

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

CRM-M-18423-2016
Date of decision: 16.07.2024

Kamalpreet KaurPetitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Paras Talwar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

Mr. Ashish Soi, Advocate
for the respondents No. 2 and 3.

HARPREET SINGH BRAR, J.

1. The present petition preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of order dated 08.01.2016 passed by the learned Additional Sessions Court, Ludhiana whereby respondent No.2 and 3 have been discharged from offences under Section 406, 498-A of the IPC in FIR No. 96 dated 04.07.2012 at Police Station Raikot, District Ludhiana Rural.

2. Briefly, the facts are that marriage between the petitioner-complainant and son of respondents No.2 and 3 was solemnized on 08.03.2011 in accordance with Sikh rites and rituals. The petitioner and her family are citizens of Canada and had only come to India for the marriage. The couple stayed at the Village Tajpur, wherein the matrimonial home of the petitioner is located for about one and a half months as the petitioner left for Surrey, Canada



on 27.04.2011. Thereafter, the petitioner applied for spousal visa for her husband, who received the same in October 2011 but did not inform her or her family regarding the same. On 03.11.2012, her husband visited the petitioner in Surrey but moved to Toronto soon after, under the guise of meeting relatives. He refused to join the company of the petitioner in spite of her repeated efforts spreading over 3 months. He also demanded \$50,000/- from her in order to buy a house. He also told her to bring along Rs. 30,00,000/- if she wants to go to her matrimonial home in India. On 29.05.2012, the petitioner visited her matrimonial home in India but she was not allowed to step in.

3. Learned counsel for the petitioner *inter alia* contends the *istridhan* of the petitioner was entrusted to respondents No.2 and 3, which remained with them even after the petitioner returned to Canada. The husband received a Canadian visa on the petitioner's application but on arrival to Canada, deserted her. As a matter of fact, after investigation, the offence under Section 420 IPC and final report under Section 173 Cr.P.C. was presented. Respondents No. 2 and 3, along with their son had raised a demand of \$50,000/- to enable her husband to buy a house in Canada, failing which, she would not be allowed to step into her matrimonial home. The husband of the petitioner, in connivance with his parents i.e. respondents No.2 and 3, solemnized marriage with the petitioner only to send him to reach Canada and the same fact has also been reiterated by the police in the final report. The husband of the petitioner has been declared as a Proclaimed Offender and has not visited India yet.

4. Learned counsel for respondents No. 2 and 3 submits that the impugned order has been passed on correct appreciation of the facts and the material available on the record. No offence as defined under Section 405 IPC is made out against respondents No. 2 and 3, as entrustment of dowry articles to



them is not established. They have been implicated in the FIR(*supra*) only out of personal spite. Learned counsel places reliance on the judgments rendered by this Court in ***Sukhdeep Kaur and another vs. State of Punjab and another 2015(4) R.C.R.(Criminal)892, Diwan Chand and others vs. Raj Rani 1992(2) HLR 569 and Bal Kishan vs. Poonam Verma 1987(1) R.C.R.(Criminal) 657.*** Further, the larger part of the offence as alleged by respondent No.2 has occurred in Canada, therefore, in accordance with the ratio of law laid down in ***Harmanpreet Singh Ahluwalia vs. State of Punjab and others (2009) 7 SCC 712***, criminal prosecution cannot be initiated in India.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that while the petitioner had mentioned that sufficient *istridhan* was given, however, it has not been specified as to what articles were presented as *istridhan*. Further, no specific averments have been made that would indicate entrustment on part of the petitioner. The list provided by the petitioner does not differentiate between the gift articles and the articles that form part of her *stridhan*. As such, it cannot be conclusively said that the offence defined under Section 405 IPC is made out against respondents No. 2 and 3. Further, a perusal of the material available on record does not reveal any demand for dowry being made by respondents No.2 and 3, as such the ingredients of offence under Section 498-A IPC are also not made out against them.

6. Under Section 239 of Cr.P.C., a remedy is provided to the accused to seek discharge of the alleged offence if he is found to be falsely involved out of malice and sufficient material is not available on record for the purpose of framing of charges. If after completion of investigation, a report under Section 173 of Cr.P.C is filed, the accused has a right to seek his discharge before the



commencement of the trial by taking a recourse to the provisions of Section 227 and 239 of Cr.P.C. If upon due consideration of the police report and all the documents attached with the final report under Section 173 Cr.P.C, the Sessions Court finds the charges leveled against the accused to be groundless, it shall discharge the accused by recording the reasons for doing so under Section 227 of Cr.P.C. A similar recourse is provided under Section 239 of Cr.P.C in trial of warrants case by Magistrates. The law on the issue with regard to the nature and degree of evaluation of the evidence presented by the investigating agency before the trial Court at the time of framing of charge is well settled. The trial Court at this stage is only to form a presumptive opinion with regard to the existence of the factual ingredients breaching the threshold of the offence alleged. At the stage of formation of opinion under Section 227, 239 and 240 of Cr.P.C, the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation at this stage is limited to determine whether a prima facie case exists depending upon. Reliance in this regard can be placed on the judgment rendered by this Court in ***Narinder Sharma vs. State of Punjab in CRM-M-57578 of 2023*** decided on 21.11.2023.

7. Recently, the Hon'ble Supreme Court examined the issue involved in the present case in ***State through Deputy Superintendent of Police Vs. R.Soundirarasu etc. 2023 (2) RCR Criminal 206*** where a two Judge Bench, speaking through Justice J.B. Pardiwala, concluded that the primary consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into. The discharge of the accused under Section 239 of Cr.P.C is

permissible only when the case set up by the prosecution after the completion of investigation is found to be ‘groundless’.

8. Time and again, the Courts have highlighted the tendency of roping in all and sundry members of the husband’s family in cases filed under Section 498-A of the IPC. Recently, a two Judge bench the Hon’ble Supreme Court in *Mahalakshmi and others vs. State of Karnataka Criminal 2024(1) R.C.R.(Criminal) 70* quashed the criminal proceedings under Section 498-A of the IPC against the husband’s sisters and cousins and observed that if the allegations are not serious and substantiated, and there is no clear evidence of accused’s involvement in the complainant’s marital life, they cannot be implicated under Section 498-A of the IPC.

9. In view of the discussion above, this Court finds that the impugned order dated 08.01.2016 passed by the learned Additional Sessions Court, Ludhiana has been passed based on correct appreciation of the material available on the record. Learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned Court below, which warrants any interference. Accordingly, the present petition is dismissed, being bereft of any merit.

10. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

16.07.2024
Neha

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