

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

**CRM-M-15773-2015(O&M)
Date of decision:-13.9.2018**

Vandana Kohli and another

...Petitioners

Versus

Priya alias Simpy

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Rakesh Gupta, Advocate
for the petitioners.

Mr.Rahul Bhargava, Advocate
for the petitioner.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. seeking quashing of order dated 30.3.2015 passed by Additional Sessions Judge, Amritsar vide which order passed by Judicial Magistrate Ist Class, Amritsar had been set aside by way of acceptance of revision petition of the complainant, has been filed by petitioners Vandana Kohli and Bablu

Kohli against Priya alias Simpy – respondent.

Briefly stated, the facts of the case, in brief, are that the complainant Priya @ Simpy wife of late Tarun alias Ashu Kohli, resident of Putligarh, Amritsar had brought a criminal complaint under Sections 406, 498-A, 34, 120-B IPC against her mother-in-law Vandana Kohli, brothers-in-law Rishu Kohli, Bablu Kohli as well as Shakuntla Kohli, Jiwan Kohli, Parveen Kohli, Shekhar and Savita, relatives of her deceased husband on the allegations that she was married with late Tarun @ Ashu Kohli on 15.4.2011; that after the marriage the two spouses resided together, however, they were not blessed with any child. According to the complainant, at the time of her marriage, her family had spent a considerable amount giving sufficient dowry articles including gold jewellery and other expensive items, however, her husband and his family members were not happy with the dowry articles given to complainant at the time of marriage and they started harassing and maltreating her so as to pressurise her to bring more dowry articles; the complainant could not get those demands fulfilled, as such, accused Nos.1, 4 and 7 started giving her merciless beatings; that other accused also joined such accused in torturing of the complainant; that on 9.2.2012, the husband of the complainant had died in a road side accident; that the complainant went to her matrimonial house along with her parents, however, on 25.2.2012 at about 10:00 p.m., all the accused in pursuance of conspiracy hatched by them, started taunting the complainant; she was given beatings and even an attempt was made to strangulate her; the complainant saved herself by locking herself in a room; on the next day, she informed her parents, who came and took her

along with them; subsequent attempts made by the complainant and her parents for return of complainant to the matrimonial home proved futile. According to the complainant, the accused have not only maltreated her in connection with demand of dowry but have committed criminal breach of trust with respect to her Istridhan articles. According to her, she had moved an application to the police seeking taking of action against the accused but to no effect, as such, she filed a private complaint before Judicial Magistrate Ist Class, Amritsar.

The complainant adduced preliminary evidence. However, the trial Magistrate refused to summon the accused to face trial and rather dismissed the complaint finding it to be without merit vide order dated 28.3.2014. The reasoning given by the trial Magistrate for coming to the conclusion is contained in paras No.4 and 5, which for ready reference are reproduced as under:

4. *It is the case of the complainant that soon after her marriage with son of accused no.1, all the accused started harassing her on account of bringing less dowry, but nothing has been disclosed about any specific demand made by the accused at any specific point of time. Rather a vague allegation has been made in the complaint that the accused started demanding more dowry articles in the shape of cash and kind. It is alleged that when she expressed her inability to bring more dowry articles, the accused no.1, 4 and 7 started giving beatings to her. But the date, month and year of the alleged occurrence is not disclosed in the complaint. It is further narrated that on*

03.01.2012 accused no.1 to 3, 5 and 6 took her to Ludhiana at the residence of accused no.7 and 8 where accused no.1 caught hold of her by hair, accused no.4 caught her by legs, accused no.7 also gave kick blows on her abdomen, whereas accused no.2 and 3 instigated the accused to teach her a lesson. But the aforesaid incident narrated in the complainant cannot be believed on the face of it, because if the intention of accused no.1, 3, 5 and 6 was really to give beating to complainant, then what was the need for them to take her to Ludhiana where accused no.7 and 8 were residing and against whom the only allegations levelled by the complainant are that accused no.7 gave kick blow in her abdomen and accused no.8 gave her slap and fist blow. It is further alleged that the accused due to fear, made her to make a telephonic call to her parents when she told them that she is pregnant. But again this averment made by her cannot be believed as the fact of mere pregnancy cannot be believed to be enough from desisting the accused from their alleged designs to harass her on account of bringing more dowry if they had brought her to Ludhiana from her matrimonial house Jagrao only for this purpose. Moreover, nothing has been stated that she disclosed about the aforesaid incident to her parents who came to Ludhiana after receiving her telephone call. She has also alleged that she was got medically treated by her parents, but no documentary evidence in this regard has been produced by

her to substantiate her version. She has also alleged that after the death of her husband in road accident, she went back to her matrimonial house from 9.2.2012 and thereafter on 25.12.2012 all the accused in pursuance of conspiracy hatched by them gave her a beating and she saved herself by locking herself into a room. Again her this version cannot be believed because it could not have been possible for the complainant to save from the clutches of the accused who were seven in number and for them it was not impossible to cause more harm to the complainant.

