

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

CRR No.2971 of 2011

Date of decision: 19th November, 2018

Gurdev Singh

... Petitioner

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Krishan S. Dadwal, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. Dy. Advocate General, Punjab
for respondent No.1/State.

None for respondent No.2.

FATEH DEEP SINGH, J.

This is a revision petition preferred by convict Gurdev Singh wherein he has challenged the findings of judgment and order dated 15.11.2011 of the Court of learned Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur. The background of this case stems from registration of case by way of complaint preferred by Saroj Kumari under Sections 406, 498-A read with Section 149 IPC against her husband Jagtar Singh, father-in-law Gurdev Singh (present revisionist), mother-in-law Harbans Kaur, brothers-in-law Shamsher Singh and Binder, sister-in-law Balbir Kaur and Gian Kaur (grandmother of the husband). The Court of learned Judicial Magistrate 1st Class, Hoshiarpur vide order dated 28.09.2005 acquitted all the accused except Jagtar Singh and Gurdev

Singh, whereby both the accused have been convicted and sentenced as follows:

Name of accused	Offence under Section	Sentence
Jagtar Singh	406 IPC	To undergo rigorous imprisonment for a period of 1 year and six months.
	498-A IPC	To undergo rigorous imprisonment for a period of one year and six months and to pay fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for a period of 7 days.
Gurdev Singh	406 IPC	To undergo rigorous imprisonment for a period of one year and six months.

The same was challenged in appeal before the Court of learned Additional Sessions Judge, Hoshiarpur whereby the Court by the impugned findings dated 15.11.2011, reduced the sentence awarded to both the accused whereby Gurdev Singh petitioner was sentenced to undergo RI for a period of one year under Section 406 IPC. The same is subject matter of challenge by convict petitioner Gurdev Singh.

Heard Mr. Krishan Singh Dadwal, Advocate for the petitioner; Mr. Dhruv Dayal, Senior Deputy Advocate General, Punjab representing respondent No.1/State and perused the records.

The complainant in her complaint had made accusations that her marriage with accused Jagtar Singh was solemnized on 25.06.1995, at which occasion her parents had given huge dowry articles including cash and that she gave birth to a child on 21.09.1996 and on account of matrimonial dispute thereafter, repeatedly Panchayats were convened but the accused refused to rehabilitate her and as a consequence of which, present complaint was filed on 12.06.1997 and after necessary evidence the impugned findings were returned.

The complaint filed by the complainant and placed on the records in para No.2, it is enumerated by the complainant that at the time of marriage, dowry of Rs.2.00 lacs was given to the accused with the understanding that on reaching home they would deliver the same under the possession of the complainant as the entire dowry articles were Istridhan of the complainant, and has attached the list of dowry articles with the complaint, which is at Annexure P-1 with this petition. In the light of what has been argued by the petitioner side and could not be controverted by the respondent complainant as none has appeared as well as learned State counsel, Annexure P-1 under the head 'articles given to Jagtar Singh accused' enumerates the household articles, gold ornaments etc. and under the head 'II' are the articles given to Gurdev Singh father-in-law, the present revisionist, which are detailed as below:-

1. Gold ring.
2. Blanket.
3. Suit one and sweater one.
4. Rs.2100/- in cash as 'Daaj'.

Furthermore, in her testimony as PW-1 there is only a vague allegation that at the time of marriage dowry of Rs.2.00 lacs was given to the accused and the other witnesses are PW2 Dwarka Nath, PW3 Arjan Singh and PW4 Karam Chand, the latter happens to be the father of the complainant. Nowhere from the complaint or in the testimonies of these witnesses of the complainant, it has come about that which of the articles was given to which of the accused and therefore, there is total lack of specific entrustment of articles of Istridhan. The list annexed with the complaint qua Gurdev Singh depicts only gifts of gold ring; blanket; one suit and one sweater along with Rs.2100/- in cash as 'Daaj' and which the learned counsel for the respondent on specific query by the Court, could not convince how the same falls within the definition of Istridhan. This Court seeks support from '**Bhaskar Lal Sharma & another vs. Monica**' 2009(3) RCR (Criminal) 866, where their Lordships, considering the definition of Istridhan, have clearly enunciated that the wedding gifts given to the bride fall within the definition of Istridhan. In the present case, the articles listed to have been given to Gurdev Singh

petitioner, are the gifts given to father-in-law at the time of marriage and therefore, in view of the definition enshrined in **Bhaskar Lal's case (ibid)** cannot be even loosely construed to be 'Istridhan'.

The second most important argument that has come about is the offence of criminal breach of trust. Section 405 IPC defines the offence of criminal breach of trust and Section 406 IPC prescribes the sentence for the same. As has been laid down in **Bhaskar Lal's case (ibid)**, necessary ingredients are that there is entrustment to any person with property or with any dominion over the property and that the person entrusted dishonestly misappropriates or converts the property to his own use. In the present case, neither in the statement of the complainant much less any evidence, there is any allegation of entrustment to the petitioner Gurdev Singh of any articles of Istridhan. The gifts given at the time of marriage to the accused being father-in-law, being outside the purview of term 'Istridhan' and the fact that expression entrustment carries with it implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Here, there is neither any allegation as to who have entrusted the articles detailed in the list, to the petitioner or that it was specifically entrusted to the petitioner being articles of Istridhan for the use of the bride and that the accused refused to hand over the same to the bride and rather usurped

the same to his own purpose, and thus, to the mind of this Court it nowhere implies conformant of any entrustment to the petitioner and that it would not be out of place to mention here that neither the complaint has been exhibited much less the Annexures thereto to prove the factum of the articles of Istridhan or their entrustment to the petitioner and how he has converted the same to his own use.

The Court below in the impugned findings has lost sight of these two essentialities to romp home the charges under Section 406 IPC against the petitioner. The Court below has misconstrued the list of dowry articles to be Annexure P1 when all it contains besides Istridhan the gifts given at the marriage to various accused, which do not fall within the definition of 'Istridhan' as they were not articles given to the bride by her parents or relatives. Moreover, as per the list annexed with the complaint, the petitioner has not been given any article of Istridhan and rather a gold ring; blanket; one suit and one sweater along with Rs.2100/- in cash have been mentioned, which are merely gifts given to the father-in-law and how the Court below has misconstrued this fact is anybody's guess. Thus, from this all, it bears out that no offence under Section 406 IPC is made out against the petitioner and the Courts below have misconstrued the evidence and the legal position and have come to a totally unjustified conclusion convicting the accused. There being

illegality in the findings, necessitates intervention by this Court by way of allowing the present revision petition and setting aside the impugned judgment of conviction qua the petitioner Gurdev Singh.

With these observations, the revision petition stands disposed off.

(FATEH DEEP SINGH)
JUDGE

November 19, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No