

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-3346-2019(O&M)
Date of order: 05.03.2024

Manmeet Pal Kaur

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Veneet Sharma, Advocate
for the petitioner.

Mr. S.S. Chahal, AAG Punjab.

Nidhi Gupta, J.

Challenge in the present petition is to judgment dated 06.08.2019 passed by learned Additional Sessions Judge, Amritsar, whereby the appeal filed by the petitioner against judgment dated 28.11.2018 passed by learned JMIC, Amritsar acquitting respondent No.2 in case FIR No.18 dated 15.05.2011 under Sections 498-A and 406 IPC registered at Police Station D Division, Amritsar, has been dismissed.

2. Brief facts of the case are that the petitioner/complainant was married to respondent No.2 on 14.02.2009. It was the second marriage of both the parties. As per the complainant, at the time of marriage, respondent No.2 had assured the petitioner that he had made enough property in America and he wanted to live in America with the petitioner. However, after the marriage, attitude of respondent No.2 and his family changed completely and they harassed and tortured the petitioner for dowry and demanded Rs.50 lakh from her. She was even

kicked and pushed by respondent No.2 and his family on 13.09.2009. They again demanded Rs.50 lakh from the petitioner. It is alleged that father-in-law of the petitioner caught her from hair and her mother-in-law caught her legs and when she tried to escape, her husband closed her mouth with his hands. The petitioner was also administered some injection by respondent No.2 and his family, due to which she lost consciousness and when she regained consciousness, she found herself in a car in front of the street of her father's house. With the above allegations, the petitioner registered the present FIR against her husband/respondent No.2 herein, father-in-law, mother-in-law, brother-in-law, sister-in-law and wife of brother-in-law.

3. After investigation, challan was presented only against respondent No.2/husband under Sections 406 and 498-A IPC.

4. Learned counsel for the petitioner inter alia submits that the learned trial Court is in patent error in acquitting respondent No.2 and his family as the petitioner had produced sufficient evidence before it, which has been disregarded by the Courts below. It is submitted that the Courts below have taken a hyper-technical view and have wrongly acquitted respondent No.2 under Sections 406 and 498-A IPC despite the fact that recovery memo (produced as Ex.PW2/A before the learned trial Court) was produced by the prosecution. Even enough evidence was placed on record by the petitioner side to make out the offence under Section 498-A IPC, however, the same has not been considered by the learned Courts below. It is accordingly, prayed that the impugned orders be set aside.

5. No other argument is made on behalf of the petitioner.
6. I have heard learned counsel for the petitioner and perused the case file in detail.
7. As regards the allegations made by the petitioner under Section 498-A IPC, she has referred to two incidents of 25.04.2009 and 13.09.2009. Regarding the incident of 25.04.2009, the petitioner had alleged that her mother-in-law, father-in-law, brother-in-law, sister-in-law and husband had demanded Rs.50 lakh from her and when she expressed her inability to provide the same, they gave filthy abuses to her and even slapped her. Whereupon her husband/respondent No.2 injected her. In support of her allegations, the petitioner has appeared as PW4 and so has her father Sewa Singh, as PW6. Although PW6 in his examination-in-chief has merely repeated the allegations made by the petitioner as already noticed hereinabove, however, in his cross-examination dated 04.10.2018, he has stated that *"neither of the relative of the accused had ever committed any overt act to my daughter in my presence on 25.4.2009 as stated by me in my examination-in-chief"*. From the above, it is clear that PW6 was not present when the alleged incident of 25.04.2009 had occurred. Any evidence led by him in support of the same was merely hearsay.
8. Relevant findings of the learned trial Court in this regard are as under:-

"14.....In order to prove the allegations of cruelty against the accused, the prosecution has predominately relied upon the testimony of PW4 complainant Manmeet Pal Kaur and of PW6 Sewa Singh, father of the complainant. In her examination-in-

chief, the complainant has alleged about two incidents i.e of dated 25.4.2009 and of 13.9.2009 when she had allegedly suffered the cruelty at the hands of the accused and his relatives. It is the allegation of the complainant that, **"on 25.4.2009 at about 9.00 a.m my mother-in-law Jagdeep Kaur, father-in-law Harnek Singh, brother-in-law Gurwinder Singh and Dr.Gurdeep Singh were sitting in the house and in presence of accused Rajwinder Singh, my mother-in-law asked to prepare and serve tea. When I brought tea, my sister-in-law's husband asked they are not satisfied only with tea and they want Rs.50 Lakh, on this, I begged before them and requested them that my parents had already given sufficient dowry and now they cannot give any money. On this, my mother-in-law started giving filthy abuses, then my father-in-law gave me slap and my mother-in-law caught hold me from my hairs., I called my husband for help, then accused also started giving slaps to me. Dr.Gurdeep Singh shouted upon me and took one injection from the pocket of his pant and inject the same against me. I became unconscious and gained conscious after few hours."** It is also alleged by the complainant that **"her mother-in-law has told that if she will give a gold set to her, then she will save her from the demand of Rs.50 Lakh. On this, the father of complainant made arrangement of gold set and handed over to the mother of accused in the month of May, 2009."** Before moving further, it is worthwile to mention here that even PW6 Sewa Singh in his examination-in-chief has narrated the above incident in the same manner. However, during his cross-examination of dated 4.10.2018 at page no.1, he had stated that, **"neither of the relative of the accused had ever committed any overt act to my daughter in my presence on 25.4.2009 as stated by me in my examination-in-chief."** Meaning thereby, Sewa Singh was not present at the spot at the time of alleged occurrence of dated 25.4.2009 and-his