5. *It is well known fact that in the matrimonial disputes, there is general tendency on the part of family of girl to implead the husband as well as his near relatives to put more pressure upon them to accede to her unreasonable demands. In the present case also only the general allegations regarding the alleged dowry demand and the maltreatment made and committed by the accused are contained in the complaint and deposition of the complainant and other witnesses. Nothing has been disclosed about the accused who has been specifically entrusted with the specific dowry articles alleged to have been given by the parents of the complainant. Likewise, the date, month and year of the alleged beatings given to the complainant by the accused, except two incidents, has been disclosed in the complaint, but those incidents cannot be believed on the face of it as discussed earlier. As such, I*

find no sufficient grounds for proceeding further with the present complaint. Accordingly, the compliant in hand is dismissed being without any merit. File complete in all respect be consigned to the record room.

This judgment was challenged by the complainant by way of filing a revision petition to the Court of Sessions, which was assigned to Additional Sessions Judge, Amritsar, who vide judgment dated 30.3.2015 set aside the order passed by the trial Magistrate observing that prima facie case against No.1 to 3 is made out under Section 498-A IPC directing that trial Court should proceed as per provisions of law.

Such order left Vandana Kohli and Bablu Kohli aggrieved and they have approached this Court by way of filing the present petition under Section 482 Cr.P.C., notice of which was given to the respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Section 203 Cr.P.C. deals with dismissal of complaint. It provides that if after considering the statements on oath of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

In this case the trial Magistrate has given detailed reasons for dismissal of the complaint and non-summoning of the accused

observing that no sufficient grounds were there for proceeding further with the complaint. The order was challenged by the complainant by way of filing a revision petition. Learned Additional Sessions Judge, Amritsar ignoring the fact that revisional jurisdiction is quite limited unlike that of an appellate Court proceeded to decide the matter as it was an appeal.

The law is well settled that the revisional jurisdiction is quite limited. The Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

The reasoning given by Additional Sessions Judge, Amritsar accepting the revision petition and setting aside the order passed by the trial Court is not very satisfactory or plausible. The order passed by the trial Magistrate was certainly not perverse or in violation of settled principles of criminal law. There was no illegality or infirmity apparent on the face of that order. There was no reason to interfere with the same while exercising the revisional jurisdiction. Therefore, I find it a fit case to exercise power under Section 482 Cr.P.C. to secure the ends of justice.

In a matrimonial dispute a tendency does exist amongst the estranged wives to rope in as many relatives of the husband as possible as a pressure tactic. This state of affair has been acknowledged by the Apex Court even. Hon'ble Apex Court in Criminal Appeal No.1265 of 2017 arising out of Special Leave Petition(Crl.) No.2013 of 2017 in para No.14 has observed as under:

14. Section 498A was inserted in the statute with

the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted. The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the Judgment. The abuse of the provision was also noted in the judgments of

this Court referred to earlier. Some High Courts have issued directions to check such abuse. In Arnesh Kumar (supra) this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.

The husband of the complainant has since expired. The marriage between the complainant and Tarun @ Ashu Kohli having been solemnized on 15.4.2011; such Tarun @ Ashu Kohli having expired on 9.2.2012, though according to the complainant her harassment and maltreatment started soon after her marriage but during life time of her husband, she had not initiated any action against him and his family members. According to her, she had gone to her parental house and had returned to matrimonial home on 25.2.2012, when the accused maltreated her. With death of her son having taken place a few days earlier, it is highly unlikely that respondent No.1 Vandana Kohli would have behaved with the complainant in such a manner. Similarly Rishi Kohli and Bablu Kohli having lost their real brother, it could not be expected that they would raise any quarrel with the complainant. Shakuntla Kohli, Jiwan Kohli, Parveen Kohli and Shekhar are just relatives of deceased husband of the complainant. They appeared to have been caught in the net thrown wide by the complainant to rope in as many persons as possible from her husband side.

Therefore, the present petition has got merit and the same is accepted. The order dated 30.3.2015 passed by learned Additional Sessions Judge, Amritsar is set aside qua the petitioners, whereas the

order passed by Judicial Magistrate Ist Class, Amritsar is restored.

13.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No