

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

CRA No.2668-SB of 2015 (O&M)
Date of Decision:07.02.2019

Sameer Khurana and others

. Appellants

Vs.

State of Haryana

. Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

Present: - Mr.Harkesh Manuja, Advocate,
for the appellants.

Mr.Surinder Singh Pannu, DAG, Haryana.

Mr.Shiv Kumar, Advocate,
for the complainant.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the order dated 29.5.2015 passed by the Additional Sessions Judge, Faridabad by which appellants No.1 & 2 were held guilty under Sections 498A, 406 & 506 of the Indian Penal Code, 1860 [for short 'the IPC'] and appellants No.3 & 4 were held guilty under Sections 498A, 406, 506 & 354A of the IPC and the order dated 30.5.2015 by which all the appellants were sentenced separately, which is tabulated as under: -

<i>Name of convict</i>	<i>Offence under which convict has been sentenced</i>	<i>Period of imprisonment</i>	<i>Fine imposed</i>	<i>Imprisonment in default of fine</i>
Sameer Khuranna	498A IPC	Rigorous imprisonment for three years	5000/-	Rigorous imprisonment for one month
	406 IPC	Rigorous imprisonment for two years	5000/-	Rigorous imprisonment for one month
	506 IPC	Rigorous imprisonment for two years	10000/-	Rigorous imprisonment for one month

<i>Name of convict</i>	<i>Offence under which convict has been sentenced</i>	<i>Period of imprisonment</i>	<i>Fine imposed</i>	<i>Imprisonment in default of fine</i>
Vijay Kumari	498A IPC	Rigorous imprisonment for three years	5000/-	Rigorous imprisonment for one month
	406 IPC	Rigorous imprisonment for two years	5000/-	Rigorous imprisonment for one month
	506 IPC	Rigorous imprisonment for two years	10000/-	Rigorous imprisonment for one month

<i>Name of convict</i>	<i>Offence under which convict has been sentenced</i>	<i>Period of imprisonment</i>	<i>Fine imposed</i>	<i>Imprisonment in default of fine</i>
Rohit Khuranna	498A IPC	Rigorous imprisonment for three years	5000/-	Rigorous imprisonment for one month
	406 IPC	Rigorous imprisonment for two years	5000/-	Rigorous imprisonment for one month
	506 IPC	Rigorous imprisonment for two years	10000/-	Rigorous imprisonment for one month

	354-A IPC	Rigorous imprisonment for three years	5000/-	Rigorous imprisonment for one month
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<i>Name of convict</i>	<i>Offence under which convict has been sentenced</i>	<i>Period of imprisonment</i>	<i>Fine imposed</i>	<i>Imprisonment in default of fine</i>
Suraj Khuranna	498A IPC	Rigorous imprisonment for three years	5000/-	Rigorous imprisonment for one month
	406 IPC	Rigorous imprisonment for two years	5000/-	Rigorous imprisonment for one month
	506 IPC	Rigorous imprisonment for two years	10000/-	Rigorous imprisonment for one month
	354-A IPC	Rigorous imprisonment for three years	5000/-	Rigorous imprisonment for one month

The sentence awarded to all the appellants was ordered to run concurrently.

After the conviction and sentence, the appellants were granted bail by the trial Court and on 04.06.2015, while admitting the main appeal, the interim bail granted by the trial Court was ordered to be extended by this Court and vide order dated 10.7.2015 of this Court, the interim bail was ordered to be further extended during the pendency of the appeal. The appellants were tried in a case registered vide FIR No.689 dated 17.12.2013 under Sections 498A, 406, 354A, 506, 376 and 511 of the IPC at Police Station Central, Faridabad. The Additional Sessions Judge, Faridabad while convicting the appellants under various provisions of the IPC, acquitted Rohit Khurana (appellant no.3) from the charges of Section 376 and 511 of

the IPC. Consequently, Neha-wife of appellant No.1 also preferred an appeal against the acquittal of appellant No.3 by way of CRA-D-1190-DB-2015 which was also ordered to be heard along with this appeal.

