

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(215)

CRM-A-1037-MA-2013(O&M)
DATE OF DECISION:- 02.03.2022

MANJIT KAUR

...PETITIONER

VERSUS

CHARAN SINGH AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sunil Agnihotri, Advocate for the applicant-complainant.

SUVIR SEHGAL, J. (ORAL)

CRM-49260-2013

Prayer in the application is for condonation of delay of 600 days in the filing of the appeal.

Heard counsel for the applicant.

Counsel for the applicant has submitted that the criminal complaint filed by the applicant was decided by the learned Judicial Magistrate Ist Class, Kapurthala on 22.11.2011 and the judgment was challenged before the learned Sessions Judge, Kapurthala by filing an appeal on 24.12.2011, within the prescribed period. But in view of the judgment of the Hon'be Supreme Court in *Subash Chand Versus State (Delhi Administration) (2013) 2 SCC 17*, appeal was withdrawn with liberty to approach the High Court vide order dated 24.05.2013.

Counsel submits that immediately thereafter the present application for leave to appeal has been instituted before this Court, which has resulted in a delay of 600 days.

Heard counsel for the applicant.

For the reasons given, application is allowed. Delay of 600 days in filing the present proceedings is condoned.

CRM-A-1037-MA-2013

Criminal law was set in motion by the applicant-complainant, namely, Manjit Kaur, by way of a complaint under Sections 406, 498-A and 120-B of the Indian Penal Code, 1860 (for short “IPC”). In order to avoid repetition and also for the sake of brevity, it would be appropriate to refer to the factual background, recorded by the Trial Court in para 2 of the judgment dated 22.11.2011, which is reproduced hereunder:-

“2. Stated briefly, the case of the complainant is that her marriage was solemnized with accused Jaswant Singh in January 1992 at village Miani, Tehsil Dasuya, District Hoshiarpur, as per Sikh rites. They cohabiting (sic cohabited) together as wife and husband at village Bassi, Tehsil Bholath, District Kapurthala. Out of wedlock, two made (sic male) children were born, who died after their birth. Charan Singh is father-in-law, Sammiter Kaur is mother-in-law, Kulwant Kaur is sister-in-law and Fauja Singh and Kulwinder Kaur are real brother and sister-in-law of father in law of father-in-law of the complainant. At the time of marriage sufficient dowry was given, as per list enclosed. The dowry/Istridhan articles were entrusted to all the accused except sister-in-law, Kulwant Kaur. The accused were not satisfied with the dowry. They stated (sic started) teasing, misbehaving, insulting, abusing, humiliating, maltreating and beating the complainant on one false pretext or other on petty matter. At the time of her marriage, Jaswant Singh, was doing a job in Army. After three months from the marriage, he left the job. Thereafter, he started asking the complainant to bring Rs.3 lacs in cash from her mother for sending him abroad. When the

complaint (sic complainant) showed her inability to meet the said demand, Jaswant Singh, accused abused and beaten her. The complainant was also maltreated by taunting and humiliating her in the presence of neighbors and relatives. She was given threats not to be kept as wife in case she does not meet the demand. This forced mother of the complainant to arrange a sum of Rs.1 lacs after borrowing it from relatives. With said money, accused, Jaswant Singh, went to Dubai after 10 months of the marriage. He remained there for three years, but never sent any money to the complainant. After returning from there, he again started maltreating, humiliating and beating the complainant on petty matter without any reasonable cause. He again started demanding Rs.2 lacs at the instigation of the remaining accused. In order to save the family life of the complainant, he (sic her) mother borrowed Rs.2 lacs on interest from Nirmal Kaur to give it to accused, Jaswant Singh. Thereafter, accused, Jaswant Singh, went to Israel in April, 1999 and returned finally in September 2002. Complainant returned entire money sent to her by Jaswant Singh while being abroad. After getting the money accused, Jaswant Singh, changed his mind and intended to marry some other girl after deserting the complainant. On 10.08.2003, accused, Jaswant Singh after conspiring with remaining accused turned out the complainant from her matrimonial home after beating her mercilessly in three wearing clothes with threat not to come back otherwise to (sic she will) be killed. Since then the complainant is residing in her parental house. The mother and relatives of the complainant have tried their level best to get (sic) rehabilitate the complainant, but, accused have flatly refused and Jaswant Singh now has filed the petition for grant of divorce. The matter was reported to police of Police Station, Bholath, but no action was taken. Hence the complaint.

Vide order dated 05.05.2006, the Trial Court summoned the respondents, who are in-laws of the complainant along with their relatives, Jaswant Singh, Kulwant Kaur, Fouja Singh and Kulwinder Kaur, for having committed an offence under Sections 406 and 498-A read with Section 120-B, IPC. The accused appeared before the Trial Court and were enlarged on bail, except Jaswant Singh, husband of the complainant, who did not appear and was declared as a proclaimed offender on 03.10.2009. Fouja Singh and Kulwinder Kaur approached this Court in quashing petitions and vide order dated 02.07.2010, this Court quashed the complaint against them. Similarly in a separate petition, Kulwant Kaur approached this Court and vide order dated 23.10.2009, criminal proceedings against her were quashed and all the said three accused were discharged. After pre-charge evidence by the complainant, vide order dated 22.10.2011 the Trial Court discharged the remaining accused (present respondents) under Section 406, IPC and they were charge sheeted for the offence under Section 498-A, IPC to which they pleaded not guilty and claimed trial. The complainant-applicant adopted her pre-charge evidence as post-charge evidence, which included her statement as well as that of her mother, Nirmal Kaur, and an independent witness, Mukhtiar Singh. Finding incriminating evidence against the accused, they were examined under Section 313 of the Code of Criminal Procedure, 1973 (for short “the Code”) and they pleaded false implication and claimed innocence. Opting to lead defence evidence, they examined Sandeep Kumar, Food Inspector Grade-II, office of Food and Civil Supplies Department, Kapurthala, as DW-1, who produced official documents on record as Ex.-D-1 to D-4.

