

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

CRM-A No.408-MA of 2017 (O&M)

Date of decision: 5th December, 2018

Kamaljit Kaur

... Applicant

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Narinder Lucky, Advocate for the applicant.

FATEH DEEP SINGH, J.

This is an application by the complainant Kamaljit Kaur seeking a prayer under Section 378(4) of the Cr.P.C. for grant of leave to file appeal against judgment and order dated 20.10.2016 of the Court of learned Additional Chief Judicial Magistrate, Hoshiarpur thereby dismissing the complaint of the complainant.

Heard Mr. Narinder Lucky, Advocate for the applicant and perused the records.

The complainant filed the complaint on the grounds that she was married with Kamaljit Singh respondent No.1 on 18.06.2010 and that was her second marriage as well as that of Kamaljit Singh. She claimed that earlier she was married with one Amandeep Singh and their marriage was dissolved by decree of divorce by mutual consent. The complainant alleged that her marriage was a lavish one undertaken with great pomp and show where sufficient dowry articles were given and serialized the

articles given to the various accused who happen to be the close relations of the second husband. Upon recording of preliminary evidence and summoning of the accused vide orders dated 08.02.2013 under Sections 406, 498A IPC the complainant in her pre-charge evidence, examined herself as CW1. Through Dr. Des Raj, Medical Officer CW2 she proved injuries on her person and thereafter CW3 Balbir Singh who lend credence to her case followed by the testimony of CW4 HC Sukhwinder Singh, who proved the DDR as Ex.C1. Thereafter, the pre-charge evidence was closed. In her after-charge evidence, the complainant examined herself as CW1 and Balbir Singh as CW2 and thereafter closed the evidence. The accused were called upon to explain the incriminating evidence, oral as well as documentary, against them proved at the trial but they denied the allegations and in defence examined DW1 Gagan Singh Thakur, Criminal Ahlmad and proved documents Ex.DW1/A and Ex.DW1/B. Consequent upon hearing of arguments, the impugned orders were passed.

The accused have been charged for commission of offences under Sections 498A and 406 IPC. Though the complainant claims that she has got her first marriage dissolved by decree of mutual divorce, but the same has neither been established on the record and it is the stand of the husband accused No.1 that it was by suppression of actual matrimonial status of the complainant she deceitfully underwent second marriage with him and on discovery of the same, he has moved an

application on 06.05.2011 to SSP regarding her falsehood of having dissolved the first marriage. To the specific query of the Court, learned counsel for the applicant complainant Mr.Narinder Lucky, Advocate could not bear out by what means this claim of dissolution of first marriage with Amandeep Singh has been proved on the record by the complainant and what one could come across, as is highlighted in the cross-examination of the complainant, she admits that it was after Kamaljit Singh accused No.1 had moved an application to the SSP on 06.05.2011 against her for this second marriage by suppressing the first subsisting marriage and then she had filed the present complaint which as per the records has been filed on 04.06.2011 after the complaint by the husband, certainly is itself suggestive of the purpose of filing the present private complaint. Had it been so, it would have been a natural consequence that the complainant would have first moved the local police and thereafter on her inability to get the same redressed would have necessitated moving of the present complaint which has not come about on the records. Certainly such a conduct by the complainant is an overwhelming evidence that goes against her. Learned Court below has rightly drawn adverse inference for this mischievous subsequent action of the wife in aborting deceit played by her upon the second husband. Furthermore, it has very well come in her cross-examination that her second husband Kamaljit Singh accused No.1 was having a child from his previous marriage who is seven years old and never wanted another

child from her womb and that was the cause of their dispute, is itself a material suggestive reason for this filing of complaint by the present complainant.

It is taken cognizance of by the Court below as has come in the cross-examination of the witness of the complainant CW3 Balbir Singh that present accused husband Kamaljit Singh had filed a complaint against present complainant Kamaljit Kaur and her family members regarding deception played upon him and in which case the wife and other co-accused have been released on bail and has also proved the complaint to that effect as Ex.DW1/A. The Court below has rightly considered that being a second marriage of both sides and in the absence of any specific entrustment of articles of Stridhan, question of lavish marriage and the offence of criminal breach of trust as defined under Section 405 IPC punishable under Section 406 IPC was not made out. Furthermore, allegation of physical abuse by the husband that is sought to be proved, are mere simple complaint of pain on lumber region, abdomen and right shoulder and as per the own admission of CW2 Dr.Des Raj Medical Officer, it was only complaint of pain and no external mark of injury was seen which is reflected from MLR Ex.CW2/A and its pictorial diagram Ex.CW2/B and does not corroborate the eye-witness account that is sought to be put forth by the complainant whereby she has attributed innumerable injuries by husband and mother-in-law to her and

there is nothing to suggest that from 10.05.2011 to 14.05.2011 she remained admitted in the Civil Hospital.

The Court below has very well appreciated the evidence and has come to a totally justifiable conclusion that the complainant has failed to establish the case against the accused. In the light of what has been detailed and discussed above, no case to show interference in the impugned findings is made out. The application being without any merit stands dismissed. Leave to appeal is declined.

(FATEH DEEP SINGH)
JUDGE

December 5, 2018

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No