

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

**CRR-4087-2014 (O&M)
Date of Decision: 19.7.2019**

Randeep Singh

.....PETITIONER(s).

VERSUS

State of U.T. Chandigarh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Navkiran Singh, Advocate,
for the petitioner.

Mr. J.S.Toor, APP for UT, Chandigarh.

Mr. Vivek K. Thakur, Advocate, for
Mr. Divanshu Jain, Advocate,
for the complainant.

RAJ SHEKHAR ATTRI, J.

The above named petitioner has challenged the judgment of conviction and sentencing order dated 3.6.2013 passed by Judicial Magistrate, 1st Class, Chandigarh vide which he was convicted and sentenced to undergo rigorous imprisonment for two years and to pay fine of ₹ 3000/- or in default to undergo further rigorous imprisonment for rigorous imprisonment for one month under Section 498-A of Indian Penal Code (in short, “the Code”) as well as the judgment of the appellate court dated 4.12.2014 vide which the appeal filed by him was dismissed.

However, the appellate court has accepted the appeal filed by co-accused

Harbans Kaur and Dilbagh Singh (who are parents of the petitioner) and both of them have been acquitted.

Filtering out unnecessary details, the factual position is as follow : -

An FIR was lodged by complainant-Smt. Rupinder Kaur against the petitioner husband, her father-in-law Dilbagh Singh and mother-in-law Smt. Harbans Kaur on the allegations that they were demanding more dowry; treating her with cruelty and they have misappropriated her *istri dhan* articles. It is her case that she was married with the petitioner on 20.11.2004 in Hotel Regency, Sector 35, Chandigarh. Ample *istri dhan* articles were given which have been misappropriated by the petitioner and his parents and those have not been returned to the complainant. Numerous instances of cruelty have been pleaded.

Learned trial court, after giving adequate opportunities to the parties to adduce evidence, has convicted the petitioner and his parents only for the offence punishable under Section 498-A of the Code as aforesaid.

All of them preferred two distinct appeals. The appeal filed by the petitioner was dismissed whereas the appeal filed by the parents of the petitioner was allowed and they have been acquitted.

I have heard learned counsel for the parties and gone through the record.

Learned counsel for the petitioner has vehemently contended that in fact, there was no valid marriage between the petitioner and the

complainant-Smt. Rupinder Kaur; learned Magistrate has wrongly observed that it was a *kareva* marriage (*which is a customary form of marriage in Punjab, Haryana and in some areas of north India*) but the said marriage was neither in *kareva* form nor it was solemnized as per Sikh religious rites and it cannot be taken as a valid marriage rather it was merely a engagement ceremony, therefore, the conviction and sentence under Section 498-A IPC of the Code is not tenable.

It has been further argued that the complainant failed to establish that the petitioner belongs to a Jatt sikh family and no evidence was adduced to this effect. According to him, learned court below failed to appreciate the evidence and wrongly recorded the judgment of conviction and passed the order of sentence. In support of his contentions, he placed reliance on the judgments of Hon'ble Supreme Court in **Shivcharan Lal Verma and another v. State of Madhya Pradesh**; 2007 (15) SCC 369, **Anvar P.V. v. P.K.Basher and others**; 2015(1) SCC (L&S) 108, Kerala High Court in **Unnikrishnan @ Chandu v. State of Kerala**; 2017(4) ILR (Kerala) 822, Delhi High Court in **Capt. Rajinder Tiwari v. State (NCT of Delhi)**; 2007(1) RCR (Criminal) 890, **Mohit Gupta v. State Govt. of NCT of Delhi**; 2006(7) RCR (Criminal) 939 and of this Court in **Darshan Singh v. State of Punjab**; 1980 PLR 243, **Davinder Kaur v. Santokh Singh**; 1992 (2) RCR (Criminal) 20 and **Manjeet Singh v. Jagwinder Singh @ Raju and others**; 2017 (2) Law Herald 1805

On the other hand, learned State counsel as well as learned counsel for the complainant have vehemently contended that there was a

valid marriage; after marriage parties resided and co-habited together as husband and wife; apart from it, for the purpose of offence under Section 498-A IPC, proving of valid marriage is not a condition precedent. They endorsed the findings and observations of the Court below and strongly urges for dismissal of the petition. In support of his contention, they placed reliance on case in **Reema Aggarwal v. Anupam and others**; 2004 (1) RCR (Criminal) 776, **A. Subash Babu v. State of A.P. And another**; 2011 (3) RCR (Criminal) 674, **S. Nagalingam v. Sivagami**; 2001 (4) Crimes 278, **Koppiseti Subbharao @ Subramaniam v. State of A.P.**; 2009 (2) RCR (Criminal) 860, **Chanmuniya v. Virendra Kumar Singh Kushwaha and another**; 2010 (4) RCR (Criminal) 704, **Dwarika Prasad Satpathy v. Bidyut Prava Dixit**; 1999 (4) RCR (Criminal) 577 and **Kamala and others v. M.R. Mohan Kumar**; 2018 (4) RCR (Criminal) 894.

