

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

234

Date of order: 08.02.2024

CRR-3854-2017 (O&M)

Sarita

.....Petitioner(s)

Vs.

Manoj & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Indu Bala, Advocate for
Mr. Aditya Jain, Advocate
for the petitioner.

Mr. Aditya Pal Singla, AAG Haryana.

Nidhi Gupta, J.

Challenge in the present petition is to the judgment and order dated 23.04.2015 passed by learned Sub-Divisional Judicial Magistrate, Pataudi, District Gurugram, acquitting the accused/respondents No.1 to 3 herein in case FIR No.241 dated 16.12.2010 under Sections 498-A, 406, 323, 354, 506 and 34 IPC registered at Police Station Pataudi; as also to the order dated 10.08.2017 passed by learned Additional Sessions Judge, Gurugram, whereby the appeal filed by the petitioner against order of learned trial Court dated 23.04.2015, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that the respondent No.1 is the husband; respondent No.2 is the father-in-law; and respondent No.3 is the mother-in-law of the petitioner, respectively.

Petitioner was married to respondent No.1 on 05.02.2008. It is the case of

the petitioner that father of the petitioner spent a huge amount i.e. about Rs.5 lakh on her marriage as also gave dowry and other domestic articles to respondents No.1 to 3 herein, however, they were not satisfied with the dowry and soon after the marriage, they started harassing the petitioner physically and mentally; and also taunted her for bringing less dowry. After a few days of marriage i.e. on 25.02.2008, on the eve of Holi, respondents No.1 to 3 physically and mentally harassed the petitioner and raised the demand of a Car. They again harassed and humiliated the petitioner on 01.06.2008 and 08.08.2008 in order to fulfil their demand of a Car. Respondents No.1 to 3 even threatened the petitioner that if the petitioner failed to fulfil their demand of a Car, then they would turn her out of the matrimonial home. When the petitioner got pregnant, all the expenses of her delivery and treatment were borne by her father and even in *Chhuchhak* function, father of the petitioner incurred huge expenses. On 22.05.2010, respondent No.1 again raised the demand of a Car; and respondent No.2 and one other boy namely Sonu pulled the hair of the petitioner; and respondent No.3 threw the petitioner on the ground and confined her in a room. Respondent No.2 also tried to outrage modesty of the petitioner by lifting her veil. The Panchayat was also convened for amicable settlement of the matter between the petitioner and respondents No.1 to 3, but to no avail.

3. Learned counsel for the petitioner further submits that even though the petitioner has examined as many as 6 witnesses in support of her case, however, learned Courts below have entirely disregarded her evidence, and acquitted the accused/respondents No.1 to 3 herein.

4. Ld. Counsel further contends that during the pendency of the appeal before the learned Sessions Judge, Gurugram, petitioner preferred an application under Section 391 Cr.P.C. for adducing additional evidence as the learned Trial Court had not given sufficient opportunities to the prosecution to lead entire evidence, due to which, petitioner could not give her deposition before the learned Trial Court against the respondents No.1 to 3. Not only this, fake report was submitted by the serving Constable. However, the application as well as appeal filed by the petitioner was dismissed vide judgment dated 10.08.2017 by the learned Additional Sessions Judge, Gurugram.

5. It is further argued that the learned Courts below have not considered that charges were framed against the respondents No.1 to 3 only on 13.12.2011, but learned trial court erroneously held that sixteen effective opportunities were given to the prosecution to conclude its evidence but to no avail. However, learned Trial Court has erred in not appreciating that summons were served to different witnesses only five times and the mentioning of sixteen effective opportunities in impugned judgment dated 23.04.2015 is totally against the facts and circumstances of the case. The learned courts below have further failed to appreciate that the complaint was filed in the month of November, 2010 and learned Trial Court directed the Station House Officer, Police Station Pataudi to register the case against respondents No.1 to 3 and Sonu, son of Ishwar, resident of village Nahahera, Gurugram. Thereafter, the case was transferred to the court of SDJM, Pataudi, in the month of March, 2013. The summon in this regard was served upon the petitioner only one time i.e. on 25.01.2014 to

appear before the court of SDJM, Pataudi and when she came to the court along with her father then it came to her knowledge that the matter has been adjourned for next date of hearing and Naib Court of the Court advised her to come on the next date of hearing. When she reached Court on the next date of hearing, it came to her notice that the learned SDJM was on leave and on enquiring further, Naib Court of Court told the petitioner that she has to appear when she personally receives the summon from the court of learned SDJM.

