

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR No. 2537 of 2009 (O&M)

Date of decision: 06.03.2024

Ami Lal and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. G. S. Sidhu, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioners against the judgment of conviction dated 20.10.2008 and order on quantum of sentence of the even date, passed by the Court of learned Judicial Magistrate First Class, Bathinda (*hereinafter referred to as 'the trial Court'*) in case titled as ***State vs. Ami Lal and others***, arising out of FIR No. 315 dated 14.07.2000, registered under Sections 406 and 498-A of IPC at Police Station Kotwali, Bathinda, whereby they were convicted for commission of offences punishable under Sections 406 and 498-A of IPC and were sentenced to rigorous imprisonment for one year

2. For the sake of convenience, the parties will be referred to as per their original identity before the trial Court.

3. Brief facts relevant for the disposal of the present petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by complainant Usha Rani alleging therein that she was married to accused Bhajan Lal on 19.04.2000. Her parents had spent huge amount of

money at the time of her marriage and several dowry articles including gold ornaments were given to the accused. All these articles were handed over to the accused. However, the accused were not satisfied and they started harassing her on account of demand of more dowry. She pleaded with them not to harass her as her parents had already spent sufficient money on her marriage and were not in a position to fulfill their demands but on that, the accused persons had started assaulting her. Demand of an amount of Rs.40,000/- was raised by them for starting a new business. The accused persons threatened to throw her out of her matrimonial house if she did not bring the said amount. Her parents had assured the accused persons to give the said amount of money but they could not do so. Thereafter, the behavior of the accused persons had worsened and they refused to keep the complainant with them. After registration of the FIR, the recovery of the dowry articles of the complainant was got effected from the accused persons. They were arrested and subsequently were released on bail. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court against the accused persons.

4. Copies of *challan* were supplied to accused free of cost. On finding a *prima facie* case for framing charges under Sections 406 and 498-A of the IPC against them, they were chargesheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined 09 witnesses besides relying upon documentary evidence and thereafter, its evidence was closed by the learned Additional Public Prosecutor.

6. Statements of the accused were recorded under Section 313 Cr.P.C., wherein they pleaded innocence and took a plea that they had been falsely implicated. In defence evidence, they examined one witness.

7. After appraising the evidence produced on record and considering the contentions as raised by both the sides, the trial Court, vide impugned judgment dated 10.10.2008, held the accused guilty for commission of aforementioned offences and they were sentenced in the manner as indicted above. Feeling aggrieved from the order as passed by the trial Court, the accused preferred an appeal before the lower appellate Court, which too had been dismissed, vide judgment dated 21.08.2009.

8. The present petition has been filed by the petitioners on the grounds and it has been argued by their counsel that the findings given by the Courts below in the impugned judgments are not sustainable in the eyes of law. The Courts below did not appreciate the evidence produced on record in a proper perspective and wrongly held that the petitioners had committed the offences punishable under Sections 406 and 498-A of IPC. Rather, in fact the ingredients for commission of either of these offences had not been made out even from the allegations in the FIR and also on the basis of the evidence produced on record. In fact, the complainant had stayed with petitioner No. 2 only for a period of 6-7 months and had herself chosen to leave her matrimonial home. Learned counsel for the petitioners has vehemently argued that from the testimony of the star witness PW-8 Usha Rani i.e. the complainant, it is crystal clear that in fact there was no demand of dowry by the petitioners and that she herself had not stayed with them for long and also that all the dowry articles, which belonged to her, had been given back to her

by the petitioners and the same were never misappropriated and converted to their own use. Vague, general and omnibus allegations had been levelled against them. With these broad submissions, it is prayed that the present petition deserves to be allowed and the petitioners deserve to be acquitted of the charges framed against them.

9. Learned State counsel has argued that there is no infirmity or illegality in the impugned judgments as they have been passed by the Courts below on correct appreciation of facts and evidence brought on record. Hence, he has prayed for dismissal of the present petition.

10. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record very carefully.

