

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM A-6-MA of 2015

Date of Decision: October 25, 2018

Raksha Kumari

.....Applicant

Versus

Rajiv Kumar and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Upender Prasher, Advocate
for the applicant.

FATEH DEEP SINGH, J.

This application has come about under Section 378(4) of the Code of the Criminal Procedure seeking leave to appeal against the judgment dated 19.09.2014 passed by learned Judicial Magistrate 1st Class, Amritsar, whereby, a complaint filed by Raksha Kumari wife of respondent No.1-Rajiv Kumar under Sections 406, 498-A, 506, 148 and 149 IPC pertaining to Police Station Islamabad stood dismissed.

Upon hearing Mr. Upender Prasher, counsel for the applicant on perusal of the records. The brief background out of which this Lis has arisen is that a marriage between the applicant and Rajiv Kumar took place on 28.03.2001. The applicant/wife claims that sufficient dowry articles were given to the accused side, who happens to be the father-in-law, sister-in-law and other-in-law family members of the complainant. It is alleged that at the time of handing over the 'Istridhan' it was specified to the accused that the articles were meant for the use of the bride and be handed over to her after the marriage. It

is alleged that after the marriage the complainant was ill treated and physically abused as the accused were taunting that the dowry was not commensurate with their status and forced her to bring more cash as well as costly items.

Upon filing of the complaint, in her preliminary evidence, the complainant examined herself as CW1 and examined Ram Singh as CW2, Harish Chander as CW3 and Gurdeep Singh as CW4. The accused consequent upon preliminary evidence were summoned under Sections 406/498-A of the IPC.

In the pre-charge evidence, the complainant examined Sudesh Kumar as CW1, herself appeared as CW2 and also examined Satish Chand as CW3 and charges were accordingly framed.

Upon completion of after-charge evidence, the accused were called upon to explain the incriminating evidence rooted against them in their individual statement under Section 313 Cr.P.C., who denied the allegations.

In their defence, the accused examined one Surinder Kumar, Superintendent, Northern Railway Amritsar to prove the allotment of railway quarter and, thereafter, the evidence of the defence was closed. It was consequent thereupon, the impugned findings were recorded.

Appreciating the submissions, there are two heads of charges under Sections 406 and 498-A IPC levelled against the accused side. Section 498-A IPC deals with cruelty to a married woman and Section 406 IPC deals with criminal breach of trust and in the present case in respect of the articles of "Istridhan". The scanning

of the evidence of the applicant/complainant does not bear any instance of entrustment of any article of “Istridhan” to any of the accused in particular with details. There are mere vague allegations to establish the case under Section 406 IPC. In accordance with the definition assigned to Section 405 IPC, the complainant is supposed to prove the manner of entrustment of the property or dominion over the same and its dishonest misappropriation or conversion to one's own use.

In the present case, none of the accused has been satisfactorily proved to have been entrusted with any article of “Istridhan” and furthermore not even semblance of evidence has come about that in spite of demands by the applicant/complainant, the accused have refused to hand back the articles of “Istridhan” and thereby committed the criminal breach of trust. The mere oral testimony of purchase of such articles detailed in the list annexed with the complaint does not suffice the purpose even the details brought on the record has been commented upon much in detail by the Court below over their veracity and acceptance as reliable and cogent piece of evidence. More so, the other witness of the complainant CW2 Ram Singh has merely stated that the gold ornaments were given to the family members and there is no specific entrustment of any particular article of “Istridhan” to any of the accused. The Court below has rightly concluded that the complainant has miserably failed to establish the commission of offence under Section 406 IPC.

To the very specific query of the Court to Mr. Upender Prasher, counsel for the applicant could not bear out as to any cogent

evidence of particulars of date, time and place as to the incidents of cruelty and the manner, in which, it was heaped upon the complainant. It has been rightly concluded by the Courts below that the complainant has failed to fulfil the necessary ingredients to attract the commission of offence under Section 498-A IPC and there is lack of specific allegations with particulars over such incidents.

Learned counsel for the applicant could not pin point any illegality or impropriety in the findings of the Court below.

The application for leave to appeal filed by the applicant is without any merit and, stands accordingly, dismissed.

October 25, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No