6. It is submitted that the learned Courts below have gravely erred in law while not appreciating that except the summon for date 25.01.2014, the petitioner never received any summon from the learned Trial Court and due to this reason, petitioner could not appear before the court to depose against the respondents No.1 to 3.

7. No other argument is raised on behalf of the petitioner.

8. I have heard learned counsel for the petitioner.

9. Perusal of the record of the case shows that learned trial Court upon appraisal of the pleadings as adduced by both the parties and in appreciation of the entire evidence, returned the following findings:-

“11. In order to prove its case, the prosecution examined as many as six witnesses. At the very outset it is pertinent to mention that complainant on whose complaint criminal law was set in motion in present case, has not stepped into witness box to prove the contents of the complaint and to prove the fact of infliction of cruelty upon her. As per the specific case of the prosecution, the accused physically and mentally harassed

complainant and raised demand of dowry on 25.02.2008, 01.06.2008, 08.08.2008, 12.12.2008 and 22.05.2010 from the complainant. However, complainant has not stepped into witness box to prove the fact of commission of aforesaid incident. The evidence of PW1 Harbir, PW3 Pratap Singh qua aforesaid incident is only hearsay and is not admissible. Even, allegedly panchayat was convened to amicably settle the matter between accused and complaint on 28.05.2010 but no member of panchayat has stepped into the witness box to prove the said fact. In such circumstances, in the absence of evidence of complainant the entire case of the prosecution stands dwindled. It is not proved on the case file as to what injuries were sustained by the complainant and which of the accused caused which injury. Even, allegations regarding subjecting the complainant to cruelty taking demand of dowry remains disapproved in view of non-examination of the complainant. Hence, it is held that prosecution has failed to prove guilt of accused u/s 498A, 323, 354 read with section 34 IPC.

12. So far, allegation against the accused under Section 406 IPC is concerned; even the prosecution has miserably failed to prove the same beyond shadow of reasonable doubt. In order to prove the guilt of accused under Section 406 IPC, prosecution is duty bound to prove the essential ingredients of Section 406 IPC. First of all, entrustment of property and its misappropriation by accused persons or conversion thereof to their own use contrary to the manner in which said property was to be used, is required to be proved to the hilt. Thus, in the cases of present nature, in the first instance it has to be specifically allege that dowry articles were entrusted at the time of marriage or even thereafter to accused persons. Thereafter, said allegations have to be proved by adducing cogent and convincing evidence. It is also required to be proved

to which and what dowry articles were entrusted to whom and how same were misappropriated.

13. Applying above principles of law, it is required to be seen whether or not in the instant case, prosecution has been successfully able to prove the essential ingredients of Section 406 IPC and consequently offence under Section 406 IPC against accused persons.

*14. In the evidence adduced by prosecution, nothing has been specifically alleged against accused that at the time of marriage or subsequently, they were entrusted with any specific dowry items. It has also not come in evidence as to which dowry articles were entrusted to whom. There is no allegation, whatsoever, in the entire complaint regarding entrustment of dowry articles to any of the accused. In considered opinion of the Court, mere keeping dowry articles by accused persons in their custody does not prove that they were entrusted with said articles at the time of marriage or subsequently and that they misappropriated the same by converting said articles to their own use particularly most of the articles were recovered by police after registration of FIR. Thus, in the considered opinion of the Court, allegations with regard to commission of offence punishable under Section 406 IPC remain allegations only and prosecution has miserably failed to prove the same beyond shadow of all reasonable doubts and hence accused persons are liable to be acquitted for offence punishable under Section 406 IPC. In this regard, authority titled **Seema & Ors. Vs. Jaswinder Kaur 2010(2) Law Herald (P&H) 1013** can also be relied upon.*

15. So far, offence punishable under Section 506 IPC against the accused is concerned, complainant has nowhere stated that threats given by the accused caused an alarm to her. It is well settled that mere threat during course of quarrel is not an

*offence. In this regard authority titled as **Amitabh Adhar & Anr. Vs. NCT of Delhi & Anr. 2000(3) CCJ 794 Delhi** can also be relied upon”.*