11. The allegations as levelled against the petitioners are that petitioner No. 2, who is husband of the complainant, and respondent Nos. 1 and 3, who are his parents respectively, after the marriage of the complainant with petitioner No. 2, had started harassing her on account of demand of dowry; had raised demand of an amount of Rs. 40,000/- and she was extended beatings. On going through the testimony of PW-8 Usha Rani, it is revealed that she had stated that the petitioners, after her marriage, had demanded a sum of Rs. 50,000/- (not Rs. 40,000/- as alleged in the FIR) from her for the purpose of starting a new business. She is shown to have improved her version by saying that on 17.09.2000, the petitioners had extended beatings to her by saying that they would rehabilitate her only if she brings an amount of Rs. 50,000/- from her parents. On a perusal of the statement made by her during her cross-examination, it is revealed that she admitted that she had stayed in the house of her in-laws only for a period of 05 months and during

that period also, she used to frequently visit her parental house and it was her husband, who used to bring her back every time. She could not tell about the exact date, month and year when the demand of Rs. 50,000/- had been made by the accused persons. It was admitted by her that she never got her medically examined when she was extended beatings by them. She stated that whenever her husband brought her back to her matrimonial home, she accompanied him in a pleasant mood. She also admitted that at the time of marriage, whatever articles were given to her in-laws and other relatives were in the shape of gift, meaning thereby the same were not given on account of demand as made by the petitioners. It is well settled law that customary gifts given to relatives of husband would not fall within the definition of dowry. Reliance in this regard can be placed upon ***Gurdeep Kaur vs. Balbir Singh and others : 2005(2) RCR (Criminal) 205***. She is even shown to have stated that she never appeared before the police in connection with making any complaint and even her statement was not recorded. She was not knowing as to what was written in the application, on the basis of which, the FIR of this case was registered. On an overall perusal of the testimony of this witness, it is clear that allegations as made by her with regard to raising demand of money by the petitioners were general and vague in nature and had been made only for the sake of leveling allegations and nothing else as no specific and distinct allegations have been made against either of the petitioners i.e. none of the petitioners have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance

of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes.

12. The settled proposition of law is that in order to prove a case punishable under Section 498A, it must be satisfied that the husband or his relatives subjected the woman, the wife, with cruelty. For the purpose of cruelty, an explanation is attached to Section 498-A IPC, which reads as under:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

13. The requirement to be established to bring home the guilt of accused under Section 498-A IPC has been laid down by the Apex Court in a catena of judgments such as ***Satish Kumar Batra and Others v. State of Haryana (AIR 2009 SC 2180)***, ***Rajendran and Another v. State Assistant Commissioner of Police (Law and Order) (AIR 2004 SC 855)***, ***Onkar Nath***

Mishra and Others v. State (NCT of Delhi and Another) (AIR 2008 SC (Supp) 204) and ***M. Srinivasulu v. State of A.P. (AIR 2007 SC 3146)***, wherein it is settled that consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498-A of IPC. However, as discussed in the foregoing paragraphs, the evidence produced by the prosecution does not make out any such case against the accused. So far as the allegations that the accused committed offence punishable under Section 406 of IPC is concerned, even as per the testimony of PW-8/complainant Usha Rani, it is clear that her *Istridhan* was not misappropriated by the accused. To constitute an offence under Section 406 of IPC, it is essential that there must be a clear and specific allegation that the accused was entrusted with some property or with dominion or power over it by the complainant and that the accused dishonestly misappropriated the same or converted the same to his/their own use and the accused refused to return back these articles when the same were demanded by the complainant. Mere general allegations made in the complaint concerning entrustment of articles of dowry to all the accused at the time of marriage or such like vague allegations would not be sufficient to *prima facie* make out a cognizable offence under section 406 of IPC. In the complaint, the allegations made by the complainant show that there are no clear, distinct or allegations regarding entrustment of her *Istridhan* to the petitioners, dishonest misappropriation by them or conversion to their own use and refusal by them to return back the dowry articles. The most vital and essential ingredients of the offence under section 406 of IPC are, therefore,

missing and as such the conviction of the accused under section 406 of IPC on the basis of these vague and journal allegations is not at all sustainable. In this regard, reliance can be placed upon *Onkar Nath Mishra and others v. State (NCT of Delhi) and another, 2008 (1) RCR (Criminal) 336*.

14. In view of the discussion made above, this Court is of the considered opinion that the Courts below have erred in holding the accused guilty for commission of offences, they were charged with. Accordingly, the present petition is allowed. The petitioners are acquitted of the charges, which were framed against them. Their personal/surety bonds be discharged accordingly.

06.03.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes