

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR 1265/2009
Date of decision: 28.07.2023.

Kamla Devi
.....Petitioner

Vs.

Munish Kumar and another
.....Respondents

CORAM HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. AS Virk, Advocate for the petitioner.

 Mr. Aditya Sanghi, Advocate
 With Ms. Shaveta Sanghi, Advocate for respondent no.1

 Mr. Brijesh Sharma, AAG Haryana.

Nidhi Gupta, J.

 This revision petition is filed against the order dated 6.3.2009 passed by Additional Sessions Judge, Kaithal whereby appeal filed by respondent no. 1-husband of the present petitioner, was allowed and judgment of conviction and order of sentence dated 13/18.10.2006 passed by CJM, Kaithal in case FIR No.324 dated 2.8.1996 under Sections 406/498-A IPC, PS City Kaithal was set aside.

 Ld. counsel for the petitioner submits that ld. CJM vide judgment dated 13.10.2006 had acquitted the father-in-law, mother-in-law, and brother-in-law of the petitioner while convicting respondent no.1-Munish Kumar under Section 406/498-A IPC vide judgment of even date, and sentencing him vide order dated 18.10.2006 as under:-

Offence	Sentence	Fine(In rupees)	In default of payment of fine
406 IPC	SI for two years	1000/-	SI for 1month

498-A IPC	SI for 2 years	1000/-	SI for 1 month
--------------	----------------	--------	----------------

Ld. counsel for the petitioner submits that the appeal filed by respondent No. 1 against above-said order dated 13.10.2006, was allowed by the ld. Appellate Court and respondent no.1 was acquitted. Ld. counsel submits that the learned Appellate Court has acquitted the respondent No. 1 without appreciating the evidence on record. It is submitted that the petitioner, who had appeared as PW1, and independent witnesses Narinder Kumar/PW3, Ram Swarup/PW5, and Rajinder Singh/PW4 had corroborated the evidence of the petitioner which clearly established that respondent no.1 had not only misappropriated her istri dhan but had also treated her with cruelty by harassing her for bringing no dowry. It is submitted that there was no ground for the Appellate Court to ignore the evidence of the PWs whose case could not be shaken even during their extensive cross-examination. Ld. counsel further submits that the sole ground on which the ld. Appellate Court has set aside the conviction of respondent no.1 is that respondent no.1 had remarried in 2008 as, during the pendency of the appeal the petitioner and respondent No.1 were granted divorce in 2006. It is further submitted that grant of divorce is no ground to acquit the respondent no.1 and the evidence led by the appellant and prosecution has to be considered on its own. Ld. counsel refers to the findings of the trial court contained in paras 36 and 38 of the judgment of conviction wherein the ld. trial court has held that despite discrepancies in the statement of the petitioner charges against respondent no.1 husband stood proved in view of consistent allegations made by the petitioner against respondent no.1-husband.

Per contra ld. counsel for respondent no.1 submits that parties were married on 16.5.1989 whereafter the petitioner deserted her matrimonial home on 8.10.1989. It is submitted that the parties had hardly lived together in the matrimonial home for barely five months, and even no child was born out of this wedlock.

Ld. counsel for respondent no.1 submits that FIR under Sections 406 and 498-A IPC was registered on 2.8.1996. Respondent no.1-husband filed petition for divorce in 2006 and vide judgment dated 12.12.2007, Additional District Judge, Delhi had granted divorce to the parties. Ld. counsel states that the appeal filed by the petitioner against the order dated 12.12.2007 was dismissed in default by the Hon'ble High Court of Delhi on 28.9.2018 as the petitioner had failed to appear in the same. Clearly she was not interested in pursuing the same. Ld. counsel for respondent no.1 produced in Court order dated 12.12.2007 passed by Addl. District Judge, Delhi which is taken on record as Annexure R1/1, and order dated 28.9.2018 passed by High Court of Delhi in MAT.App.18/2008 which is taken on record as Annexure R1/2.

Ld. counsel further submits that the appeal filed by the petitioner against the acquittal of her father-in-law, mother-in-law and brother-in-law vide order dated 13.10.2006 was dismissed; and even CRR 1950/2009 filed by the petitioner there-against, was dismissed by this Court vide order dated 7.8.2009.

Ld. counsel for respondent no.1 refers to findings recorded by the Appellate Court in para 14 of the impugned judgment which reads as under:-

"14. As far as Criminal Appeal No. 91 of 2006 titled as "Munish Kumar Vs: State of Haryana is concerned, the learned trial court relied upon the testimony of complainant Kamla to the effect that she was subjected to cruelty and harassment on the pretext of bringing insufficient dowry. The trial court in its wisdom has relied upon the recovery memo Ex.PW.B/A vide which dowry articles were recovered from accused Munish Kumar at Bhawani Kherai and the trial court held that this shows that the dowry articles were entrusted to accused Munish Kumar and he misappropriated the same to his own use and did not restore them to the complainant on her asking. The learned trial court in the impugned judgment also held that role in the entire episode if any was played by Munish Kumar only and accordingly, he was convicted and sentenced for committing offences punishable under sections 406/498-A IPC. With due deference to the findings of the learned trial court this court is of the view that although the principles of falsus in uno falsus in omnibus do not have application in India, but still where part of the statement of complainant is not believable at all then court is put on guard and a heavy duty is casted on the court to see whether rest of the allegations are correct or not. No doubt It is the duty of the court to sift grains out of chaff, but where both are intermingled in such a fashion that they can not be separated then the benefit of doubt has to be extended to the accused. As discussed above, the allegations in the complaint are general and vague in the nature and absolutely no details of dowry articles which might have been entrusted to the accused is provided in the complaint and no list of dowry articles was produced or proved on the record of the case. Simply on the basis of recovery of some articles at the instance of accused Munish, it cannot be said that the articles were entrusted to the accused which constituted Ishtri Dhan of complainant in the absence of the details given in the complaint. No invoices or purchase bills were ever produced by the complainant on

