

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**211****CRM-A-1721-MA-2016 (O&M)****Date of decision: 01.09.2023****Veerpal Kaur****...Appellant(s)****Vs.****Simarjit Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Lakhwinder S. Sidhu, Advocate
for the applicant-appellant.

NIDHI GUPTA, J.**CRM-29563-2016**

This is an application under Section 5 read with Section 14 of Limitation Act seeking condonation of delay of 1266 days in filing the present appeal.

Learned counsel for the applicant submits that against order of acquittal dated 22.01.2013 passed by learned Judicial Magistrate, 1st Class, Mansa in complaint No.221 RT No.42 of 05.06.2008, the applicant/appellant/complainant preferred an appeal bearing Criminal Appeal No.17 dated 09.04.2013 RT No.17 dated 09.04.2013 registration No.CRA/200/2013, in the Court of learned Sessions Judge, Mansa. Said appeal was dismissed "being not maintainable". Thus, the only remedy left with the applicant was to file an appeal against acquittal under Section 378(4) Cr.P.C. by obtaining special leave before this Court.

Learned counsel further submits that the delay of 1266 days in filing the present appeal has occurred for the reason that the applicant was pursuing her remedy before the learned Court of Sessions Judge, Mansa. Further, the aforesaid delay is neither intentional nor wilful.

After going through the contents of the application, the same is allowed and delay of 1266 days in filing the present appeal is condoned.

MAIN CASE

Present appeal has been filed against judgment dated 22.01.2013 passed by learned Judicial Magistrate, 1st Class, Mansa whereby in a private complaint bearing No.221 RT No.42 of 05.06.2008, the respondents No.1 to 3 have been acquitted of the charges under Sections 406 and 498-A IPC. Against the aforesaid order dated 22.01.2013, the appellant herein preferred an appeal before the learned Sessions Judge, Mansa bearing Criminal Appeal No.17 dated 09.04.2013 RT No.17 dated 09.04.2013 registration No.CRA/200/2013. However, at the very outset, the appeal was dismissed as not maintainable as the private respondents herein had challenged the jurisdiction of the learned Sessions Court in entertaining an appeal against acquittal, in a case instituted on a private complaint.

2. Learned counsel for the appellant vehemently submits that respondents No.1 to 3 herein have been wrongly acquitted of the charges made against them as the appellant had levelled serious allegations against the private respondents which she had supported by placing on record cogent documentary evidence as also by way of oral testimony. It is contended that however, the learned trial Court has failed to consider the same resulting in serious miscarriage of justice to the appellant. It is submitted that the impugned judgment is an outcome of conjecture and surmises which is not supported by law. Learned trial Court is in error in dismissing the complaint and acquitting the accused and while doing so has overlooked material evidence which has caused flagrant miscarriage of justice. Learned counsel accordingly prays that the impugned judgment dated 22.01.2013 be set aside.

3. I have heard learned counsel for the appellant.

4. Perusal of record of the case reveals that mainly three allegations have been made by the appellant against the private

respondents No.1 to 3, which can be summarised as: a) that the accused persons are very greedy persons and have taken all her *istridhan* which includes two gold bangles, five rings, a chain, earrings, four bangles, 21 suits, almirah, table bed, washing machine, utensils, colour TV, fridge, etc.; b) the complainant in her complaint had alleged that she had gone to her matrimonial home along with Panchayat and had demanded her *istridhan*; and c) cruelty.

5. In this regard, the relevant findings returned by the learned Trial Court in respect of the above three grounds taken by the appellant are reproduced hereinbelow:-

“13. After considering the rival contentions of learned counsel for both the parties I am of the considered opinion that the ingredients of section 406 IPC for holding the accused liable i.e. entrustment of the dowry articles and misappropriation of the dowry articles by accused have not been fulfilled. In the case in hand the complainant has not produced any list of dowry articles. She has also not examined any witness to prove the fact that the articles as alleged by her, were purchased. Perusal of her cross examination dated 24.2.2010 reveals that she admitted that she cannot produce any receipt regarding that articles entrusted to the accused. She stated that she has not brought any receipt. She also deposed that she cannot tell the name of the gold smith from whom the gold chain was got prepared. Regarding the other articles viz. Clothes, television, washing machine, utensils, bedding, furniture, fridge etc. also, her reply was that she cannot tell about the name of the shopkeeper from whom these articles were purchased. She also deposed that she cannot produce any bill regarding these articles. Perusal of cross examination CW-2 Nachhattar Singh who is the father of the complainant reveals that he also stated that he cannot produce any of the bills. Though he has stated that he had purchased television from Piara Lal but no such

