

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

201

CRR-330-2020

Date of Decision: 21.02.2023

Anu Gupta

...Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. S.P. Arora, Advocate for the petitioner

Mr. Digvijay Nagpal, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 401 Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') is seeking setting aside of order dated 10.01.2020 whereby Chief Judicial Magistrate, S.A.S. Nagar, Mohali has dismissed the application of the petitioner under Section 216 Cr.P.C. seeking addition of charges under Section 406, 420 and 120-B of Indian Penal Code, 1860 (for short '**IPC**') against respondent Nos.2 to 7.

2. The brief facts emerging from record and arguments of learned counsel for the parties are that the petitioner is a resident of Panchkula and his marriage was solemnized with Vikas Gupta i.e. respondent No.2 on 10.02.1999. The couple could not enjoy fruits of the marriage and relations soured. An FIR No.496 dated 23.12.1999 came to be registered against the respondents. The FIR was registered under Sections 406, 498-A of IPC and Sections 4 and 9 of Dowry Prohibition

Act, 1961. During the course of investigation, the police effected recovery of gold articles. The Investigating Officer did not seal the recovered articles. The recovery was effected on 10.01.2000 whereas petitioner came forward for its possession after two years. The petitioner found that the alleged recovered articles were not made of gold. At the behest of the petitioner, another FIR No.127 dated 25.03.2002 under Sections 406, 420 & 120-B of IPC came to be registered against the respondents. The police after completing the investigation filed its report under Section 173 Cr.P.C. The respondents preferred petition before this Court seeking quashing of aforesaid FIR No.127 dated 25.03.2002. This Court vide order dated 22.11.2006 passed in CRL.M.No.11178-M of 2003 allowed the petition of the petitioners therein. The operative portion of order dated 22.11.2006 reads as:-

“Application was submitted by Anu Gupta on 28.02.2002. The jewellery articles might have been got checked by the government approved expert later on and therefore this FIR No.127 was registered on 25.3.2002 i.e. after two years of seizure memo. It is admitted fact that Anu Gupta did not come forward to claim the dowry articles taken in possession on 10.1.2000 on superdari. These continued lying in the police station. The gold ornaments were not kept in any sealed container. Now after two years if these had been found to be not genuine, no separate FIR could be registered as against the petitioner for the offence under Sections 406/420/120-B IPC. If there had been any problem then that matter should have been

investigated in case FIR No.496 dated 23.12.1999 originally registered in which articles were taken in possession. Registering a separate FIR and that too on the allegations that after two years of the seizure memo prepared in the earlier FIR, on application of the complainant that articles were found not to be genuine will just be a source of harassment for the petitioners and when the challan is presented then it is misuse of process of the Court.

Under these circumstances, this petition is accepted. FIR No.127 dated 25.3.2002 shall stand quashed. If there is any problem as far as dowry articles are concerned that should be taken up in case FIR No.496 dated 23.12.1999.”

3. The petitioner, keeping in mind the afore-stated order of this Court, preferred an application under Section 216 Cr.P.C. before the Trial Court seeking addition of charge under Section 406, 420 & 120-B of IPC. The application of the petitioner came up for consideration before CJM, Mohali, who vide impugned order dated 10.01.2020 dismissed application of the petitioner.

4. Learned counsel for the petitioner, *inter alia* contends that Trial Court has passed the impugned order ignoring the findings recorded by this Court in its order dated 22.11.2006. This Court has quashed FIR with the observation that charges can be framed under Sections 406, 420 and 120-B IPC in the trial arising out of first FIR i.e. FIR No.496 dated 23.12.1999. The limited prayer of the petitioner is that

charges should be framed under Section 406, 420 and 120-B IPC in the trial arising out of first FIR.

5. Learned State counsel submits that State has not challenged order dated 22.11.2006 passed by this Court and is not further assailing the impugned order.

6. I have heard arguments of learned counsels for the parties and perused the record.

7. The relevant extracts of the impugned order read as:-

“After hearing the arguments of Id. Counsel for complainant and Id. Defence counsel, this Court is of the considered view that present application is moved by complainant through her counsel under Section 216 Cr.P.C. for adding charges under Sections 406, 420 and 120-B IPC against the accused persons in compliance of the order dated 22.11.2006 passed by the Hon’ble Punjab and Haryana High Court in CRM-M No.11178-M of 2003. However, the perusal of the order dated 22.11.2006 clearly reveals that no directions were issued either to the trial Court or to the IO and while quashing the FIR No.127 dated 25.03.2002, it was observed that “if there is any problem as far as dowry articles are concerned, that should be taken up in case FIR No.496 dated 23.12.1999.” However, the perusal of entire case file reveals that till date, there is no such problem being shown by the complainant in the present challan and as such, there is no evidence regarding the same for which the charges under Sections 406, 420 and 120-B

IPC can be framed against the accused persons. Accordingly, this Court is convinced with the arguments of the ld. Defence counsel that no charge can be amended under Section 216 Cr.PC. against the accused persons in the present FIR under Sections 406, 420 and 120-B IPC in absence of evidence regarding the same. In view of the above discussion present application is dismissed being devoid of merits. Since, the present challan pertains to the year 2000 and till date, the evidence of complainant is not recorded, she is ordered to be present on 15.01.2020 for her evidence.”

8. From the perusal of the findings recorded by the Trial Court and order dated 22.11.2006 passed by this Court, it transpires that this Court has never directed the Trial Court to frame charges under Section 406, 420, 120-B IPC in the trial arising out of FIR No.496 dated 23.12.1999. The respondents handed over gold articles to the Investigating Officer on 10.01.2000. The petitioner did not take custody of those articles at that point of time whereas the petitioner lodged complaint after two years alleging that the alleged articles are not made of gold. The respondents handed over custody of gold articles on 10.01.2000 and at that point of time neither the Investigating Officer nor the petitioner raised any objection with respect to purity of the articles. The articles were never sealed. There are all probabilities of misappropriation at the police station. The respondents could not be held

responsible after two years especially when it is known fact that gold is such an article which is most vulnerable to misappropriation.

9. In view of above facts and circumstances, this Court does not find any substance in the present petition, thus, present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

21.02.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>