

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-5-MA-2018 (O&M)

Date of order: 12.03.2024

Jaspal Kaur

.....Applicant(s)

Vs.

Harjinder Singh & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kamaljeet Singh Mamrat, Advocate
for the applicant.

Nidhi Gupta, J.

CRM-19-2018

This is an application under Section 482 Cr.P.C. read with
Section 5 of Limitation Act for condonation of delay of 65 days in filing the
appeal.

After going through the contents of the application,
which is supported by affidavit of the applicant, the same is allowed subject
to all just exceptions and delay of 65 days in filing the present appeal is
condoned.

MAIN CASE

This is an application under Section 378(4) of Cr.P.C. for
seeking leave to file appeal against judgment dated 09.08.2017 passed by
learned Additional Chief Judicial Magistrate, Moga acquitting the
respondents in complaint made by the applicant under Sections 406, 498-A,
120-B, 323 and 506 IPC.

2. Respondent No.1 is the husband, respondent No.2 is the mother-in-law and respondent No.3 is the father-in-law of the applicant. Present is a complaint case.

3. Brief facts of the case as per the prosecution version are that marriage of the applicant/complainant was solemnized with respondent No.1 on 23.07.2010 at Village Duneke, District Moga in the presence of respectable persons and relatives. At the time of marriage sufficient dowry was given. Soon after the marriage, all the respondents started maltreating the applicant/complainant on account of bringing insufficient dowry and told her that their son (respondent No.1) is in the Army and her parents should have given a car. After 20 days of the marriage, when respondent No.1 was about to go for his duty, again the respondents raised a demand of car and after beating her, they turned her out of the matrimonial house and all the respondents raised a threat that the applicant/complainant would not be rehabilitated till the satisfaction of demand.

4. Learned counsel for the applicant vehemently submits that the applicant is handicapped. When questioned about the nature of handicap, learned counsel submits that one leg of the applicant is not working. When questioned about the degree of disability/handicap, learned counsel submits that he is not aware. When questioned if there is any evidence in the form of medical certificate on record to substantiate the assertion on part of the applicant, learned counsel admits that disability certificate is not available.

5. Second contention on part of learned counsel is that respondent No.1 has solemnized second marriage during pendency of the present proceedings while his first marriage with the applicant was still subsisting. When questioned as to the date of alleged second marriage of respondent No.1, learned counsel submits that he does not know. When questioned as to whether respondent No.1 had re-married prior to passing of the impugned order, learned counsel affirms the same and states that respondent No.1 had re-married prior to passing of impugned order dated 09.08.2017. When asked if the said fact was brought to the notice of the learned trial Court, learned counsel for the applicant admits that, it was not so.

6. Moreover, perusal of record reveals that none of these above said facts were made part of the pleadings or arguments before the learned trial Court. Therefore, a whole different case has been carved out by learned counsel for the applicant before this Court.

7. Be that as it may, even in respect of the offence for which the accused/respondents were charged, findings of the learned trial Court are as follows:-

“8. To recapitulate the very marrow of the imputations so levelled upon the accused, it has been claimed that all the accused had subjected the complainant, to cruelty while raising a demand for dowry and had also illegally usurped the articles which were entrusted to the accused at the time of marriage. In their respective testimonies, the afore referred witnesses have deposed in unison that the accused had been harrying and maltreating the complainant after her marriage, coercing her to meet their towering demands of dowry and that complainant's articles had been usurped by the accused. At the

very outset it is imperative to note that the allegations levelled in the complaint are absolutely general and unspecific broadly encompassing all the accused persons in a vague manner. Although a lengthy list of dowry articles has been given in the complaint but it is noteworthy that the element of 'entrustment' is grossly missing from the allegations levelled in the complaint. It is further not alleged that the said articles constituted the Istridhan of the complainant or that the accused persons were entrusted with dominion over the said movable property with a specific rider or under a specific assurance that the said articles were meant for the user of the complainant solely. Provisions of Section 406 IPC are attracted if criminal breach of trust is committed in one or more of the ways as incorporated in Section 405 IPC. The essential ingredients in order to constitute offence of criminal breach of trust are: i) entrusting a person with property or any dominion over the property, ii dishonest misappropriation or conversion of that property by such person to his own use or, iii) dishonest use or disposal of that property either in violation of any direction of law prescribing the mode in which such trust is to be discharged or any legal contract made touching the discharge of such trust. In order to bring home the offence of criminal breach of trust, proof of entrustment is essential. When from the allegations made there is nothing to show that there was any entrustment of any property to the accused, provisions of Section 406 IPC are not attracted....

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10. As far as the question of cruelty is concerned, the time, date of torturous action have not been mentioned in the complaint. Not a word has been said in the complaint as to how, when and by whom the complainant was beaten. It is not alleged specifically that who demanded more dowry. The allegations of

beating, which have been levelled to make out an offence under Section 498-A of the Indian Penal Code suffer from legal infirmities of vagueness and lackness of material particulars. The details regarding material particulars of date, time and manner in which complainant was subjected to cruelty, have not been given in the complaint, which is the requirement of law as laid down in Kishan Sharma and ors., v. State of Haryana, 1989(2) Recent Criminal Reports 13, Dhan Devi v. Deepak, 1989(1)CLR 1078 and Anokh Singh v. Paramjit Kaur, 1990(2) CLR 224. Hon'ble Supreme court of India in Bhaskar Lal Sharma & anr. Vs. Monica 2009(3) Apex Court Judgments 532 (S.C.), has mentioned the essential ingredients of offence necessary to attract offence under section 498-A of Indian Penal Code, such as:-

- **A woman must be married;**
- **She must be subjected to cruelty;**
- **Cruelty must be of the nature of:**

(i) any willful conduct as was likely to drive such woman:

(a) to commit suicide;

(b) cause grave injury or danger to her life, limb, either mental or physical;

(ii) harassment of such woman,

(1) with a view to coerce her to meet unlawful demand for property or valuable security,

(2) or on account of failure of such woman or by any of her relation to meet the unlawful demand

(iii) woman was subjected to such cruelty by:

(a) husband of that woman, or

(b) any relative of the husband

In the present case, complainant has entirely failed to prove that she was ever subjected to cruelty by her husband or other family members in order to fulfill unlawful demand for property or valuable security....”

8. Learned counsel for the applicant is unable to dispute the above said findings. Accordingly, I find no merit in the present application and the same is hereby **dismissed**.

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

12.03.2024
Sunena

(Nidhi Gupta)
Judge

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