

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

CRA-S-3047-SB-2009

Date of decision : 12.05.2022

Jitender Kumar and others

..... Appellants

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Robin Dutt, Advocate
for the appellants.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Mr. Karunesh Kaushal, Advocate
for the complainant.

RAJESH BHARDWAJ, J.

This appeal has been filed by the appellants challenging the orders of conviction dated 18.11.2009 and sentence dated 21.11.2009 passed by the learned Additional Sessions Judge, Faridabad, whereby, all the four appellants/accused namely, Jitender Kumar, Bijender Kumar, Neelam and Manju, had been convicted under Section 498-A IPC and were sentenced to undergo rigorous imprisonment for a period of two years along with fine of Rs.500/- and in default of payment of fine, the appellants/accused were further sentenced to undergo imprisonment for a period of one month.

The case of the prosecution against the appellants was that the complainant Ms. Mamta Devi wife of accused Devender Aggarwal and daughter of late Sh. Harish Chander Single, had lodged the complaint dated 14.11.2007. It was alleged that she got married with accused Devender Aggarwal son of Bijender Aggarwal on 15.11.2002 and

sufficient amount of dowry was given in her marriage by her mother as well as by her brothers. They spent about Rs.8,00,000/- in her marriage. All the necessary articles including Scooter Bajaj Super was given in the marriage. It was alleged that after one year of her marriage, her father-in-law-Bijender Aggarwal, mother-in-law-Manju, elder brother of her husband Jitender Aggarwal and Smt. Neelam wife of Jitender Aggarwal and her husband Devender Aggarwal started taunting her for bringing less dowry. She was being compelled to bring Rs.8,00,000/- from her parents. Having been compelled, her brothers namely, Yogender Singla and Vikrant Singla had given Rs.6,00,000/- to her husband. She alleged that even after getting Rs.6,00,000/-, they raised further demand and kept on harassing and humiliating her for bringing more dowry. On 12.11.2007 at about 12:00 noon, her husband clandestinely gave her poisonous substance on pretext of medicine sent by her brother and wife. She started vomiting and her husband after beating her, fled away from the house. She called her brother Rinkle Singla @ Vikrant Singla who got her admitted in Sarvodaya Hospital where it was confirmed by the doctors that the poisonous substance i.e. Celphos was given. Thereafter, she lodged the FIR and the investigation was concluded and the charge-sheet was presented before the trial Court. The charges were framed for the offence under Sections 498-A, 328 read with Section 34 IPC. The accused pleaded not guilty and claimed trial. The prosecution produced 13 prosecution witnesses along with other documentary evidence. The defence also led evidence in their support. After a detailed trial, learned trial Court convicted all the four appellants and the husband-Devender Kumar for the offence punishable under Section 498-A IPC. However,

husband-Devender Kumar was also convicted for the offence under Section 328 IPC whereas, all the four appellants were acquitted of the same. Aggrieved by the same, the appellants filed the present appeal against their conviction and sentence. So far as husband Devender Kumar is concerned, he filed the separate appeal i.e. CRA-S-3048-SB-2009. During the pendency of the appeal, husband Devender Kumar died and hence, the appeal filed by him as afore-mentioned stood abated vide order dated 25.03.2022.

The present appeal has been filed by rest of the four appellants i.e. appellant No.1-Jitender Kumar-brother-in-law (Jeth), appellant No.2-Bijender Kumar (father-in-law), appellant No.3-Neelam (jethani) and appellant No.4-Manju (mother-in-law). Learned trial Court suspended their sentence for one month under Section 389 Cr.P.C. for enabling the appellants to file the appeal. After the present appeal having been filed, their sentence was suspended by this Court vide order dated 18.01.2010. During the pendency of the appeal, it was submitted before this Court by the counsel for the complainant that both the parties i.e. the appellants and the complainant, have settled the dispute amicably and the complainant would have no objection if the conviction of the appellants is *set aside*. As a result, this Court directed both the parties to appear before the trial Court for recording their statements for verification of the genuineness of the compromise arrived at between the parties as contended. As a result, both the parties appeared before the learned trial Court who recorded their statements in support of compromise arrived at between the parties on 20.02.2020. Learned trial Court after having verified the genuineness of the compromise arrived at between the

parties, sent its report dated 02.03.2020 to this Court. It was concluded by the learned Additional Sessions Judge, Faridabad that he is satisfied that the compromise has been effected between the parties without any pressure or coercion in any manner. The parties have no other criminal proceedings pending against them, It is further submitted that as per the report submitted by the SHO concerned, neither other criminal case nor any PO proceedings are pending against any of the parties.