While this appeal was pending for adjudication, the appellants moved an application bearing CRM-34317-2018 under Section 482 of the Code of Criminal Procedure, 1973 [for short 'the Cr.P.C.'] for setting aside the order of conviction and sentence dated 29.5.2015 and 30.5.2015 as well the FIR No.689 dated 17.12.2013 on the basis of which the prosecution was initiated, on the ground that it was resulted on account of matrimonial discord between the parties but since the complainant-Neha (wife of appellant No.1) has settled all the disputes after taking a lumpsum amount of ₹29,50,000/- and got the custody of the minor child (female) by way of a compromise, reduced into writing on 19.5.2018, on the basis of which a decree under Section 13-B of the Hindu Marriage Act, 1955 [for short 'the Act'] in regard to dissolution of her marriage with appellant No.1 was granted by mutual consent.

On 14.1.2019, notice in the application was issued to the State of Haryana for today.

Learned counsel for the State has not filed any reply to the application rather there is no contest to the application and therefore, the application is allowed at this juncture only to the extent of taking the documents Annexures A1 to A6 on record.

CRM-31317-2018 is thus disposed of in this manner at this juncture.

Since the matter has been settled between the parties, therefore, the other appeal filed by Neha-wife of appellant No.1 bearing CRA-D-1190-

DB-2015 which was also ordered to be listed along with this case is withdrawn by her today.

Learned counsel for the appellants has submitted that insofar as the present case is concerned, the appellants have been convicted maximum for three years for the offences committed under Sections 498A and 354A of the IPC and this Court has the inherent jurisdiction to quash the order of conviction by invoking Section 482 of the Cr.P.C. It is further submitted that out of 4 provisions of the IPC, 2 provisions of the IPC, namely, Sections 406 & 506 of the IPC are compoundable in terms of Section 320 of the Cr.P.C. Sections 498A and 354A of the IPC are non-compoundable as these provisions are not part of Section 320 of the Cr.P.C.

Learned counsel for the appellants has submitted that the conviction and sentence of the appellants under Sections 498A and 354A of the IPC can still be set aside/quashed by invoking the inherent powers of the Court provided under Section 482 of the Cr.P.C. in view of the facts and circumstances of this case because the FIR was registered by the wife of appellant No.1 on account of cruelty meted out to her for demand of dowry and Section 354A of the IPC was invoked on the allegation of abusing her by Rohit Khurana (appellant No.1) and Suraj Khurana (appellant No.4). It is submitted that although the appellants have been convicted and sentenced and are in appeal but the parties have entered into a compromise which was reduced into writing on 19.5.2018 in which it is provided that appellant No.1 would pay a lumpsum amount of ₹29,50,000/- to his wife towards full and final settlement against her permanent alimony, maintenance allowance for past, present and future and Istridhan etc. and would allow his wife to retain

the custody of a child namely Prananya and appellant No.1 would not claim the custody of the said child in future.

Apropos, they also decided to file a joint petition under Section 13B of the Act for dissolution of their marriage which was solemnized on 22.8.2010 as per Hindu rites at Karnal. They both suffered the statements on oath at the first and second motion stage and maintained their stand of parting ways in order to burry the hatchet forever but on the condition that appellant No.1 would pay a lumpsum amount of ₹29,50,000/- to his wife, who would also retain the custody of the only child (female). The petition filed under Section 13B of the Act was allowed on 19.5.2018 and a decree of divorce was also drawn. Thus the relationship of the parties as husband and wife came to an end on 19.5.2018 by passing a decree of divorce. However, still the sword of the order of conviction and sentence is hanging on the heads of the members of the family of the husband/appellant No.1, who have been convicted and sentenced by the learned trial Court under the aforesaid provisions of the IPC. Since there are two offences which are compoundable, namely, Sections 406 & 506 of the IPC, the Court do not find any difficulty in entertaining the prayer made by the appellants under Section 482 of the Cr.P.C. by moving the application bearing CRM-34317-2018 which has been partly allowed in the earlier part of this order but the difficulty is in regard to the setting aside of the order of conviction and sentence awarded under Sections 354A and 498A of the IPC as these provisions are non-compoundable.

