is made out that each and every argument addressed on behalf of the applicant-complainant were duly considered and dealt with in detail by the trial court. The complainant has failed to prove that her father had given a

sum of ₹ 15,000/- at the time of Muklawā. The complainant has levelled the general allegations, without specifying the date, time and the year of demand of dowry and even failed to produce on record any medical evidence to substantiate the plea of criminal intimidation as envisaged under Section 506 of Indian Penal Code. The complainant was residing in the house of her father since the year 2006 and filed the instant complaint in the year 2011 i.e. after a gap of five years when the accused had obtained an ex-parte divorce from her. After considering all the facts, the trial court has held that the complainant failed to prove the ingredients of the sections, of which allegations were levelled against the accused persons.

10. In view of the foregoing discussion, this court is of the considered view that the complainant has failed to prove the guilt of the accused persons beyond shadow of reasonable doubt. Further, there is no illegality or infirmity in the impugned judgment so passed by the trial court. As such, no ground is made out to grant leave to file appeal under Section 378(4) Cr.P.C. and therefore, the said application is hereby dismissed.

April 23, 2018

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No