

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

Sr. No.760**CRA-S-383-SBA-2006 (O&M)****Reserved on: 06.02.2023****Date of Pronouncement: 21.03.2023**

Taranjit Kaur

...Appellant

vs.

Satnam Singh etc.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Gaurav Singla, Advocate
for the appellant.Mr. Narinder Singh, Advocate
for respondents No.1 and 2.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J.**CRM No.14414-2005**

The appellant/applicant had moved the instant application under Section 311 Cr.PC for permission to produce the copy of the petition filed by the appellant under Section 13 of the Hindu Marriage Act as an additional evidence. It was contended by the learned counsel for the appellant that the applicant/appellant had filed the petition under Section 13 of the Hindu Marriage Act on 12.08.1995 for grant of divorce and in the said petition, specific averment was made that the husband had raised the demand of Rs.50,000/- for purchase of motor cycle. The said petition was allowed by the learned Additional District Judge, Rup Nagar and the divorce was granted on

02.09.1996. A copy of the judgment was already on record as Ex.PA. Consequently, the observation of the learned Trial Court that the allegations regarding demand of motorcycle by the accused from the complainant and her family members, seemed to be afterthought is wrong. Consequently, it was prayed that the appellant may be permitted to place on record the petition under Section 13 of the Hindu Marriage Act as an additional evidence in the appeal.

Section 311 of Cr.PC is reproduced below for ready reference:-

“311. Power to summon material witness, or examine person present- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

A perusal of the abovesaid provision clearly shows that the Court can summon any material witness or may examine any person or may re-examine any person, if his testimony appears to be essential for the just decision of the case.

There is a specific provision i.e. Section 391 Cr.PC, which empowers the appellate Court to take further evidence during the pendency of appeal. Consequently, it is apparent that the appellant/applicant has wrongly invoked the powers of the Court under Section 311 Cr. PC to place on record a copy of divorce petition as an additional evidence, during the proceedings before this Court.

Even otherwise admittedly, the said divorce petition was allowed by the Court of learned Additional District Judge, Rup Nagar vide the judgment dated 02.09.1996 and the copy of the said judgment has already been exhibited as EX PA on record. Thus, even the petition, which is now sought to be placed on record as an additional evidence, was within the knowledge of the applicant during trial and was not essential for the just decision of the case. Apart from that, in the present application also, the appellant/applicant has failed to explain as to how the production of copy of the petition under Section 13 of the Hindu Marriage Act was essential for the just disposal of the present case.

Thus, findings no merits, application is ordered to be dismissed.

CRA-S-383-SBA-2006

The present appeal is directed against the judgment dated 20.08.2004 passed by Additional Chief Judicial Magistrate, Ropar, whereby the respondents No.1 and 2 were acquitted of the charge under Section 406 IPC read with Section 6(3) Dowry Prohibition Act (hereinafter referred to as the Act).

Brief facts of the case are that the present appellant/complainant had filed the complaint against her husband, namely, Satnam Singh, Bachan Kaur, mother-in-law and Ujagar Singh, father-in-law under Section 406 IPC read with Section 6(3) of the Act. During the pendency of the trial, Ujagar Singh had expired, whereas Satnam Singh and Bachan Kaur, respondents No.1 and 2 had faced the prosecution and were ordered to be acquitted by the Trial Court. The appellant/complainant had filed the complaint by averring that her marriage was solemnized with Satnam Singh, respondent No.1/accused on

22.11.1992 according to Sikh rites and ceremonies. At the time of marriage, her family members had given sufficient dowry and the same were entrusted to the respondents No.1 and 2 by the complainant on demand and the value of dowry articles was approximately Rs.90,000/-. The dowry articles were delivered to all the accused in the presence of the complainant, Bhag Singh (husband of sister of the complainant), Kako (mother of the complainant) and Surinder Singh son of Jagir Singh. As per the complainant, various articles were given and a list of 41 articles was mentioned in the complaint. As per the complainant, she was subjected to maltreatment at the hands of the respondent No.1 and his family members and ultimately she filed a petition under Section 13 of the Hindu Marriage Act against respondent No.1, which was allowed by the learned Additional District Judge, Ropar on 02.06.1996. After the dissolution of the marriage, the complainant demanded dowry articles from the accused, which were entrusted to them, in the presence of the witnesses, but all the accused/respondents No.1 and 2 declined to return the same in the last week of May 1997. Since, the accused had mis-appropriated the dowry articles, the instant complaint was filed by the complainant on 04.06.1997 in the Court of Learned ACJM, Ropar.