evidence is merely hearsay. Thus, in order to prove the allegations of dated 25.4.2009, the prosecution has predominately relied upon the testimony of PW4 Manmeet Pal Kaur. This Court has scanned the statement of complainant PW4 Manmeet Pal Kaur and is of the view that the same does not inspire any confidence. PW4 Manmeet Pal Kaur in her cross-examination has admitted that, **"It is correct that marriage of Dr.Gurdeep Singh and Rajinder Kaur was performed prior to my marriage with accused Rajwinder Singh. Dr. Gurdeep Singh and Rajinder Kaur did not attend our marriage. It is correct that at the time of performance of marriage, both Dr.Gurdeep Singh and Rajinder Kaur were residing at Mandi Dabwali, Haryana."** She further admitted that, **"After the marriage, I had lived with accused Dr.Rajwinder Singh in a rented accommodation at Bathinda."** If she had lived with the accused Dr.Rajwinder Singh at Bathinda, then how the incident of dated 25.4.2009 took place at the parental house of the accused which is situated at Giddarbaha, District Muktsar. Further, it is not believable that a person who had not even attended the marriage of the complainant and the accused, had harassed the complainant with a demand of dowry. Also no complaint to the police had been moved by the complainant immediately after the alleged incident of dated 25.4.2009. Also if the complainant was mercilessly beaten by five persons with fists and blows, then she must have received some injuries. However there is no medical evidence on the record relating to the same. Apart from this, the complainant has also alleged that the accused alongwith her parents, Gurwinder Singh, Dr.Gurdeep Singh and Sonic had again harassed her on 13.9.2009. She alleged that Gurwinder Singh pushed her on the earth and Jagdeep Kaur caught hold her with hands and with pre-mediated mind all the accused gave beatings to her. Thereafter, Dr. Gurdeep Singh with the help of Sonic had given

injection to her by mixing some medicine in the same. On this, the complainant became unconscious and when she had gained conscious, she found herself in Amritsar in the house of his father. Even these allegations of the complainant are not believable because neither any complaint has been moved to the police immediately after that incident nor there is any medical record relating to the alleged injuries suffered by the complainant on 13.9.2009. Also prosecution itself had given the clean chit to all the persons except the present accused, by giving the reason that they had no role to play in the alleged occurrence of dated 25.4.2009 and that of 13.9.2009. If other accused had no role in the alleged occurrence, then it is not possible for the accused alone to commit the alleged occurrence in the manner narrated by the complainant. Also the allegations of the complainant is not believable because she has made a number of improvements in her examination-in-chief from that of the complaint which was moved to the police on 22.6.2011. During her cross-examination conducted on dated 4.6.2018, she admitted the improvements made in her examination-in-chief by deposing in the following manner :-

"It is correct that in my complaint Mark A dated 22.6.2011 I did not state that my husband, father-in-law, mother-in-law, brother-in-law and sister-in-law and brother-in-law had ever said that the dowry is insufficient. I also did not state in my complaint given to the police that on 25.4.2009 at about 9.00 a.m my mother-in-law Jagdeep Kaur, father-in-law Harnek Singh brother-in-law Gurwinder Singh and Dr. Gurdeep Singh were sitting in the house and in the presence of my husband and mother-in-law asked me to prepare serve tea or that when I brought the tea my sister-in-law's husband asked that they are not satisfied with the tea and they want fifty Lakh rupees. I also did not state that my mother-in-law started abusing me or called me illegitimate. I also did not state my father-in-law gave me slap and my mother-in-law caught me

from my hair or my husband gave me slaps or my mother-in-law gave me kicks with legs. I also did not state that Dr. Gurdeep Singh shouted at me to catch me and had taken one injection from his pocket of his pent while the other's had captured me and I became unconscious. I also did not state that when I gained consciousness my husband told me that it was a sleeping injection. I also did not state that accused had threatened to give me death injection on my refusal to bring Rupees Fifty lakh. I also did not state that my father gave me one gold set which I had given to my mother-in-law. I also did not state that I had asked for the return of my articles but the accused refused to return me the same. I also did not state that my brother-in-law Gurwinder Singh pushed me on earth and his wife Jagdeep Kaur captured me and my father-in-law caught me from my hair and my mother-in-law caught me from my legs and my husband closed my mouth and Dr. Gurdeep Singh tried to inject me or Sonik ever said to wait as he wanted to mix something in the injection. I also did not state that Dr. Gurdeep Singh had ever given me any injection. These facts are not so mentioned in the application dated 22.6.2011 mark A. In this case the police had never recorded any other statement of mine besides my complaint."

