

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

**CRR-2851-2017 (O&M)
Date of Decision: 13.3.2019**

Yogesh Prabhakar and another

.....PETITIONER(s).

VERSUS

Monika Prabhakar alias Monika Sharma

.....RESPONDENT(s).

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

Present: Mr. Yogesh Prabhakar in person.

Mr. B.R. Rana, Advocate,
for the respondent.

RAJ SHEKHAR ATTRI, J.

The petitioner has filed this consecutive petition under the provisions of Section 482 of the Code of Criminal Procedure solely on the ground that the charges have not been properly framed by the learned trial court vide order dated 29.7.2017.

The wife of the petitioner filed a complaint under the provisions of Section 200 of the Code of Criminal Procedure against the petitioner for the offence punishable under Sections 406, 498A of the Indian Penal Code.

After recording preliminary evidence, the petitioner was summoned vide order dated 9.7.2009 and the charges were framed against him. He challenged the charge solely on the ground that order of

charge is not speaking and is without any reasons by filing CRM-M-18674-2014. That petition was disposed of by this Court vide order dated 27.5.2014 by passing the following order : -

“The petitioner wishes to withdraw the present petition with liberty to raise all the points before the trial Court at the time of framing of charge.

Dismissed as withdrawn with the aforesaid liberty. The trial Court shall pass a speaking order in respect of framing of charges, if any,.”

Charges were framed against the petitioner. He preferred CRR-587-2015 which was disposed of by passing the following order : -

“A plain reading of order dated 05.01.2015 would make it evident that the trial Magistrate has not passed a speaking order while framing charge against the petitioner and his co-accused.

The order passed by the trial Court reads as follows:-

“Heard. A prima facie case punishable under Sections 406 and 498-A IPC is made out against the accused. They have been charge sheeted accordingly.....”

As the order passed by the trial Court framing charge against the petitioner and his co-accused is in complete violation of the directions issued by this Court, the same cannot be allowed to sustain and ordered to be set aside.

For the aforesaid reasons, the petition is allowed. The impugned order dated 05.01.2015 and the charge sheet of the even date are ordered to be set aside. The matter is remitted to the trial Court for considering the question of charge afresh, in complete consonance of the order dated 27.05.2014 passed by this Court.”

A bare perusal of the complaint transpires that in para 16, the allegations with regard to entrustment have been made and in para 17, is with regard to jurisdiction. It is apposite to reproduce para 16 and 17 of the complaint as under : -

“16. That the T.V. And A.C., Golden chain, Ring, Wrist watch were entrusted to accused No.1 which are in his possession and refuse to return back the same and furniture, loapola dinner set and five suitcases of V.I.P. And one Aristocrat and two blankets and one set of gold and rings and all other gold ornaments were entrusted to accused no.1, which are in her possession which she refuse to return and all other articles mentioned in the list attached are in common possession of both the accused persons which were entrusted to them and they refuse to return the same.

17. That the complainant is residing with her parents Durga Nagar, Tehsil and Distt. Ambala and some dowry articles were also entrusted to accused persons at Ambala and were also demanded back from the accused persons to return to the complainant at Durga Nagar Ambala

city where both the accused persons refused to return and they also humiliated, thrashed, beaten and also treated the complainant with cruelty for demand of dowry, hence this Hon'ble Court has jurisdiction to entertain and try the complaint and as such they have committed offences u/s 406, 498-A IPC.”

From para 16 of the complaint, it is clear that factum of entrustment has been classified into three segments; first entrustment to petitioner-Yogesh Prabhakar which is of TV, AC, golden chain, ring, wrist watch; secondly, to his mother Smt. Renu Prabhakar which includes furniture, loapola dinner set and five suitcases of VIP and one aristocrat and two blankets and one set of gold and rings and all remaining ornaments. However, it has been submitted that the remaining articles shown in the list attached with the complaint are in possession of both the petitioners and his mother.

A bare perusal of the charge sheet makes it clear that it relates to only third category (common entrustment). The charge sheet reads as under : -

“That after the marriage of complainant with Accused Yogesh Prabhakar on 22.04.2004, you both misappropriated the dowry articles belonging to complainant Monika Prabhakar which were entrusted to you at the time of marriage by dishonestly converting the same to your own use and thereby committed an offence punishable under section 406 of IPC and within my cognizance.

Secondly, after the marriage, you both subjected complainant Monika Prabhakar with cruelty by giving beatings, taunting and demanding more dowry and you have thereby committed an offence punishable under section 498-A IPC and within the cognizance of this Court.

And I hereby direct that you be tried by this court on the above said charge.”

When specific entrustment was made to the petitioner of some of the articles and remaining to his mother, it must be mentioned in the charge sheet. Even in the order vide which the charge was framed, these facts have not been mentioned.

In this view of the matter, learned Judicial Magistrate failed to comply with the directions of this Court passed in CRR-587-2015 as well as in CRM-M-18774-2014.

For the aforesaid reasons, the petition is allowed. The impugned order dated 29.7.2017 and the charge sheet of even date are ordered to be set aside. The matter is remitted to the trial Court for considering the question of charge afresh, in complete consonance of the order dated 27.5.2014 passed by this Court.

(RAJ SHEKHAR ATTRI)
JUDGE

March 13, 2019

Paritosh Kumar

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No