

**CRR No.4963 of 2016****-1-****IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRR No.4963 of 2016**Date of decision: 18.05.2024****MANJU SHARMA****...Petitioner****Versus****SANJAY SHARMA AND OTHERS****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Shiv Kumar, Advocate for the petitioner.

Mr. B.S. Tewatia, Advocate for the respondents.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioner against the judgment dated 23.01.2014 passed by the Court of learned Additional Chief Judicial Magistrate, Faridabad in criminal case No. RBT-65-2005 titled as *State vs. Sanjay Sharma and others*, arising out of FIR No.298 dated 08.06.2005 registered under Sections 498A and 406 of IPC at Police Station City, Ballabhgarh, whereby the respondents-accused were acquitted of the charges as framed against them as well as the judgment dated 30.07.2016 passed in Criminal Appeal No.38 of 2014 titled as *Manju Sharma vs. Sanjay Sharma and others*, whereby an appeal filed by the petitioner-complainant against the judgment of acquittal dated 23.01.2014 had also been dismissed.

2. For the sake of coherence and continuity, the parties shall be referred hereinafter as per the original nomenclature as given before learned trial Court.

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3. The brief facts of the case, relevant for the purpose of disposal of the present revision petition, are that the aforementioned FIR was got registered by the present petitioner by recording a statement alleging therein that she was married with accused-Ajay Sharma on 11.12.1999. Sufficient dowry was given by her father at the time of her marriage as per his status. She alleged that accused-Ajay Sharma, who is her husband and other co-accused i.e other members of her in-laws' family were not satisfied with the dowry so brought by her and they started ill-treating her on that account. She was tortured physically as well as mentally and demand of Rs.50,000/- was raised by the accused. On showing inability on the part of her father to meet with the said demand, the petitioner was subjected to severe beatings and her father was asked to take her back. She was ultimately thrown out of her matrimonial house and all *istridhan*, belonging to her, had been refused to be returned by her in-laws. After registration of the FIR, investigation proceedings were initiated. The accused were arrested and were subsequently released on bail. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court for trial of the accused.

4. On finding a *prima facie* case, the accused were charge-sheeted under Sections 406 and 498A of IPC. They abjured their guilt and claimed trial.

5. To substantiate its case, the prosecution examined 7 witnesses in all besides placing reliance upon certain documents and thereafter the

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prosecution evidence was closed. It will not be out of place to mention here that accused Ajay Sharma absented himself during the trial and was declared proclaimed offender. Statements of the accused under Section 313 of Cr.P.C. were recorded wherein, they pleaded false implication. They were given opportunity to lead evidence in defence but did not lead any.

6. On appraising the evidence produced on record and giving due deliberation to the contentions raised by both the sides, learned trial Magistrate acquitted the accused of the charges as framed against them by observing that the prosecution had failed to prove the allegations as levelled against them beyond doubt.

7. Feeling aggrieved, the present petitioner filed an appeal against the judgment dated 23.01.2014 before the Court of learned Additional Sessions Judge, Faridabad which too, had been dismissed as mentioned above and feeling dissatisfied by the order passed by the Courts below, the instant petition has been preferred.

8. It is submitted in the petition and it has been argued by learned counsel for the petitioner that the findings in the judgment as passed by learned trial Magistrate and affirmed by learned Appellate Court, are not sustainable in the eyes of law and are liable to be set aside. The Courts below did not apply their judicious mind and passed non-speaking orders which are based on misreading and mis-appreciation of the evidence produced on record by the prosecution. It is argued that there was overwhelming evidence on record to prove the allegations that the petitioner was subjected to harassment

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both physical as well as mental on account of demand of dowry by respondents-accused. It was also proved from the evidence produced on record that the dowry articles belonging to the petitioner had been entrusted to the respondents and they refused to return the same and converted the same to their own use. It is therefore, urged that the appeal be accepted, impugned judgments be set aside and that the respondents-accused be held guilty and convicted for commission of offences for which they had been charge sheeted.

9. I have heard learned counsel for the parties and have meticulously gone through the material placed on record besides perusing the trial Court record.

10. The respondents-accused had been charge sheeted in this case for commission of offences punishable under Sections 498-A and 406 IPC. Learned trial Court while acquitting the accused of the charge under Section 498-A of IPC, had observed that the prosecution had failed to prove the allegations under this section. Before proceeding further, it would be proper to refer to the provisions of Section 498-A of IPC which read as under :-

"498-A. Husband or relative of husband or 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."

The 'Explanation' appended thereto defines cruelty to mean : (i) any willful conduct which is of such a nature as is likely to drive the woman to commit

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suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman; or (ii) 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.

11. Thus, the essential ingredients of the aforementioned provision are:

1. A woman must be married.

2. She must be subjected to cruelty.

3. 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 : (1) husband of that woman, or (2) any relative of the husband.

12. It is to be seen by this Court as to whether the evidence produced on record by the prosecution was sufficient to prove the commission of

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offence punishable under Section 498-A of IPC as claimed by the revisionists or not?