Vide its judgment dated 22.11.2011, Trial Court acquitted the accused-respondents holding that the evidence of the complainant has remained doubtful and the accused stand discharged from charge under Section 498-A, IPC. Feeling aggrieved, the applicant has filed the present application under Section 378(4) of the Code seeking leave to appeal. That is how, this Court is seized of the matter.

Learned counsel for the applicant has urged that the Trial Court has proceeded on a misconceived perverse approach while recording acquittal of the accused-respondents. He contends that sufficient evidence has been brought on record, bringing home the guilt against the accused-respondents, but the Trial Court has failed to appreciate the evidence as a result of which, the impugned judgment is not sustainable.

I have heard learned counsel for the applicant and with his able assistance, examined the record of the lower Court.

After giving a thoughtful consideration to the arguments raised and keeping in view the factual situation, I am of the considered opinion that the present case is not fit for granting leave to file appeal for the reasons given hereunder.

Firstly, marriage of the complainant was solemnized with Jaswant Singh in 1992 and the complaint has been lodged by her on 06.08.2005, i.e., after about 13 years of marriage. During this entire period of 13 years, there is no material to show that any complaint had been given by the complainant regarding the allegations leveled by her. Rather in her evidence, she has stated that she conceived six times, which is an indicator of the fact that the relations between her and her husband and his family members were normal. After a divorce petition was

instituted by the husband under Section 13 of the Hindu Marriage Act, 1955 on the ground of cruelty that present complaint was filed by her. The complaint being a counterblast to divorce petition cannot be ruled out.

Secondly, allegations have been leveled by the complainant of misappropriation of dowry articles by the accused, who are her husband, in-laws and relatives of the husband. Relatives of the husband (excluding the in-laws) approached this Court by way of two separate petitions seeking quashing of the complaint, which were accepted vide order dated 23.10.2009 passed in ***CRM-M-14833-2007 titled as Kulwant Kaur and another Versus Manjit Kaur and another*** and order dated 02.07.2010 passed in ***CRM-M-33774-2008 titled as Kulwinder Kaur and another Versus Manjit Kaur and another***. In particular, the observations of this Court in Kulwinder Kaur's case supra deserve to be noticed and are reproduced as under:-

“Even otherwise, the allegations in the present petition does not inspire confidence. The petitioners are only uncle and aunt of the husband of the complainant. They have their own family comprising of two sons and one married daughter. They are admittedly residing separately. The said allegations, in any case, which are not specific, are made after fourteen years of the marriage and that also after the filing of divorce petition and a criminal complaint against the complainant.

Lately, a tendency has developed for roping in all the relations in dowry cases in order to browbeat and pressurize the immediate family of the husband. Accordingly, sometimes inflated and exaggerated allegations are made.”

Thirdly, after analysing the evidence led by the complainant, the Trial Court has come to the conclusion that the evidence led by her is doubtful. The Court has found that the complainant, who appeared as CW-1, has not named any neighbor or relation in the presence of whom, she was maltreated. Her mother, Nirmal Kaur, CW-2, is an interested witness and the evidence of Mukhtiar Singh, CW-3, does not carry any weight as he is a resident of the paternal village of the complainant and cannot depose regarding the cruelty meted to the petitioner.

Fourthly, in their defence evidence, the accused have brought on record material to show that the names of the complainant and her husband were deleted from the Ration Card of the joint family on 22.02.1995 and thereafter a separate Ration Card of the couple was made. It has been pointed out that the complainant and her husband were living separately from other family members since 1995. From the evidence led, it seems that the entire dispute between the couple arose after the husband, who was abroad, came back to India and insisted upon his wife to account for the amount of Rs.10 lacs, which he had saved from his earnings and sent to her. On her failure to do so, the relations between the parties came under pressure leading to the filing of the divorce petition by the husband and the present complaint by the complainant.

Lastly, it may be noticed that the Apex Court in ***Kahkashan Kausar alias Sonam and others Versus State of Bihar and others, 2022 SCC Online SC 162*** has held.

“18. The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A, IPC and the increased tendency of implicating relatives of the husband in matrimonial

disputes, without analysing the long term ramifications of the trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the Courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

Considering the totality of the facts and circumstances of the case noticed above, coupled with the aforementioned reasons and judgment of the Supreme Court, this Court is of the view that there is no patent illegality or perversity, which is a *sine qua non* for interference in the impugned judgment of the Court below.

In view of the above, present application lacks merit and is without any substance. No case for interference has been made out.

Resultantly, the application under Section 378 (4), Cr.P.C. seeking leave to file appeal against impugned judgment of acquittal is ordered to be dismissed.

(SUVIR SEHGAL)
JUDGE

02.03.2022
Kamal

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