

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
231 CRR-269-2020(O&M)
Date of decision: 12.02.2024

Bashiran Begum

...Petitioner(s)

Vs.

State of Punjab & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. G.N. Malik, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

NIDHI GUPTA, J.

Challenge in the present petition is to the judgment dated 15.10.2019 passed by learned Additional Sessions Judge, Sangrur; and judgment dated 18.01.2018 passed by Court of learned Sub-Divisional Judicial Magistrate, Malerkotla, district Sangrur.

2. Brief facts of the case are that on the basis of statement of the petitioner, FIR No.20 dated 17.03.2014 under Sections 406 and 498-A IPC was registered at Police Station city-2, Malerkotla, District Sangrur, against respondents No.2 to 4 herein, stating that her daughter Waheeda was married to respondent No.2 on 06.02.2013. Said respondents misled the petitioner and her daughter by saying that respondent No.2 was settled permanently at Spain but after marriage, it came to knowledge of the complainant and her daughter that the said fact was false and respondent No.2 was drug-addict and an alcoholic.

Respondent No.2 in connivance with respondents No.3 and 4 performed marriage with the daughter of complainant with the intention to get articles and money in the marriage. Said respondents started harassing and beating daughter of the complainant and when the demands made by them were not fulfilled then she was thrown out of her matrimonial house after giving beatings and all the articles were retained by the accused and due to this reason, the complainant approached the police authorities by moving application. Thereafter, inquiry was conducted by the police authorities and the accused were found to be involved in the crime and FIR was registered.

3. Final report under Section 173 Cr.P.C. was presented against the accused and trial was conducted. Learned trial Court vide judgment dated 18.01.2018 held the respondent No.2 and 3 guilty under Section 498-A IPC and they were sentenced to undergo rigorous imprisonment for one year. However, they were acquitted under Section 406 IPC; whereas, respondent No.4 was acquitted from all the charges. Aggrieved from the judgment dated 18.01.2018, the petitioner challenged the same by way of filing appeal No.46 of 05.02.2018 against respondents No.2 to 4 and prayer was made to set aside the findings returned by the learned trial court with regard to acquittal of respondents No.2 and 3 under Section 406 IPC and acquittal of respondent No.4 from all the charges. Respondents No.2 and 3 also filed Criminal Appeal No.45 of 05.02.2018 against judgment dated 18.01.2018 whereby they were convicted and sentenced under Section 498-A IPC.

Both the appeals were decided by the Court of learned Additional Sessions Judge, Sangrur vide common judgment dated 15.10.2019 whereby appeal filed by the petitioner has been dismissed and appeal filed by respondents No.2 and 3 was allowed and all the accused have been acquitted in FIR registered by the petitioner. Hence, the present petition is preferred by the petitioner/complainant, challenging the judgment dated 15.10.2019 passed in both the appeals.

4. Learned counsel for the petitioner inter alia submits that respondents No.2 and 3 herein were wrongly acquitted by the learned trial Court under Section 406 IPC as in the FIR it has been admitted that list of articles along with bills were duly proved on record; dowry articles were recovered from their possession; and statements of the witnesses also supported these facts. It is submitted that therefore, learned trial Court has wrongly held that Section 406 IPC has not been proved. Further, respondent No.4 has been wrongly acquitted as he has played a crucial and active role in conniving with respondents No.2 and 3 in committing offences under Sections 406 and 498-A IPC, therefore, prayer has been made for setting aside the impugned judgment dated 15.10.2019 passed by learned Additional Sessions Judge, Sangrur and judgment dated 18.01.2018, passed by learned Sub-Divisional Judicial Magistrate, Malerkotla.

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

6. I have heard learned counsel for the petitioner.

7. Perusal of record of the case shows that daughter of the petitioner/complainant was married to respondent No.2 on 06.02.2013. In August 2013 itself the parties started living separately.

8. As regards the allegations made by the petitioner under Section 498-A IPC and cruelty, to the effect that her daughter was beaten by respondent No.2 under the influence of liquor, findings recorded by learned Additional Sessions Judge, Sangrur are relevant and are reproduced hereinbelow:-

*“19. The admissions arrived during **cross examination of witnesses** are very much relevant to clinch the controversy in a fair manner. Wahida (PW-1) has stated that she remained in her matrimonial home only for three months. In her in laws family, there is her husband, sister-in-law and mother-in-law. She was got admitted in a hospital at Malerkotla, due to the maltreatment made by the accused and she delivered the MLR to the police. **But, the prosecution has not produced or proved any MLR showing her medical condition.** She was turned out in August 2013 after giving beatings and **thereafter, she never went to her matrimonial home. After marriage, her husband did not visit Spain. They assured her that after marriage, they would take her to Spain. Her husband started taking drugs. Thus, they have committed fraud with her. Though, she denied that Mohd Hanif was beaten by her sister Mumtaz, her Bhaia and some unidentified persons, yet Mohd. Hanif was got admitted in hospital, SSP enquired the matter, and no action was taken against them.***

*Bashira Begum, mother of Wahida, (PW-6), during examination-in-chief, has conceded that **Mohd. Hanif was misrepresented to be permanent resident of Spain, due to***

which they performed marriage of her daughter with him, but after marriage, they came to know that Mohd. Hanif was not permanent resident of Spain and the marriage was performed by keeping them in dark. Her son-in-law i.e. Mohd. Hanif accused is addicted to vices and drugs and that is her grievance. She did not have any bill of clothes or any receipt of Rs. 3,00,000/-.