the record of the case. P.W.1 Kamla Devi complainant admitted in the cross examination that her husband filed a petition for divorce at Bhiwani Courts before the institution of the present complaint and possibility cannot be ruled out that the present complaint is a counter blast to the divorce petition filed by accused Munish. It has also come on the records of the case that the complainant is 5-6 years elder to accused Munish and probably that was one of the reasons that soon after the solemnization of the marriage the differences cropped up between the complainant and accused Munish. In her cross-examination, the complainant has even come up with a plea that there was no sharing of bed between the complainant and accused Munish although, an explanation has been rendered by the complainant that accused never wanted the children from the wedlock. While deciding the appeal the court can take note of subsequent events also and as discussed above a divorce petition was filed by accused Munish Kumar in the year 2006 and ultimately, the divorce petition has been decided by the court of Sh. Gurdeep Singh, learned Addl. District Judge, Delhi, vide Judgment dated 12.12.2007. The issues before the court of Sh. Gurdeep Singh, learned Addl. District Judge, Delhi were if the present complainant had treated Munish Kumar with cruelty or if the present complainant deserted Munish Kumar for a period of two years immediately before the filing of the petition. Both issues have been answered against complainant and rather, the learned Addl. Distt. Judge, Delhi while returning findings on the issue of desertion has held that the present complainant never lived with accused Munish Kumar after 8.10.1989 and she deserted Munish Kumar. The marriage was solemnized between the parties on 14.5.1989 and there is a definite finding by the court of learned Addl. District Judge, Delhi that after 8.10.1989 the present complainant never lived in the company of accused Munish Kumar. It is settled proposition of law that the judgment of

civil court is binding on the criminal court. The court of learned Addl. District Judge has also held that in fact, it was the present complainant, who treated Munish Kumar with cruelty after the solemnization of marriage. Otherwise also on the record of the learned trial court, there is a copy of FDR dated 5.6.1989 in the name of complainant for a sum of Rs. 31,000/- which has been proved as Ex.D.6. The marriage between the parties has taken place on 14.5.1989 and soon thereafter i.e. on 5.6.1989, a FDR was got issued in the name of complainant for a sum of Rs. 31,000/-. The version of the accused is that as a matter of fact for the purchase of household articles, he was given cash of Rs. 31,000/- and list Ex.D.11 has been placed on record in this regard. The defence seems to be probable in as much as soon after the solemnization of the marriage, the FDR was got issued in the name of complainant herself for the amount which was given at the time of marriage. If Munish Kumar could get the FDR issued in the name of complainant, it becomes highly improbable that he would be torturing the complainant for bringing more cash and the allegations of complainant in this regard do not inspire confidence at all. The other factor which has weighed in the mind of this court is that the allegations are general in nature and the complainant has tried to rope in all the family members of her husband and definitely there is a breakdown of marriage between the parties which has ultimately resulted into a decree of divorce."

Heard ld. counsel for the parties.

The only ground on which the petitioner seeks to lay challenge to the impugned order dated 6.3.2009 acquitting the respondent of charges under Section 406 and 498-A IPC, is that the learned Appellate Court could not have acquitted the respondent No.1 only on the ground that the

respondent had subsequently re-married. However, it is my clear view that argument on behalf of the petitioner is fallacious and misplaced. It is an admitted fact that the parties were married on 16.5.1989 and have been living separately since 18.10.1989. FIR against alleged cruelty during this period of five months was registered on 2.8.1996, that is, after a period of almost 7 years. There is no explanation whatsoever on record as to why there was this inordinate delay of seven years in registering the FIR.

Moreover, perusal of the record does not reveal any specific instances containing details of time and place of when and how cruelty was inflicted upon the petitioner. Only repeated, bald, unsubstantiated allegations have been made against the respondent No.1 that he had made demands of dowry. Even perusal of order dated 13.10. 2006 shows that the trial court has convicted the respondent No.1 holding that: *“Though, certain discrepancies have surfaced in the testimony of complainant, but by the large, her testimony is consistent with the allegations against the accused Munish. Since there are consistent allegations regarding demand of dowry, I hold that on the basis of above said evidence, the prosecution has been successful to discharge its burden with the commission of offence punishable u/s 498-A IPC against the accused Munish Kumar.”* However, said order does not reveal discussion of any ‘evidence’ whatsoever. Even no evidence of cruelty on part of respondent No.1 has been presented before this Court by learned counsel for the petitioner.

Furthermore, it is my clear view, that conviction cannot be upheld in ignorance of, or without considering all the attendant factors. In the present matter, admittedly, the petitioner and respondent had lived together only for about five months. Much water has flown under the bridge thereafter.

The decree of divorce between the parties has attained finality, and the respondent No.1 has re-married. Moreover, the petitioner has been unable to dispute or controvert in any manner the telling findings of the learned Lower Appellate Court.

Accordingly, I find no merit in the present revision petition.

Dismissed.

28.07.2023.
Joshi

(Nidhi Gupta)
Judge