13. To prove these allegations, the prosecution had mainly relied upon the statements of PW-1 namely Tirlok Chand Sharma who is the father of the petitioner, PW-2 Mangal Dev Sharma, who is maternal uncle of the petitioner and the testimony of the petitioner herself who appeared as PW-3. On a perusal of testimony of PW-2 Mangal Dev Sharma it clearly appears that the same was hearsay in nature because he admitted that he could not tell about the exact date, time and month when demands of money had been raised by the respondents-accused. His statement also shows that he was not the witness to the commission of any act of cruelty or extending beatings upon the petitioner by either of the accused, therefore, his statement, serves no purpose. Then, so far as the statement of the PW-1 Tirlok Chand Sharma is concerned, though he stated that he had given several articles as dowry at the time of marriage of her daughter and all member of her in-laws' family had been given clothing, cash of amount Rs.501/- and silver coins but they were not happy with the same and started torturing her by extending beatings to her. He did not say that the articles which were given at the time of marriage, had been demanded by either of the accused. Further he stated that the demand had been raised in the year 2000 at the time of 'teej' festival by the parents-in-law and brother-in-law of his daughter but did not specifically state as to what was that demand. As per the allegations in the FIR, it was an amount of Rs.50,000/- which had been demanded by accused from the petitioner but

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PW-1 stated that they had demanded a sum of Rs.1 lac from him. During the cross-examination, he changed his stand by saying that previously they had raised a demand of Rs.50,000/- and then raised demand of Rs.1 lac and before the Women Cell, they had demanded Rs.1.25 lac. PW-3, the petitioner stated that her in-laws raised demand sometime of Rs.50,000/- and sometime of Rs.1 lac and when she had disclosed to them that her parents could not fulfill the said demand, they used to extend beatings to her to that an extent that she had become unconscious. On a careful scrutiny of the statements of these witnesses, it clearly appears that general allegations had been levelled against all the respondents-accused by alleging that they raised demand of Rs.50,000/- or Rs.1 lac. No specific and direct allegation had been levelled by these witnesses to show as to which particular accused had raised such demand and at what particular point of time. These allegations can not be stated to be of such nature on the basis of which it can be stated that the respondents-accused subjected the petitioner to cruelty to meet such demand or committed any such willful act or conduct which was likely to drive her to commit suicide. As already mentioned that it is not the case of these witnesses that whatever articles were given at the time of the marriage of the petitioner with accused-Ajay Sharma, on account of some demand. No medical examination of the petitioner was ever conducted to show that she had been extended beatings by the respondents-accused at any particular point of time. Their evidence do not show that there was any demand of dowry at the time of marriage. In such circumstances, in my considered opinion, the evidence as led by the

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prosecution was not sufficient enough to prove that the petitioner was subjected to cruelty by the respondents and harassed by them on account of demand of dowry or any act on their part was likely to force the petitioner to commit suicide. As such, this Court finds no reason to interfere with the findings as given by the Courts below with regard to the acquittal of the respondents-accused for commission of offence punishable under Section 498A of IPC.

14. So far as the allegations that the petitioners committed offence punishable under Section 406 of IPC is concerned, this section provides punishment for commission of offence of criminal breach of trust as defined under Section 405 of IPC. This offence may be held to have been committed when a person who had been entrusted in any manner with the property or has otherwise dominion over it, dishonestly misappropriates it and converts it to his own use, or dishonestly uses it or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, expressed or implied, made by him touching any discharge, or willfully suffers any other person to do so. In this case, on perusal of testimonies of the material witnesses i.e. PW-1 to PW-3, in my considered opinion also, no case for commission of offence punishable under Section 406 of IPC has been made out as against the respondents-accused. It was alleged that the *istridhan* belonging to the complainant was not returned by her in-laws. In the FIR, there was no allegation of entrustment of any specific kind of property by the complainant to the respondents-accused and

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only general allegations had been levelled. Similarly, PW-1 and PW-2 did not utter even a single word to the effect that the *istridhan* or any other property belonging to the petitioner was entrusted to the respondents-accused and they had misappropriated the same. Even the petitioner herself simply stated that her dowry articles had not been returned by the respondents. However, it was admitted by her during cross-examination that some of her dowry articles were recovered by the Police and had been handed over to her. Though, she alleged that all valuables and jewellery were still with the respondents but the details thereof, had not been given. The allegations qua entrustment of property or its misappropriation by the respondents is pre-requisite of offence under Section 406 of IPC, but the same itself is lacking in this case, as evidence does not prove that which particular accused were entrusted with which particular item of *istridhan*/dowry belonging to the petitioner and which particular accused had misappropriated the same. The allegations as levelled do not technically attract the definition of breach of trust within the meaning of Section 405 of IPC. So far as giving of some cash amount of money and silver coins to the respondents-accused is concerned, the well settled proposition of law that any gift made to bridegroom or his parents, whether in accordance with any custom or otherwise, does not constitute an offence under Section 406 of IPC. Therefore, in my considered opinion, learned Courts below had rightly acquitted the respondents of charge under Section 406 of IPC.

14. As per the discussions made above, I see no reason to interfere with the well reasoned findings as given by the Courts below and finding no reason to allow the petition, the same is ordered to be dismissed.
15. It is clarified that observations made hereinabove, shall not be construed as an expression of opinion on the merits of the case.

18.05.2024	(MANISHA BATRA)
Jyoti-IV	JUDGE
<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>