It is well settled law that a witness who makes a number of improvements from his earlier version, then the testimony of such witness cannot be taken into consideration."

9. From the above admission, it is clear that the allegations made against the accused brother-in-law and sister-in-law are patently false as admittedly, they live in Mandi Dabwali, Haryana whereas the incident is alleged to have taken place at Giddarbaha, District Muktsar, Punjab i.e. the matrimonial home of the petitioner. Moreover, as rightly

observed by the learner Court below, it is unbelievable that persons who

had not even attended the wedding of the petitioner and respondent No.2, had harassed the petitioner for demand of dowry.

10. It is in this background that the learned Courts below held that prosecution had miserably failed to prove the charges under Section 498-A IPC against respondent No.2.

11. The allegations made by the petitioner under Section 406 IPC are that her dowry articles were entrusted to respondent No.2 and his parents, including one gold karra, 6 gold gents rings, two gold lady earrings, one gold set, gold chain, gold bangles, four rings, two karras etc. In support of her allegations, the petitioner placed on record list of dowry articles and photocopy of gold ornaments before the learned trial Court. Although FIR was registered on 15.05.2011, list of alleged dowry articles was handed over to the police only on 23.09.2014. This fact has been admitted by PW3 SI Gurjit Singh in his examination-in-chief. To prove this, the prosecution has relied upon one bill dated 13.02.2009 issued by Khurana Jewellers and to prove the said bill, the prosecution examined PW7 Ajay Sharma, who in his cross-examination as deposed that *"I have not sold any gold to the complainant or to her father. The bill Ex.PW6/A has not been issued in the name of any person and it is in the name of cash. I do not know who had purchased the goods vide Ex.PW6/A. Police had never recorded my statement in the present case"*. In this regard, relevant findings of the learned trial Court are as under:-

"16.....Thus, this witness was unable to depose that who had purchased the gold through bill Ex.PW6/A. Hence, the testimony of this witness is having no use for the case of the prosecution because neither the name of the complainant nor

*of her father has been mentioned on the bill. Also this witness was unable to depose that who had purchased the gold articles from him vide bill Ex.PW6/A. Moreover, the allegations relating to the dowry articles is only relating to some gold articles which were allegedly given at the time of marriage. This court is of the view that giving of some gold ornaments at the time of marriage does not come within the purview of dowry as defined in Section 2 of the Dowry Prohibition Act. These are customary gifts which are given at the time of solemnization of marriage. The Hon'ble Punjab and Haryana High Court in case titled as **Harmel Singh & another Versus State of U.T., Chandigarh and another, 2007(2) Criminal Court Cases, 093** has held that:*

"Gifts given to the relatives of husband in marriage do not form part of 'Istri dhan'. Non return of gifts to bride, the offence of mis-appropriation under section 406 of IPC not made out."

Also in order to constitute an offence of criminal breach of trust there must be an entrustment with property or with domain or power there over, and its mis-appropriation or conversion to ones own use by the person, whom it was entrusted and such mis-appropriation or conversion must be with dishonest intention. Moreover, there is no allegation of the complainant that the alleged articles were not returned to her inspite of her demand. In these circumstances, this Court is of the view that the prosecution has failed to prove on record that the accused was entrusted with the dowry articles and he had dishonestly used and mis-appropriated the same. Hence, no offence under Section 406 IPC is made out against the accused."

12. The above said findings have been upheld by the learned Additional Sessions Judge. Furthermore, learned counsel for the petitioner is unable to controvert the above said findings of the learned Courts below.

13. It has also come on record that after the marriage, the parties have been granted divorce by an American Court as far back as on 29.04.2011. This fact has been admitted by the petitioner in her cross-examination that on receiving notice in the divorce petition filed by respondent No.2 in the Court of America, she had filed reply to the same.

14. It has also come on record that during trial, an application under Section 319 Cr.P.C. for summoning other family members of respondent No.2, was moved by the petitioner side, which was dismissed. It has also been proven on record that the complainant/petitioner made material improvements in her version of events at each subsequent stage. It has also come on record that parties resided together only for about 7 months and FIR was lodged long after that. Moreover, parties have been granted divorce in 2011.

15. In view of the above, I find no merit in the present petition, and the same is accordingly, **dismissed**.

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

05.03.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No