10. Thereafter, even learned lower Appellate Court after due consideration of the matter, has given the following findings:-

“10...It is further argued that 16 effective opportunities were given to the prosecution to conclude their evidence but they have not availed the same. It is further argued that PW1 Harbir father of the complainant has deposed at length but the deposition has failed to prove the ingredients of offences against which the accused are charged with. Learned counsel further drawn the attention on the deposition of witness where the witness admitted as correct that before filing the complaint he has never make any complaint in the police station. The witness further deposed that he has done the entire proceedings in the present complaint and that all the writings were got done by him. The witness further deposed that the police has recorded his statement on 19.11.2010. On this, learned counsel argued that the above deposition shows that PW1 is not a hearsay witness but he was well acquainted with the facts and circumstances of the case but his evidence was not found to be sufficient to prove the ingredients of Sections 498-A/406 IPC against the accused persons. It is further argued that the witness has admitted that he has never taken any respectable person and Panchayat to the house of the accused and that her daughter (complainant) has reached her house at 8/9.00 p.m. with his son Rohit. Learned counsel contradicted the same with the complaint as in the complaint, it is stated that on 8.8.2008 the accused persons called the complainant and told her that her father has not fulfilled the demand of car and then thrown her out from the matrimonial home and then the complainant reached to her parental house and told the

entire story. On this, learned counsel argued that the above contradictions shows that the facts mentioned in the complaint are not correct and in the evidence the witness Harbir had admitted that his daughter had come to her parental house along with her brother. It is further argued that infact the accused are aggrieved in the hands of complainant and this fact is admitted by the witness PW1 and he has deposed that accused persons had come to their village 1-2 times with the Panchayat but he had never sent her daughter with the Panchayat. The witness further admitted that when a son is born to her daughter then some gifts are given as a ritual but he has not given the same. Learned counsel further contended that the complainant and their family members from the very beginning want to harass the accused and the very fact is reflected in the evidence of PW5 Ompal who has deposed that no Panchayat was convened by the family members of complainant Sarita in the village qua the marriage or dowry articles. The witness further admitted that no dowry was ever demanded by the accused persons and the marriage of complainant Sarita was performed in very routine manner. It is further argued that there is no other proof qua beating, cruelty to the complainant on record. It has thus, been contended that the learned trial court rightly acquitted the respondents...

14...Further, this court finds that the allegations qua the offence U/ss 498-A/406 IPC are not convincingly proved as PW1 Harbir father of complainant and PW3 Partap Singh have failed to level any specific allegation rather in their evidence some deposition are against their case. Learned counsel for the appellant has not been able to persuade this court that any of the findings recorded by the learned trial court are against record, perverse or not sustainable. As discussed above, the material witness of the prosecution complainant Sarita has not appeared before the court inspite of sufficient opportunity. On

*perusal of case record, it has appeared that the complainant and other prosecution witnesses were summoned numerous times and on perusal of order dated 16.3.2015, it has appeared thatailable warrants against PWs Prem Chand, Ram Nath and Sarita were received back served but even then they were not appeared before the court. This court further observes that PW1 father of complainant who has deposed that he is well versed with the case, being father and all the proceedings of the case were done by him, but from his evidence nothing convincing has come out which could show that the allegations against the accused are true and are proved to the extent which are required in a criminal case. Learned trial court has rightly observed that the prosecution has failed to prove the offence U/s 406 IPC as there are no specific allegation that the dowry articles were entrusted at the time of the marriage or even thereafter to the accused persons and it is also required to be proved as to which articles is entrusted to whom and how the same were misappropriated. Further, the non-examination of the complainant to prove the allegations of cruelty and demand of dowry remained disproved in view of the non appearance of the complainant before the court. In a very recent judgment in the case of **Rajesh Sharma Vs. State of U.P. decided on 27 July, 2017**, the Hon'ble Apex Court observes that it is a matter of serious concern that large number of cases continued to be filed under Section 498-A IPC alleging harassment of married women and further observed that most of such complaint are filed in a heat of the moment over trivial issues".*

11. Learned counsel for the petitioner is unable to controvert the above said findings of the learned Courts below.

12. In view of the above uncontroverted position, I find no merit in the present petition. The same is accordingly **dismissed**.

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

08.02.2024

Sunena

(Nidhi Gupta)
Judge

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