

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

CRR No.2364 of 2013 (O&M)
Date of Decision: April 02, 2018

Kuldeep

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vinod Kumar, Advocate for
Mr. Siddartha Yadav, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG Haryana.

JAISHREE THAKUR, J. (Oral)

1. The instant criminal revision has been filed against the judgment/order dated 05.07.2011/06.07.2011 passed by the Addl. Chief Judicial Magistrate, Jind as well as judgment dated 08.05.2013 passed by the Addl. Sessions Judge, Jind, whereby the petitioner has been convicted under Sections 406, 498-A read with Section 34 of Indian Penal Code and has been ordered to undergo sentence of rigorous imprisonment for a period of one year and to pay fine of Rs.2000/-.

2. In short, FIR No.17 dated 08.02.2008, under Sections 406, 498-A, 34 of Indian Penal Code came to be registered at Police Station Julana by complainant-Mukesh Devi on the allegations that she was

married to Kuldeep Singh, the petitioner herein on 04.05.2004 at Village Mato Bhaini as per Hindu rites and rituals, out of which wedlock a female child was born. As per complainant, sufficient dowry articles were given to the accused at the time of marriage, however, they were not satisfied with the same and started hurling accuses of bringing inadequate dowry. Thereafter, the accused started harassing the complainant to bring more dowry in the form of motorcycle, refrigerator, colour television, washing machine and cash of Rs.1,00,000/- and a sum of Rs.50,000/- was paid to the accused persons for motorcycle. However, the accused persons did not mend their ways and demanded more dowry. When the complainant shown her inability to fulfill the demand raised, the accused turned her out of the matrimonial home. A Panchayat was convened at the house of the accused persons to settle the matrimonial life of complainant, but all in vain and the same resulted into registration of the present case.

3. After completing the investigation, challan was presented in the court. Thereupon, copies of the challan was supplied to the accused persons and on finding a prima facie case, the accused persons were charge-sheeted under Sections 498-A, 406 read with Section 34 of Indian Penal Code, to which they pleaded not guilty and claimed trial.

4. In its evidence, the prosecution had examined five witnesses in all, Smt. Mukesh Devi complainant as PW1, Shamsher Singh as PW2, EHC Baljeet Singh as PW3, Surender as PW4, ASI Baljit Singh, Investigating Officer as PW5 and thereafter, closed its evidence.

5. Thereafter, statement of the accused persons were recorded under Section 313 Cr.P.C., in which they denied the allegations and pleaded false implication. In their defence, they tendered copy of petition as Ex.D1 and copy of ration card as Ex.D2.

6. After hearing arguments of both the sides, the learned trial court acquitted the accused Ramdhari and Kaushalya, who were parental uncle and aunt of husband of the complainant and living separately from them. Whereas, the petitioner herein and his mother Kamla have been convicted under Sections 498-A, 406 read with Section 34 of Indian Penal Code substantially for a period of one year each, besides the fine of ₹ 1000/- each. Being aggrieved, both the petitioner herein and his mother Kamla preferred an appeal before the Additional Sessions Judge, Jind, in which sentence imposed upon the petitioner herein was maintained only for offence under Section 498-A of Indian Penal Code, while acquitting him for the offence under Section 406 of Indian Penal Code, whereas, the mother of the petitioner herein namely Kamla was acquitted under both the said sections. In the instant criminal revision, the petitioner herein is assailing his conviction under Section 498-A of Indian Penal Code.

7. Learned counsel appearing on behalf of the appellant argues that both the courts below have failed to take into consideration the fact that there is material discrepancies in the statement of the witnesses of the prosecution. It is contended that the complainant had alleged that she was beaten by the petitioner many a times, however, she was not able

to prove any such incident or prove any medical in support of such allegations. It is vehemently argued that the instant FIR has been lodged by the complainant as a counter-blast to the divorce petition filed by the petitioner on the basis of non-compatibility, which has been granted and the complainant has already re-married. It is stated that a female child namely Parul was born out of this wedlock, who is being look after by the petitioner herein, however, being in custody, his mother is taking care of her. It is also contended that the conviction of the petitioner under Section 498-A of Indian Penal Code is also liable to be set aside or alternatively, the petitioner herein has already undergone a period of 05 months and 06 days under Section 498-A of Indian Penal Code and urges that his sentence should be reduced to the period already undergone by him.

8. Per contra, learned counsel appearing on behalf of the respondent-State argues that there are specific allegations levelled by the complainant qua the petitioner herein and the judgments passed by the courts below are well reasoned, therefore, the instant appeal is liable to be dismissed.

9. I have heard learned counsel for the parties, apart from perusing the record.

10. In her version, while appeared as PW1, complainant Mukesh categorically stated that the petitioner herein demand motorcycle after two months of the marriage and an amount of ₹ 50,000/- was paid to him for this purpose and this fact is duly

corroborated by complaint Mark-D1. PW4 Surinder admitted that Mukesh had moved this complaint, in which the matter was compromised. This demand of motorcycle was only for the benefit of the petitioner. In this view of the matter, this court is of the considered view that the prosecution has been able to prove the charge under Section 498-A of Indian Penal Code against the petitioner herein, therefore, his conviction under Section 498-A of Indian Penal Code is justified and deserved to be affirmed.

11. On the question of sentence, learned counsel for the appellant submitted that the marriage was solemnized between the parties in the year 2004 and the instant FIR came to be lodged in the year 2008 and since then about 10 years have elapsed. It is contended that the appellant has already remained in jail for a period of five months and six days. It is also submitted that the parties have already divorced and thereafter, the complainant has since re-married and the female child, which was born out of this wedlock, is being looked after by the appellant herein. In these circumstances, learned counsel for the appellant prays for leniency in the matter of awarding jail sentence to the appellant.

12. This court find substance in the submissions made by learned counsel for the appellant. Taking into consideration the above circumstances, this court deem it just and proper to reduce the sentence of the imprisonment of the appellant to the period of sentence already undergone by him. For this purpose, this court relies upon

Mukeshkumar Ratansingh Thakore vs. State of Gujarat, 2014 Cri. LR 814, Rajiv Narula vs. State, 2010(6) RCR (Criminal) 1483 and Dhaniram vs. State of M.P., 2012(24) RCR (Criminal) 190.

13. In view of the foregoing discussion and ratio of law, conviction and sentence of the appellant under Section 498-A of Indian Penal Code is affirmed, however, the sentence is reduced to the period of sentence already undergone by him.

14. The appeal stands partly allowed accordingly.

April 02, 2018

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No