I have given my thoughtful consideration to the rival contentions.

So far as the contention regarding the validity of the marriage is concerned, to the mind of this Court, for proving the offence under Section 498-A of the Code, proof of valid marriage is not a *sine qua non*. This Court would like to reproduce the provisions of section 498-A of the Code here under : -

“**498A.** Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a

term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”

The provisions of said Section 498-A refers to the word, “woman” and not the wife and by the said provision, protection was contemplated to a married woman and not only to the legally wedded wife. Besides this, it has also clearly come into evidence that the marriage of the petitioner with the complainant took place in accordance with the customs which has been accepted by the petitioner.

When the parties are residing and cohabited together as husband and wife, then the fact that they were not validly married, does not, *ipso facto*, exonerate the husband from the rigors of section 498-A of the Code.

PW1 Rupinder Kaur has categorically stated that she was married with the petitioner on 20.11.2004 and it was a second marriage of both the parties. She has categorically stated that because of the second

marriage of both the parties, they adopted to marry each other with *chunni* ceremony which is a valid marriage. Her version is supported by the photographs. Even *granthi* of the Gurudwara was called who recited the holy *ardaas* and thereafter, both the parties started residing together.

PW2 Baldev Singh Bains is the father of the complainant. He has stated that he married his daughter with the petitioner according to Sikh rites and traditions by way of *chunni* ceremony on 20.11.2004. The petitioner asserts that only engagement ceremony was solemnized with Smt. Rupinder Kaur on 20.11.2004. A specific suggestion was given to her to this effect.

PW3-Karambir Singh has categorically stated that the marriage by way of *chunni* ceremony was solemnized in his presence at Hotel Regency on 20.11.2004.

PW4-Sadhu Singh also testified this fact. He has stated that a valid marriage was solemnized between the petitioner and Smt. Rupinder Kaur on that day.

PW-5 Surjit Singh has also stated that a valid marriage was solemnized between the petitioner and Smt. Rupinder Kaur in Hotel Regency on 20.11.2004. So far as the caste of the parties is concerned, PW5 has categorically stated that the parties to this petition are *Jatt* Sikhs. PW12 Gur Mehar Singh and PW13 Jugraj Singh have also testified that the marriage between the petitioner and Smt. Rupinder Kaur was solemnized by way of *chunni ceremony* and *ardass* was performed by the priest.

From the critical examination of the evidence available on

the record, one fact has been established that both the parties had opted to solemnize their second marriage by *chunni* ceremony and *ardass* under Sikh religious rites was also performed at that time to mark the completion of the marriage ceremony. Apart from it, the photographs have also been placed on record showing the petitioner putting ring in the finger of Smt. Rupinder Kaur who also put ring in the finger of the petitioner and they have been shown sitting together and going together to the house of the petitioner.

Custom is the strongest source of Hindu law. Even after codification of Hindu laws, the legislature in its wisdom had protected the custom and also the customary rites and ceremonies of the marriage.

Section 7 of Hindu Marriage Act specifically provides that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of the parties. It is not necessary that the customary ceremonies and rites may be of both the parties, rather it may be of either of the parties to the marriage.

Various Hindu societies were governed by the customs. The Punjab agrarian societies, especially the *Jatt* Sikhs, had been governed by various customs with regard to marriage, divorce, succession etc. These customs were secular in nature and those were result of geographical and social status of the northern parts of the country and they developed into Punjab customary law. Even the marriage by way of *chaddar andazi* is prevalent almost in all communities in Punjab and Jatt Sikhs were predominately governed by them. Sir W. H. Rettigon in his classic treatise on customs which was published under title '*Customary Law-As*

At Present Ascertained' 16th edition, 2007 has stated with regard to marriage customs among Jatts as under : -

“It is well-known that *Jats*, specially Sikh *Jats*, hold very liberal views on questions relating to marriage and even at the height of the *Brahmanical* supremacy they did not show much inclination to be bound by the caste-iron rules laid down in the later Hindu Smritis interdicting marriage outside the caste, and prescribing elaborate ritual for the performance of the marriage ceremony. Among them (*Jats*), the re-marriage of widows has all along existed commonly, and *Chadar Anadazi* in which the ceremonial has been reduced to the very minimum is one of the recognised forms of marriage. Indeed, the *Rivaj-i-ams* of the Districts and the records of the cases decided judicially are full of instances in which mere cohabitation as man and wife for a long period without any strict matrimonial ceremony, has been considered sufficient to validate the marriage. The presumption of marriage arising from long cohabitation can, however, be rebutted by showing that marriage between the parties would have been unlawful.”