In order to overcome this difficulty, learned counsel for the appellants has referred to a Division Bench judgment of this Court rendered in the case of ***“Sube Singh and another Vs. State of Haryana and another”***

2013 (4) RCR (Criminal) 102 to contend that this Court has exercised its power under Section 482 of the Cr.P.C. for the purpose of setting aside the order of conviction and sentence passed by the trial Court while the appeal was pending in the first Appellate Court.

Learned counsel for the respondent/State has not referred to any decision to the contrary except for arguing that the provisions of Sections 498A & 354A of the IPC are non-compoundable and the order of conviction and sentence cannot be set aside.

We have heard learned counsel for the parties and perused the record with their able assistance.

It would be relevant to refer to the fact that the order of conviction passed by the learned Appellant Court is under 4 provisions of the IPC i.e. under Sections 406, 498A, 506 & 354A of the IPC in which the maximum period of punishment under Sections 406, 498A & 354A of the IPC is of 3 years and under Section 506 of the IPC is of 2 years whereas, the punishment awarded to the appellants under Sections 498A & 354A of the IPC for 3 years and under Sections 406 & 506 of the IPC for 2 years. It is further submitted that since the genesis of the registration of the FIR is the matrimonial discord which has now been amicably settled between the parties as the wife of appellant No.1 has entered into a written compromise on 19.5.2018 and decided to withdraw all the cases filed against each other and the said agreement has been acted upon because appellant No.1 has handed over a draft of ₹29,50,000/- as a whole to his wife towards full and final settlement of all her claims and also the claims of his daughter as a right to live freely thereafter when the petition under Section 13B of the Act was filed and allowed by the competent Court.

The question still would be as to whether criminal proceedings can be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. even after the accused was found guilty and convicted by the trial Court though the matter is *sub judice* before the appellate Court?

The same question has been addressed by the Division Bench of this Court rendered in the case of ***Sube Singh and another (Supra)*** and is thus no more *res integra*. In the said case, the dispute was in regard to the sale of the land by practicing fraud. There was conviction under the provisions of Sections 420, 467 & 468 read with Section 120 of the IPC and the appellants therein were sentenced for a period of maximum 2 years and when their appeal was pending before the appellate Court, a petition under Section 482 was filed before this court for quashing the order of conviction and sentence on the basis of a settlement arrived at between the parties.

The matter was placed before the learned Single Bench of this Court, who had referred the matter to the Larger Bench by framing the question referred to, which has been answered by the Division Bench after referring to the facts and circumstances of the case much less taken into consideration the fact that the sale deed in question was cancelled and ownership of land was restored to the complainant therein and then it was answered that though Section 420 of the IPC is compoundable and Sections 467, 468 & 120B of the IPC are non-compoundable but there is no statutory embargo in invoking Section 482 of the Cr.P.C. even after conviction of accused by the trial Court and during the pendency of the appeal, in the interest of justice to burry the differences between the parties once for all.

Thus taking into consideration the entire facts and circumstances narrated hereinabove and the decision of this Court rendered in the case of *Sube Singh and another (Supra)*, we are of the considered opinion that it is one such case in which the interference of this Court is required in order to bring peace and harmony in the family of the appellants as well as the complainant who have now settled all their disputes which unfortunately had occurred because of the incompatibility between the husband and wife which resulted into the conviction of parents-in-law as well as the brother-in-law of the husband on account of the registration of the FIR. The prayer thus made in CRM-34317-2018 for accepting the appeal and quashing the orders of conviction and sentence dated 29.5.2015 and 30.5.2015 and also the proceedings which were initiated on account of registration of FIR No.689 dated 17.12.2013 is hereby allowed and conviction and sentence of the appellants and the proceedings initiated in terms of the FIR referred hereinabove are hereby set aside.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

07.02.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*