Counsel for both the parties have admitted the compromise arrived at between the parties. It has been submitted before this Court that with the intervention of the respectables, good sense has prevailed upon them and both the parties have decided to bury the hatchet. It is submitted that in pursuance to the compromise arrived at between the parties, the divorce has been granted between the husband and wife and thereafter, husband has even expired. As agreed by the parties, Rs.10,00,000/- towards one time permanent alimony has already been paid to the complainant-wife. Both the parties wanted to live in peace and have decided to bring end to all the outstanding litigations. They have relied upon the judicial precedents of the Hon'ble Supreme Court in Murali Vs. State rep. by the Inspector of Police, Criminal Appeal No.24/2021 (arising out of SLP (Crl.)10813 of 2019) with Rajavelu Vs. State rep. by the Inspector of Police, Criminal Appeal No.25/2021 (arising out of SLP (Crl.) 10814 of 2019) decided on 05.01.2021 where the appellants after having been convicted by the Courts, the Hon'ble Supreme Court has accepted the factum of compromise and partly accepted the appeal for the offence under Section 307 IPC filed by the convicts by reducing the sentence to that of already undergone. They have pleaded that the

appellants are convicted for the offence under Section 498-A IPC where the Hon'ble Supreme Court has time and again held that though the offence under Section 498-A IPC is non-compoundable, however, in view of the judicial precedent in B.S. Joshi and others Vs. State of Haryana and another, (2003) 4 SCC 675 the offence under Section 498-A IPC is being a matrimonial offence would be compoundable. They have also relied upon the judgment of Hon'ble the Supreme Court titled as Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, 2021 SCC OnLine SC 315.

I have heard the learned counsel for the parties and have perused the record.

The Hon'ble Supreme Court in State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335 has held as under:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the

- accused.*
2. *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
 3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
 4. *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
 5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
 6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
 7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

Hon'ble Division Bench of this Court in Sube Singh and another vs. State of Haryana and another, 2013(4) RCR (Criminal) 102

observed as under:

“20.It has thus been ascertained to our satisfaction and stands established that the compromise arrived at between the parties is genuine, willful and bona fide. It is also proved that the petitioners and respondent No.2 are living under the same roof. In fact, to remove any sort of doubts regarding the genuineness of the compromise, respondent No.2 appeared before us along with her daughter and made a statement on oath on 3.4.2013 in support of the compromise. She also stated that the parties are living under the one roof and she is being well looked after by her sons, namely, the petitioners.

21. In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Nonacceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.

22. Consequently and for the reasons afore-stated, we allow this petition and set aside the judgment and order dated 16.3.2009 passed in Criminal Case No.425-1 of 2000 of Additional Chief Judicial Magistrate, Hisar, on the basis of compromise dated 08.08.2011 arrived at between them and their step-mother respondent No.2 (Smt. Reshma Devi) w/o late Rajmal qua the petitioners only. As a necessary corollary, the criminal complaint filed by respondent No.2 is dismissed qua the petitioners on the basis of above-stated compromise. Resultantly, the appeal preferred by the petitioners against the

above-mentioned order dated 16.3.2009 would be rendered infructuous and shall be so declared by the first Appellate Court at Hisar.”

The dispute between the parties is a matrimonial discord. The marriage in question took place on 15.11.2002 and thereafter, the present FIR was lodged in 2007. The appellants were convicted on 18.11.2009. After the conviction, the husband has expired. As per the compromise arrived, the divorce took place between the husband and wife under Section 13-B of Hindu Marriage Act and the permanent alimony was also paid to the complainant-wife. The appellants are facing the agony of pending litigations since 2007 i.e. from last about 15 years. In view of the judgment by the Hon’ble Supreme Court titled as *Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and Ors., (1980) 1 SCC 63, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words: "The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."*, this Court finds that the plea taken by the appellants qualifies for its acceptance on the anvil of the settled law.

In view of the above discussion and the law settled by the Hon'ble Apex Court in above-said cases, the compromise arrived between the parties is accepted and on the basis of the same, order of conviction dated 18.11.2009 and sentence dated 21.11.2009 passed by learned Additional Sessions Judge, Faridabad is *set aside*.

Appeal stands disposed of.

12.05.2022
m.sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No