

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-3863-2018(O&M)

Date of order: 04.04.2024

Smt. Anupam Sharma

.....Petitioner(s)

Vs.

State of Haryana & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Atul Yadav, Advocate
for the petitioner.

Mr. Aditya Pal Singla, AAG Haryana.

Nidhi Gupta, J.

Present petition has been filed by the complainant against judgment dated 13.02.2017 passed by learned JMIC, Gurugram, whereby respondents No.2 to 4 have been acquitted in case FIR No.149 dated 15.08.2012 registered under Sections 406, 498-A, 323, 377, 506 read with Section 34 IPC at Police Station Sector 40, Gurugram; **and** judgment dated 07.08.2018 passed by learned Additional Sessions Judge, Gurugram, whereby the appeal filed by the prosecution against the aforesaid judgment dated 13.02.2017 has been dismissed.

2. Brief facts of the case are that the complainant was married to respondent No.2 on 27.11.2010. No child was born out of this wedlock. Due to matrimonial discord, the parties started living separately, culminating in the filing of the present FIR on 15.08.2012. In the FIR, it has been alleged that respondents No.2 to 4 were greedy persons. Even before

marriage they had taken Rs.3,80,000/- from the father of the complainant in order to buy a car; and also taken Rs.1 lakh from the complainant on 10.11.2010. On 01.01.2011, respondent No.3/father-in-law of the complainant had demanded a gold ring from the complainant on occasion of his birthday and when she expressed her inability to provide the same, he had abused her. On 21.01.2011, respondent No.2/husband of the complainant had demanded Rs.20,000/- from her and also a mobile phone upon which the complainant had given Rs.11,500/- to respondent No.2/husband under compulsion. Similar such allegations of demand of money/dowry, beatings and other verbal and physical abuse by respondents No.2 to 4, have been made all through the FIR. It has also been stated that on 18.06.2012 even a Panchaysat was convened, however, no amicable resolution could be arrived at between the parties. It is further alleged that on 02.07.2012 respondent No.2/husband again abused and gave beatings to the complainant whereupon the complainant finally lodged the present FIR on 15.8.2012.

3. Learned counsel for the petitioner submits that the impugned orders have been passed only because the prosecution case has been disbelieved by the Courts below due to minor discrepancies in the statements of the witnesses. It is stated that the petitioner had led comprehensive and cogent evidence before the learned Courts below in support of her case. However, the same has been misread and not appreciated in the correct light. The petitioner had produced numerous prosecution witnesses who had corroborated the version of the prosecution. It is submitted that the petitioner had produced herself as

PW3, her brother as PW2 and her father as PW8. However, testimony of said witnesses has been discarded on account of the fact that the said witnesses are interested witnesses and no independent witness has been examined by the complainant in support of her case. It is submitted that in matrimonial matters, it is not possible to examine independent witnesses as the matter relates to family members only.

4. No other argument is made on behalf of the petitioner.

5. I have heard learned counsel for the petitioner and perused the case file in detail.

6. Perusal of record of the case shows that the main allegation made by the complainant against respondents No.2 to 4 is in respect of a payment of Rs.3,80,000/- made by the father of the complainant into the account of respondent No.2/husband through RTGS; and Rs.1 lakh in cash. First and foremost, the said payment is alleged to have been made on a demand raised by the accused-husband *prior* to marriage of the parties. If that was so, it is not clear as to why the complainant still married respondent No.2 despite his 'greedy nature'. Even otherwise, findings of the learned trial Court in respect of the said allegation, are as under:-

"33.....no documentary proof regarding the same was brought on record by the prosecution to prove that any money was transferred from the bank account of father of the complainant to the bank account of accused Rakesh..."

7. Learned counsel for the petitioner has submitted that although no documentary evidence in respect of the said RTGS transaction

of Rs.3,80,000/-, could be produced before the learned trial Court, however, the same was duly brought on record in appeal before the learned Additional Sessions Judge. Findings of the learned Additional Sessions Judge in this regard are as under:-

“14...It has been alleged that Rs.3,80,000/- has been transferred to account of accused Rakesh through RTGS and Rs. 1 lakh has been paid in cash to accused Rakesh. Though, such allegations have been levelled but no evidence has been adduced with respect to the alleged monetary transaction and a document has been placed on the record without establishing as to what account the said amount has been transferred without leading any evidence upon the same. In the absence of any evidence having been adduced regarding the transaction of the amount the said document can not be taken on record. Even otherwise, this court fails to understand why the said document has not been produced before the investigating officer so that the opportunity was there with the accused to confront the witness of the prosecution at the time the evidence of the prosecution.....”.