witness in corroboration was examined. He also feigned Ignorance about the fact as to when the gold ornaments were purchased by him. He also replied the same with regard to other articles. He feigned ignorance as to what was the company/brand of the television given by him. He could not tell as to the amount spent by him in purchasing fridge, T.V, and other articles. There is a discrepancy in the statement of PW-2 Nachhattar Singh and PW-3 Banta Singh regarding the quantity of the gold given by the complainant's father. PW-2 Nachhattar Singh in his cross examination during pre-charge evidence has stated that about 15 tolas of the gold was given whereas PW-3 Bhanta Singh stated in his cross examination that about 7/8 tolas of gold was given and except for this no other gold was given. There are other discrepancies also. As per the complainant's version, Rs.40,000/- were given in cash for motor cycle. Witness examined Bhanta Singh PW-3 on the other hand in his cross examination during pre-charge evidence stated that a motor cycle of red colour was given at the time of marriage. This fact coupled with the other infirmities as referred above create the doubt about the credibility of the witnesses examined by the complainant in support of her allegations. Further PW-3 Bhagwant Singh alias Bhanta Singh in his cross-examination during the pre-charge evidence stated that apart from the other articles, Rs.70-80,000/- was given whereas the case of the complainant on the other hand is that Rs.1,00,000/- in cash was given to the accused Simarjit Singh apart from Rs.40,000/- for the purchase of motor cycle. The witnesses have also self contradicted themselves. They have also deviated from the allegations levelled by the complainant in her complaint. The evidence of the complainant also creates doubt. In her cross examination during pre-charge evidence, the complainant denied that the maintenance was fixed in the

Lok Adalat on the basis of compromise, whereas during after charge evidence conducted on 5.9.2012, she admitted the fact that the maintenance amount was fixed on the basis of compromise in the Lok Adalat. In the after-charge evidence also, complainant Veerpal Kaur could not produce any bill regarding the articles allegedly purchased by her family or father. She also could not tell about the shopkeeper, from whom the said articles were purchased. Complainant in her statement before the court has also not stated anything incriminating as to which dowry article was demanded from which of the accused. There are vague allegations of entrustment. None of the other witness has produced any such receipt or bill. Even it is presumed that the parents of the complainant had purchased the articles, complainant could have examined some witness or shopkeeper to depose regarding the purchased articles but no such witness was examined. The complainant has failed to substantiate the allegations as to whether they had actually purchased the dowry articles allegedly given by them to the accused. Further for fulfilling the ingredients of section 406 of IPC, it was necessary for the complainant to prove that the articles were demanded from the accused and they refused to hand over the same. The complainant in her complaint has alleged that she had gone to her matrimonial home along with the panchayat and had demanded the istri dhan. In order to prove the fact that she had gone to her matrimonial home along with panchayat member, she stepped into witness box as CW-1 and has also examined CW-2 Nachhattar Singh and CW-3 Bhanta Singh. Perusal of the cross-examination of the complainant reveals that this fact gets falsified as the complainant in her cross examination where she during pre-charge evidence stated that she was not the part of the last panchayat. The

case of the complainant is that the demand for return of the articles from the accused was made in the last panchayat of which she was also a part. However, this vital fact emerging out of the complainant's mouth falsifies her stand that demand was made from the accused qua the return of the entrusted articles. She also stated in his cross examination during pre-charge evidence that the panchayat had told her that the accused are not ready to rehabilitate her. She stated that except for this nothing else was told to her. This fact emerging out of her cross examination falsifies her allegations that despite requesting the accused, they refused to return her istridhan. CW-3 Bhanta Singh in his cross-examination during pre-charge evidence has also stated that the accused refused to rehabilitate the complainant by saying that she gives birth to girls only. Bhanta Singh stated that except for this, nothing else was stated by the accused. Thus, the allegations that the accused were using her articles also thus does not stand established. Further perusal of the examination-in-chief of the complaint's father Nachhattar Singh during pre charge evidence reveals that he deposed that the dispute started cropping up between his daughter and accused no.1 Simarjit Singh after about two years of marriage. He deposed that the accused use to beat his daughter. On the other hand in his cross-examination during pre-charge evidence, he stated that he cannot tell as to when the dispute arose between his daughter and the accused. He stated that his daughter was beaten about 6-7 months ago before the filing of the complaint for the first time. Thus, in this way he himself contradicted his version. The plea of the accused that they never beat the complainant gets established from the fact emerging out of the cross-examination of Veerpal Kaur during her after charge evidence, wherein she stated that accused Simarjit Singh never

inflicted injuries upon her. She stated that she never moved any application to the police. Hence in view of totality of evidence on record, the allegations regarding entrustment of dowry articles and its demand from the accused does not inspire confidence. As such, I am of the considered view that the complainant failed to prove that the dowry articles were by the complainant or her parents. Specific entrustment of the same to the accused has also not been proved on record. It was for complainant to prove specific and distinct allegations against each accused showing entrustment of any article to them and its misappropriation with dishonest intention. Allegations levelled by complainant and other witnesses are vague in nature and do not show when the accused were entrusted with dowry articles and when they misappropriated the same. Since the complainant herself admitted that she did not accompany the panchayat, as such her allegations regarding demand for the articles from the accused also do not stand established. Since she admitted that she did not go with the panchayat, no question arises of her making the demand of her Istri Dhan from the accused who as per the complaint were found to be using the Istri Dhan of the complainant. It seems that the complainant has levelled false allegations. Complainant was to prove the allegations by leading cogent and convincing evidence. The evidence led by her cannot be said to be credible so as to fasten the liability upon the accused. As such the complainant has failed to prove the charge under section 406 IPC against the accused. As such merely on the basis of bald statement of the complainant and other witnesses, the liability under Section 406 of IPC cannot be fastened.