A bare perusal of the above said paragraph from the customary law digest by Sir Rattigon makes it abundantly clear that mere co-habitation as man and wife for a long period, without any strict matrimonial ceremony, has been considered sufficient to validate the marriage and that the presumption of marriage arise from long co-

habitation which can be rebutted by showing that the marriage between the parties would have been unlawful. Nothing has been brought if the marriage between the parties is unlawful.

Liberal connotation has been given to the customs relating to the marriage prevalent in Punjab. Oftenly, it is said that a *Kareva* is a valid form of marriage only in case a person marrying with the widow of his elder brother but in Rattigon's Digest on Customary Law at page 488 (16th Edition) numerous examples are given of *Kareva* marriage between a man and woman belonging to different communities and it is not necessary that they are related to each other. This Court would like to reproduce the relevant paragraph of the Rattigon's Customary Law Page 488 (ibid) wherein instances of inter marriage have been given : -

“1. A *Jat* Jagirdar cannot ordinarily marry Brahmin woman. **But see No.50 PR 1900, where it was found that a *Kareva* marriage between a Hindu *Jat* and a *Brahmin* woman was valid; No.73 PR 1897, where it was held that issue of a permanent union between a *Jat* and a woman of the *Nai Khaider* or *Kalal* class were legitimate; and No.79 PR 1910, where it was held that a marriage between a *Jat* and a *Koli* woman was valid.....”**

Chunni ceremony is a prevalent in various communities in some areas of states of Punjab and Haryana as a ceremony for valid marriage. Generally, the boy puts a *chunni (dupatta)* over the girl and accepted her as his wife. There is ample evidence available on the record that *chunni* ceremony was performed.

Beside this, the petitioner also accepted the ceremony of *chunni*. This is why he put the ring in the finger of Smt. Rupinder Kaur respondent and thereafter, they resided and cohabited together as husband and wife for a long time. When the petitioner himself chosen a special form of marriage i.e. by way of *chunni* ceremony, he resided and cohabited with her, now he is estopped for denying the same to be a valid form of marriage.

To the mind of this Court, there was a valid marriage between the parties by way of *chunni* ceremony. At that time, a holy *ardaas* was performed by the *granthi* of the Gurudwara.

However, the facts in **Shivcharan Lal Verma and another v. State of Madhya Pradesh**; 2007 (15) SCC 369, **Anvar P.V. v. P.K.Basher and others**; 2015(1) SCC (L&S) 108, Kerala High Court in **Unnikrishnan @ Chandu v. State of Kerala**; 2017(4) ILR (Kerala) 822, Delhi High Court in **Capt. Rajinder Tiwari v. State (NCT of Delhi)**; 2007(1) RCR (Criminal) 890, **Mohit Gupta v. State Govt. of NCT of Delhi**; 2006(7) RCR (Criminal) 939 and of this Court in **Darshan Singh v. State of Punjab**; 1980 PLR 243, **Davinder Kaur v. Santokh Singh**; 1992 (2) RCR (Criminal) 20 and **Manjeet Singh v. Jagwinder Singh @ Raju and others**; 2017 (2) Law Herald 1805 are distinguishable.

Now coming to the demand of dowry, there is ample evidence that the petitioner and his family was not satisfied with the dowry, rather he was demanding more dowry articles. Apart from it, he has been treating the complainant with cruelty and turned her out from the his house. The evidence adduced before the court below well

establishes the factum of cruelty as defined under Section 498-A of the Code. The petitioner failed to rebut the concurrent findings of the courts below. Thus, the conviction under Section 498-A of the Code is well founded.

Now coming to the quantum of sentence, undisputedly, the petitioner has suffered the agony of protracted trial for more than 13 years. He has been sentenced to undergo rigorous imprisonment of two years and to pay fine of R 3,000/- or in default of payment, to undergo rigorous imprisonment for one month under Section 498-A of the Indian Penal Code. This Court is of the view that ends of justice would be adequately meted out in case substantive sentence is reduced to six months. However, there shall be no alteration in the amount of fine.

With these observations and modifications, the present revision petition is dismissed. Now, for the sake of clarity, it is made clear that the petitioner stands sentenced to undergo rigorous imprisonment of six months and to pay fine of R 3,000/- or in default of payment, to undergo rigorous imprisonment for one month under Section 498-A of the Indian Penal Code. He has already paid the fine.

(RAJ SHEKHAR ATTRI)

JUDGE

July 19, 2019

Paritosh Kumar

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No