20. Appreciating the contentions aforesaid in the light of evidence and admissions on record, it is found that the relationship between the parties is not disputed. Wahida was allegedly maltreated, but there is no specific instance of any kind of cruelty allegedly meted out by the accused to her. Rather, it seems that the marriage of Wahida was performed with Mohd. Hanif so as to send her to Spain, but after the marriage, they came to know that Mohd. Hanif was not permanent resident of Spain and also that he was addicted to consume intoxicants. It was only after that Wahida chose to quit her matrimonial relations with her husband and implicate the accused in the present FIR. Such like allegations or instances do not come under the ambit of 'cruelty'. Even the FIR does not reveal any specific instance of cruelty. No doubt, the word 'cruelty' has a very wide meaning. It includes mental as well as physical cruelty. But there is nothing on the file which would support the fact that accused had treated Wahida with cruelty. Had she been subjected to cruelty, she would have been turned out from the matrimonial home by the accused at that very moment and not left her at her parental home. General and vague allegations that the accused demanded dowry, would not in itself amount to cruelty. Nowhere in the testimony of these witnesses, there is any specific instance of the accused having ill-treated the complainant. No medical evidence has been

*produced on record by the prosecution regarding any alleged injury inflicted on her person by the accused. There is no evidence on the file that the accused ever treated Wahida with cruelty. General and vague allegations regarding demand for dowry cannot form the basis of conviction of the accused under section 498-A IPC. Somnath alias Makhan Bhati was only the mediator to arrange marriage. There is nothing on record that he lived in the matrimonial home of Wahida like a family member. He had nothing to do with the family affairs of Wahida. In this manner, the witnesses brought by the prosecution have failed to enumerate even a single instance of cruelty at the hands of any of the accused against the complainant. In the family life, there can be differences, quarrels, misgivings and apprehension, but it is the degree which raises it to the level of cruelty. In order to attract criminal liability, there should be positive and specific evidence of torture physical or mental, demand of dowry and maltreatment. But in the instant case, the prosecution has failed to prove on record that the accused have created such atmosphere in the matrimonial home with the demand of dowry or maltreatment of Wahida, under which she could not live or her life had become miserable. In the considered opinion of this court, mere general and vague allegations have been levelled by the complainant against the accused in her complaint as well as in her testimony in the court. In this context, the Hon'ble Apex Court in **Preeti Gupta and another vs. State of Jharkhand and another 2010 (7) SCC-667.....**"*

9. It is the further case of the petitioner that during investigation, the police had taken into possession the list of dowry and even dowry articles were recovered from respondents No.2 and 3.

However, perusal of record of the case shows that the said list of dowry articles did not bear the signatures of the complainant and as such, it was not proved on record. Even, the entrustment of dowry articles to respondents No.2 and 3 was not proven on record. In this regard the findings of the learned Additional Sessions Judge, are contained in Para 21, which are reproduced hereinbelow:-

*“21. Adverting now to the charge under Section 406 IPC. ASI Balwant Singh (PW-3) has stated that the dowry articles were got recovered from the possession of accused Mohd. Hanif. No bills of clothes were taken by him. The evidence and cross examination of Wahida, her mother and other witnesses, bring on record that no demand was made at the time of settlement of marriage or in the marriage itself. They gave the money of their own and not under any kind of allurements. She has categorically admitted that **she never demanded her dowry articles from her mother-in-law and husband**. When, she never raised any demand, how she can allege that the accused have misappropriated her dowry articles and committed criminal breach of trust. Pardeep Kumar, goldsmith (PW-2) and Mohd. Mustaq (PW-7) proprietor of Sagar Resort, has merely proved on record that the complainant party had purchased gold and silver ornaments and expenses were incurred on the occasion of the marriage but their testimonies are not sufficient to prove that the said articles were either entrusted to or misappropriated by the accused persons. Similarly, the official witnesses have deposed about their respective roles played by them during the investigation of the case but they were not the witnesses of any alleged act of demand of dowry by the accused. Even there is no refusal to return the 'Istridhan' proved on the file*

as the complainant herself admitted in cross- examination that all the dowry articles were returned in the office of SSP, Sangrur which were taken by the police in possession. The prosecution has failed to prove on record any entrustment of a particular item to a particular individual or its custody with him, or thereafter misappropriation thereof by the accused. Even the list of dowry articles attached with the report under section 173 Cr.P.C reveals that all the gift items which were allegedly given to the complainant by her parents at the time of marriage, were the general items which the parents usually give out of love and affection. These articles cannot be described as dowry by any stretch of imagination. Simply affixing the list of articles without there being any evidence to show that these articles were demanded by the accused, is not sufficient to connect the accused with regard to misappropriation of dowry articles. Moreover, the gifts given to the relatives do not come within the purview of definition of dowry”.

10. It is in this background that the learned lower Appellate Court concluded that on the basis of bald statements, in the absence of cogent evidence made by the complainant and her daughter, the respondents cannot be convicted. Nothing has been presented before this court to controvert or dispute the above said findings.

11. Present petition accordingly stands **dismissed**.

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

(Nidhi Gupta)
Judge

12.02.2024
Sunena

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