

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
215 **CRM-A-982-2019 (O&M)**
Date of decision: 12.10.2023

Smt. Smita Singh

...Applicant(s)

Vs.

Avinash Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Raj Kumar Bhatia, Advocate
for the applicant.

NIDHI GUPTA, J.

Present application under Section 378(4) read with Section 482 Cr.P.C. is filed seeking special leave to file appeal against judgment dated 05.02.2019 passed by learned Judicial Magistrate, 1st Class, Faridabad, whereby accused/respondents herein, have been acquitted in case FIR No.484 dated 19.11.2012 under Sections 498-A, 406, 323 and 506 IPC registered at Police Station Mujessar, Faridabad.

2. Learned counsel for the applicant-wife submits that the learned trial Court is in patent error in acquitting the respondents/accused as the applicant had produced cogent and comprehensive evidence on record to show that offences as alleged have been committed by the respondents. It is submitted that however, the said evidence has been ignored by the learned trial Court and hence, the impugned judgment be set aside. It is also submitted that the learned trial Court was in patent error in acquitting the respondents on the ground that Panchayatis had not been examined. It is submitted that when father, brother, and sisters of the applicant, who were material witnesses to the acts of cruelty committed

upon the applicant by the respondents were duly examined, then the respondents could not have been acquitted merely on the ground that Panchayatis were not examined. It is further submitted that the dowry articles gifted by the parents of the petitioner at the time of marriage are still in the custody of the accused/respondents.

3. I have heard learned counsel for the applicant.

4. Perusal of record of the case shows that the applicant was married to respondent No.1 on 06.02.2011. One daughter was born out of this wedlock, who is currently in the care and custody of the petitioner.

5. As regards the allegations of cruelty purportedly inflicted upon the applicant by the accused/respondents, perusal of the record reveals that respondents had placed on record photographs Exhibit D1 to D5 to show that respondent No.1-husband had taken the applicant to Agra for a family trip; and documents Exhibit D6 to D8 to show that the respondents had taken proper care of the applicant when she was pregnant. The only other argument raised on behalf of the applicant is that the dowry articles gifted by parents of the applicant to the respondents have not yet been recovered and are in the possession of the respondents. The relevant findings of the learned trial Court in this regard, are as follows;-

“26. The material witnesses i.e. the complainant and her other relatives have specifically admitted that the marriage was solemnised after proper verification of the accused and whatever was given at the time of marriage, was given to the complainant by their own free wish and will. It is admitted by the complainant and her father that the articles of gold and

other household things were given at their own without any pressure and due to respect and regard to the accused persons. He has also stated that the articles given in the marriage were not in the shape of dowry. Hence, when the complainant and her other family members have admitted that no dowry was given at the time of marriage, there is no presumption of any demand by the accused persons.

27. Except the complainant, the other witnesses are only hearsay as they were not present at the time of any incident of cruelty alleged by the complainant. The brother-in-law while appearing as PW-3 has stated that all the facts of this case were narrated to him by the father of complainant. The father and sister of complainant have also stated that the complainant told them the facts and therefore they have no firsthand knowledge of the incidents alleged by the complainant. The complainant has specifically submitted that her brother came to her matrimonial house on 22.02.2011 where he was taunted and misbehaved by the accused persons but the brother has not been examined by the prosecution. The complainant has also alleged abusing with her sister and brother-in-law also on 29.07.2012 but nothing such has been stated by them. It is also mentioned in the complaint that many Panchayats were convened between the parties and in the Panchayat also, the accused were adamant on their demands. But no specific name of any member panchayat has been given and none of them has been examined as a witness. If the demand was raised publicly i.e. in the Panchayat then the members of Panchayat could be the best witnesses to prove the demand but the prosecution has failed to examine any such witness for the reason best known to it.

28. The accused have been charge sheeted under Section 406 of IPC also as the complainant stated that all the Istridhan and dowry articles were taken by the accused persons, however, there is no list of any dowry articles on record to show as to what articles were actually entrusted to the accused persons by the complainant. Some photostat copies of jewellerybills have been tendered but the same have not been duly proved as per law since the witness executed and issued the bills has not been examined. In order to prove the ingredients of section 406 IPC, entrustment of Istri Dhan and refusal on demand are sine qua non for committing such offence. Therefore, allegations in the said context have no legs. A perusal of testimony of PW2

and PW5 reveal that they have not specifically deposed exact facts regarding entrustment of dowry articles, their misappropriations and a refusal to return them. In other words, above named witnesses have no-where stated in their respective testimonies that they entrusted dowry articles to the accused persons and the same were refused to be returned by them on demands. They have also not specifically deposed as to what particular dowry articles were entrusted to the accused person and the allegations regarding section 406 IPC are general allegations. Therefore, allegations under section 498-A IPC are found to be deficient on material particulars vis-a-vis time place and manner of cruelty. Independent corroboration of instances of cruelty have not been made by anybody-else except the complainant. Omnibus allegations without attributing any specific overt act qua each of the accused without mentioning any specific incidents, cannot be considered for the conviction of accused persons. Moreover, it is a growing tendency to involve all the relatives of the husband when the relationship between the husband and wife becomes strained. Reliance in this regard is placed upon **State of Haryana vs. Hari chand and others, 2015 (4) Law Hearld (sic) 2825.** Further, in recent pronouncements, Hon'ble Apex Court as well as Hon'ble High Court have observed that there is growing tendency to come out with inflicted and exaggerated allegations roping the husband and his family members and the women are abusing the beneficial provision of section 498-A of IPC. In a pronouncement, titled as **Smt. Hukmi Devi vs. State of Haryana, 1992(1) RCR 357**, it was held that general allegations of entrustment, refusal to return the dowry articles and general allegations of cruelty under section 498-A of IPC cannot be encouraged and should be depreciated by the Court. Hence, the prosecution evidence on record is not sufficient to establish the guilt of the accused persons under sections 498A, 406, 323, 506 of IPC.

29. It is settled principle of criminal law jurisprudence that the prosecution is bound to prove the guilt of the accused beyond reasonable doubts. However in the present case, the prosecution has miserably failed to bring home the guilt on the accused under Sections 498-A, 406, 323, 506 of IPC beyond the shadow of reasonable doubts. From the circumstances above mentioned, the version of the prosecution is shrouded with doubts. Accordingly, the accused are extended the benefit of

doubt and is acquitted of the charges framed against them. However, their bail bonds and surety bonds shall remain intact for a further period of six months. File be consigned to the record room after due compliance”.

6. Learned counsel for the applicant is unable to dispute or controvert the above said findings of the learned trial Court. Nothing whatsoever has been shown to this Court that would remotely indicate or suggest that the above findings are incorrect.

7. In view of the above undisputed findings of the learned trial Court, I find no ground is made out to interfere in the impugned judgment. Instant criminal miscellaneous application seeking special leave to file appeal being completely devoid of any merit is **dismissed**.

8. Pending application(s) if any also stand(s) disposed of.

12.10.2023

Sunena

(Nidhi Gupta)

Judge

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