I have heard learned counsel for the parties and with their able assistance, I have gone through the Trial Court record carefully.

Learned counsel for the appellant vehemently argued that sufficient evidence was led by the appellant/complainant to prove on record that the dowry articles were given to respondents No.1 and 2/accused in the presence of her mother Kako, brother-in-law namely, Bhag Singh and Surinder Singh.

Learned Trial Court has failed to appreciate that in the present case, only the parents and husband were impleaded as accused and no other relative/family member of the accused No.1 was implicated in the instant case. Since the dowry articles were entrusted to respondents No.1 and 2 i.e the husband and mother-in-law of the complainant, the learned Trial Court wrongly observed that there was no allegation of specific entrustment of the articles to any of the accused. Still further, there is no requirement of law to prepare a list of dowry articles and wrong inferences have been drawn by the learned Trial Court in this regard. The submissions made by learned counsel for the appellant have been vehemently opposed by learned counsel representing the respondents No.1 and 2 and prayed for upholding the findings recorded by the learned Trial Court.

I have heard learned counsel for the parties and find no substance in the arguments raised by learned counsel for the appellant. In the instant case, the complainant alleged that the dowry articles were handed over to the accused in her presence as well as in the presence of Bhag Singh, Kako and Surinder Singh. During the course of trial, the complainant appeared as CW-1 and examined, Kako as CW-2, Surender Singh as CW-3 and Bhag Singh as CW-4 in the preliminary evidence. Even in pre-charge evidence, the complainant appeared as CW-1, whereas Bhag Singh appeared as CW-2. However, none of the witness alleged any specific entrustment of dowry articles to respondents No.1 and 2. Only vague allegations have been levelled with regard to the giving of dowry articles to the accused. Apart from that, even no list of dowry articles was prepared nor any such list was signed by the accused. Still further, PW-1 Taranjit Kaur admitted that a list was prepared by her cousin at the time of marriage, however, when the Panchayat had gone, it took away the list with

itself. Still further, in the same breath, she stated that she had taken the list and the photocopy of the list was attached with the divorce petition. She further stated that list was attached with this case file also. However, when the case was shown to her, the list was not there. Still further, she stated that the list was attached with the suit file for articles and she had the list at home. This clearly shows that the complainant i.e PW-1 Taranjit Kaur was not a reliable witness. Apart from that, in her after charge evidence, she clearly stated that she had mentioned the dowry articles in the present case on the basis of her memory only. This clearly shows that the learned Trial Court rightly disbelieved the testimony of CW-1 Taranjit Kaur and acquitted the respondents.

Learned counsel for the appellant further argued that the learned trial Court had wrongly acquitted the respondents No.1 and 2 on the ground that the shopkeepers, from whom the dowry articles were purchased were not examined by the complainant and it was not possible to obtain the receipts and to remember the name of the shopkeeper from where the dowry articles were purchased. Learned counsel for the respondent vehemently opposed the said submissions by contending that the appellant had led no evidence at all to show that the dowry articles were ever purchased by her family members from some shopkeeper and no evidence has been led in this regard.

I have considered the rival submissions made by learned counsel for the parties. The learned Trial Court has rightly observed that it was incumbent upon the appellant/complainant to examine the shopkeeper, from where the dowry articles were purchased at the time of marriage. Apart from that, the complainant was under a legal obligation to prove the purchase of

dowry articles and entrustment of dowry articles to the present accused to prove the basic ingredients of the offence. However, the appellant could not lead any evidence to show as to when the dowry articles were purchased by her. Even no shopkeeper was ever examined by the appellant to prove her case. Consequently, the complainant could not prove the entrustment of dowry articles to the accused and there was no question of mis-appropriation of dowry articles by the accused. Thus, the learned Trial Court has recorded valid reasons for acquitting the accused. No other submission was raised.

In view of the above discussion, it is held that the learned Trial Court has correctly appreciated the evidence on record and thus, the appeal is hereby dismissed.

As a result, the impugned judgment dated 20.08.2004 passed by Additional Chief Judicial Magistrate, Ropar is upheld and affirmed.

All pending applications, if any, are also disposed off, accordingly.

The Trial Court record be sent back.

21.03.2023
Hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No