8. I am in agreement with the findings and reasoning as recorded here in above. Evidently the document adduced before the learned Additional Sessions Judge to prove the alleged RTGS transaction did not bear the account number from which the transfer was made. Admittedly, the said document was not even proven in accordance with law. As such, there was no conclusive proof of the alleged transfer of ₹3,80,000 made into the account of respondent no.2.

9. It is also relevant that the marriage between the petitioner and respondent No.2 was a love marriage. It has also come on

record that respondents No.3 and 4/parents-in-law of the complainant used to reside in Jaipur whereas the complainant and her husband/respondent No.2 were residing in Gurugram. In these circumstances, it is improbable that they would be making dowry demands or inflicting beatings upon the complainant from Jaipur. Moreover, the complainant has not produced any medical record in support of the said allegation of merciless beatings before either of the Courts below.

10. FIR also suggests that a panchayat was convened on 18.06.2012. However, no Member of Panchayat has been examined by the prosecution. Even no explanation is forthcoming from the complainant side as why no Member of Panchayat was examined. The prosecution has only produced the complainant as PW3; brother of the complainant as PW2; and father of the complainant as PW8. It is not clear as to why no independent witnesses were examined in support of the allegations.

11. It has further been alleged that the complainant was paying for the premises that were taken on rent by the complainant and respondent No.2, however, complainant has failed to produce any rent receipt or any other documentary proof in support of her said allegation.

12. As regards the allegation of the complainant under Section 406 IPC, the list of dowry articles (Ex.PW3/B) was relied upon and it was alleged that respondents No.2 to 4 had failed to return the said articles. However, admittedly, the said articles were recovered from the house at Sector 31, Gurugram, where the complainant and her husband used to reside on rent. Complainant during her cross-examination admitted

that she had vacated the said house in September, 2012, whereas respondents No.2 had left the said house on 24.07.2012 prior to the complainant. In such circumstances, it cannot be said that dowry articles have been entrusted by the complainant to respondents No.2 to 4 or that respondents No.2 to 4 were in possession of the same. As such, it cannot be said that any offence under Section 406 IPC has been committed by respondents No.2 to 4.

13. It has also come on record that besides the present complaint (Ex.PW3/A), the complainant had also moved another complaint (Ex.DA) against respondents No.3 and 4 for committing cruelty against her. However, the learned trial Court had found that *"...in the said complaint Ex.DA no allegations, as detailed out in the complaint Ex.PW-3/A has been made by the complainant for the reason best known to her...."*. Thus, in the present complaint a whole new set of allegations has been made by the complainant which is at variance with the allegation made in the previous complaint. This casts a shadow of doubt regarding the truth of the allegations made by the complainant.

14. It had further been alleged by the complainant that respondent No.2/husband was in extra-marital relationship with one Garima Bhardwaj and that his office colleagues had knowledge of the same. However, the complainant did not examine anybody from the office of respondent No.2. Findings of learned trial Court in this regard are as under:-

"36. More so, allegations were also levelled by the complainant against her father-in-law Ramdass Sharma and mother-in-law

Vimla Sharma that they repeatedly raised demand for the purchase of flat for accused Rakesh. Besides this, in January, 2012 her father-in-law of the complainant also demanded air tickets for Bharat Bharman and on 15.01.2012 she was given beatings by all the accused at Jonata Mata temple. Besides this, it was alleged that father-in-law tried to implicate complainant in a false abduction case of accused Rakesh. However, all these allegations are merely oral allegations without any corroboration from some independent source. More so, it has come on record that accused Ramdass Sharma and Vimla Sharma lived separately from the complainant and accused Rakesh. It is very highly impossible to believe that accused Ramdass Sharma and Vimla Sharma who were residing in Jaipur would come to Gurugram to treat the complainant with cruelty or demanded the dowry articles from the complainant.....”.

15. Allegations have also been made that respondent No.2 forced unnatural sex upon the complainant, however, as per the testimony of PW5/Dr. Priyanka Goswami, “..at the time of medico-legal examination no scar mark or any old injury mark was reported in the MLR..”.

16. In view of the above findings and facts on record, which have not been disputed or controverted by the complainant, I find no merit in the present petition and the same is accordingly, **dismissed**.

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

04.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No