

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

CRM-A-1068-MA of 2017 (O&M)

Decided on:- January 18, 2019.

Anu Sharma.

.....Applicant.

Versus

Manish Rambani and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ashish Aggarwal, Advocate
for the applicant.

HARI PAL VERMA, J.

CRM-16186-2017

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 28 days in filing the present application under Section 378(3) Cr.P.C. for grant of leave to appeal.

For the reasons stated in the application, the same is allowed and the delay of 28 days in filing the instant application for grant of leave to appeal is condoned.

CRM-A-1068-MA-2017

Applicant-complainant Anu Sharma (hereinafter referred to as the 'complainant') has filed the present application under Section 378(3) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 02.02.2017 passed by learned Judicial Magistrate 1st Class, Amritsar, whereby respondents-accused Manish Rambani and Lajwanti

(hereinafter referred to as the 'accused') were acquitted of the charges levelled against them in a complaint filed by the complainant under Sections 406 and 498-A IPC.

Briefly stated, it is the case of the complainant that her marriage was performed with accused No.1 Manish Rambani on 20.04.2008 at Amritsar according to Hindu rites and ceremonies. Prior to the marriage, the engagement ceremony and Shagun ceremony were also performed and at the time of performance of every ceremony, the parental relations of the complainant had given a huge and substantial *Stridhan* to the complainant. Though all the articles were *Stridhan* of the complainant, but the same were taken into possession by all the accused persons, namely, accused No.1 Manish Rambani (husband), accused No.2 Smt. Lajwanti (mother-in-law), accused No.3 Rishi Rambani (brother-in-law i.e. Jeth) and accused No.4 Palwinder Singh (brother-in-law i.e. Nanannvia) of the complainant.

After marriage, accused No.1 was found a drunkard person, who was totally acting under the influence of accused No.2 and 3. Accused No.4 also had a complete hold in the matrimonial home of the complainant and he even used to misbehave with her time and again. The accused were not satisfied with the dowry articles given in the marriage. The accused No.1 also used to beat the complainant under the influence of liquor and drugs, but she kept on tolerating with the hope that with the passage of time, some better sense may prevail upon the accused persons. In the mean time, the complainant had conceived a child from the loins of accused No.1, but the aforesaid wrongful demands of the accused persons kept on increasing day by

day. At the time of delivery of child, the father of the complainant had given a sum of Rs.30,000/- to the accused No.2 Smt. Lajwanti. The parental relations of the complainant had made request to the accused persons not to harass her, but they did not mend their ways time and again, the complainant was turned out of her matrimonial home, however, with the intervention of respectables, she was again brought back to her matrimonial home.

On account of his evil vices, accused No.1 became HIV positive, but still the complainant decided to live with him being a faithful wife. On the other hand, accused No.1 did not improve himself, rather, his wrongful acts increased day by day and ultimately, all the accused planned to kill the complainant and to snatch her son. In the month of October 2009, the complainant was turned out of her matrimonial home in three wearing apparels along with her minor child and she was clearly told not to come back to her matrimonial home, so long as her parental relations do not fulfil their demand of more dowry. Now the accused have been threatening the complainant that after snatching her son, they will kill her and will also cause injuries to her parental relations. A representation No.2495 dated 30.06.2010 was submitted on behalf of the complainant to the Commissioner of Police, Amritsar seeking registration of a criminal case against all the accused, but they managed to exercise their influence over the local police and no action was taken against them on the said representation. Hence, the present complaint.

After recording preliminary evidence of the complainant, the accused No.1 and 2 (respondents herein) were summoned to face trial under

Sections 406 and 498-A IPC vide order dated 21.07.2015 passed by trial Court, whereas the complaint against accused No.3 and 4 was dismissed.

Thereafter, pre-charge evidence of the complainant was recorded. Finding a *prima facie* case against the accused, the trial Court charge sheeted them under Sections 406 and 498-A IPC vide order dated 19.12.2016, to which they did not plead guilty and claimed trial.

After recording the evidence and hearing the arguments of both the sides, the trial Court acquitted both the accused of the charges levelled against them vide impugned judgment dated 02.02.2017.

Aggrieved against the aforesaid judgment, the complainant has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal.

Learned counsel for the complainant has argued that the trial Court has not appreciated the evidence on record properly, rather, overlooked the evidence produced on record by the complainant. The accused were acquitted by the trial Court without applying its judicious mind to the facts and circumstances of the case.

He has further argued that while acquitting the accused, the trial Court has failed to appreciate the fact that at various occasions the accused have harassed the complainant in order to extract dowry. These incidents were duly corroborated by the other witnesses, which is sufficient to convict the accused. The trial Court has passed the impugned order in a casual and mechanical manner which has caused a serious prejudice to the complainant.

He has further argued that the impugned judgment dated 02.02.2017 passed by the trial Court is illegal and based upon misreading of facts and evidence and is not sustainable in the eyes of law. Therefore, the same is liable to be set aside and the accused be convicted and sentenced accordingly.

I have heard learned counsel for the complainant.

Perusal of the impugned judgment dated 02.02.2017 passed by learned trial Court shows that only general and vague allegations have been levelled by the complainant against the accused. Besides this, there are serious discrepancies in the evidence of complainant. The complainant has also admitted that after the delivery of her son, accused No.1 visited her and also organized Akhand Path. In her complaint, she has stated that she was thrown out of her matrimonial home in the year 2009, but in her examination-in-chief conducted on 15.01.2016, she deposed that she came back to her parental house on some excuse. The complainant has failed to prove the cruelty and demand of dowry. No specific allegation of entrustment is made in the complaint. Thus, the allegations are general in nature.

It is conceded position that the petitioner has obtained *ex parte* divorce against the husband. Even otherwise, Ajit Lal, who is father of the complainant while appearing in the witness box as CW2 has stated that the complaint was filed so as to ensure the presence of the husband in the divorce petition. The complainant has failed to prove the allegations of cruelty and demand of dowry against the accused.

The complainant has failed to show any misreading of evidence by the learned trial Court and has not been able to point out any legal error in the judgment under challenge, which may warrant interference by this Court. Thus, in the absence of any cogent evidence on record to connect the accused with the alleged crime, no case is made out for interference in the impugned order dated 02.02.2017 passed by learned Judicial Magistrate 1st Class, Amritsar.

Accordingly, the present application, being devoid of any merit, is dismissed.

Leave to appeal is declined.

January 18, 2019

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No