14. Now coming to the allegations of the complainant that she was subjected to the cruelty by the accused, the complainant has failed to bring on record any convincing

evidence regarding accused. Contention of the learned counsel for the complainant is that marriage of the complainant with accused No.1 was solemnised in 2002. Her contention was that the accused use to torture the complainant for bringing less dowry. He had argued that from the allegations levelled by the accused, which are duly supported by the testimony of the witnesses, the offence against accused stand duly proved. On the other hand counsel for the accused had argued that the evidence led by the complainant does not inspire confidence. He argued that there are vague allegations of the cruelty against the accused.

15. Perusal of the complaint filed by the complainant reveals that in para no. 3 of the complaint, the complainant has alleged that after few days of the marriage, accused no.3 had got removed her ornaments. They had started taunting her after few days of marriage for bringing less dowry. Para no.4 and 5 of the complaint reveals that the complainant has alleged that about five months ago, she was thrown out of her matrimonial home. The complaint was filed by her on 3.11.2007. She has alleged that thereafter she narrated the whole of the incident to her parents and on the very next day she accompanied by her father and panchayat members went to her matrimonial home at Village Dhalevan but the accused did not accede to her request. In para no.6 of the complaint, she alleged that about two months ago she again accompanied by her father and panchayat went to her matrimonial home and found that the accused had broken opened the lock of her box. Her articles were lying scattered and the accused were using her Istridhan. In the light of these allegations on record, I have scrutinized the evidence led by the complainant to support her allegations. Perusal of the cross examination of the complainant conducted on 24.2.2010

during pre-charge evidence reveals that she deposed that the accused had thrown her out of matrimonial home about fifteen months of the marriage after beating her. This fact emerging out of her cross-examination is contradictory to the fact emerging out of cross-examination of her father Nachhattar Singh who stated in his cross-examination dated 13.10.2010 that her daughter was given beating for the first time about 6-7 months ago and she was thrown out of the matrimonial home. Thus, this fact is not in consonance with the case of the complainant. PW-2 was cross-examined on 13.10.2010. The cross examination of PW-2 Nachhattar Singh dated 5.9.2012 during after charge evidence reveals that they have taken the panchayat for the first time after 4/5 months of the marriage. This statement of the complainant's father becomes doubtful in view of the fact that he deposed during the course of cross examination dated 13.10.2010 in pre-charge evidence that the dispute between her daughter and the accused started after two years of the marriage. This fact is also against the facts alleged by the complainant in her complaint who had alleged that the dispute started after 2/3 months of the marriage. As mentioned earlier, the fact that the panchayat accompanied by complainant visited her matrimonial home also does not inspire confidence as the complainant in her cross examination conducted during pre-charge evidence stated that she had not accompanied the panchayat. In her complaint she had alleged that she had accompanied the panchayat and she was tortured by the accused from the very beginning of the marriage. It has been argued that demand of more dowry was made by the accused and the complainant was given beating. However as referred above also, the complainant during her cross-examination in after charge evidence stated that no beating was ever given by the accused Simarjit Singh. She also stated

that she did not move any complaint to the police regarding the beatings given by the accused. Thus the allegations regarding cruelty against the accused cannot be accepted without a pinch of salt that these accused would have been maltreating and harassing the complainant. No specific date, time and month of the alleged beating has been given by the complainant. The Complainant and other witnesses examined by her did not attribute any specific act of cruelty committed upon complainant by accused. The allegations of complainant regarding demand of dowry against them are vague and not supported by any cogent and convincing evidence. The complainant was duty bound to prove the particulars or the offence committed by each of these accused and the role played by the each and every accused in committing of that offence but the testimonies of the Complainant and other complainant witnesses in this regard are vague. The same does not show as to what act was committed by accused and what is exact role played by these accused. It is commonly seen that when a marriage is shattered, there is tendency of bride to implicate all relatives of husband. In view of what has been discussed above this court is of the considered view that the complainant has failed to prove that she was subjected to cruelty by the accused for demand of dowry.

16. In view of the above made discussion, I am of the view that the complainant has failed to prove the specific entrustment of dowry articles and misappropriation thereof by the accused. Hence, all the accused are acquitted under section 406 of the IPC. The complainant has also failed to prove maltreatment and harassment to complainant on the part of accused. As such, this court is of the considered view that complainant has failed to prove the charge under section 498-A IPC against the accused beyond the shadow of reasonable

doubt. Accordingly, by giving benefit of doubt accused are also acquitted of the charge U/s 498-A framed against them. File be indexed and be consigned to the record room.”

(Emphasis supplied)

6. Though the learned counsel for the appellant has referred to the voluminous evidence on file, however, he is unable to show anything to this Court to controvert the above cogent and exhaustive findings returned by the learned trial Court after considering the matter in great detail.
7. Accordingly, I find no ground is made out to interfere in the impugned judgment.
8. **Dismissed.**
9. Pending application(s) if any also stand(s) disposed of.

01.09.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No