

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**CRM M-8480 of 2010 (O&M)
Date of Decision: September 07, 2012**

Harjit Singh and another

.. Petitioners

Versus

The State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. R.K. Shukla, Advocate,
for the petitioners.

Ms. Jaspreet Kaur, AAG, Punjab.

Mr. Keshav Kataria, Advocate,
for respondent No.2.

Paramjeet Singh, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 127 dated 20.08.2009, under Sections 406, 498-A IPC, registered at Police Station Sadar, Faridkot and all subsequent proceedings arise therefrom.

Brief facts of the case are that Gurpreet Kaur respondent No. 2 lodged aforesaid FIR against nine persons including the petitioners as

well as her husband Surjit Singh (non-petitioner) under Sections 498-A/406 IPC alleging therein that she got married to Surjit Singh on 10.05.2006 by way of Anand Karj at Gurudwara Sahib, Ismailabad and the remaining marriage programme was held at Maharaja Banquet Hall, Ismailabad because at that time the parents of respondent no.2 were residing at Village Naishi, District Kurukshetra. Thereafter, the family of respondent no.2 shifted to Village Bishnandi, Tehsil Jaito, District Faridkot. It is alleged in the FIR that in the marriage her parents had spent about Rs. 12.00 lacs. She also alleges that about 20 Tolas of Gold was given on her marriage, out of which chain to mother-in-law, 22 bangles to sisters-in-law (Nanads), 2 bangles to sister-in-law (Jethani), Kara and rings given to petitioner no.1 and a neckless set, weighing 3 tolas, 6 bangles weighing 4 tolas, ear rings weighing 1-½ tolas were given to respondent no.2. Apart from this number of jewellery, other articles and istridhan i.e. 200 utensils of steel, brass, kansi, one fridge and many others things of common kitchen use, Colour TV, Washing machiner, furniture, godrej almirah as detailed in the FIR (Annexure P/1) were also given. These dowry articles (as mentioned in the FIR - Annexure P/1) were entrusted to her in-laws. It is her case that her in-laws had promised that the same were to be returned to respondent no.2 as and when demanded by her. It is also mentioned that before the marriage ceremony, Thaka had taken place. At that time also, Rs. 2 lac were given to Surjit Singh-husband for purchase of car. He purchased the motorcycle and embezzled the remaining amount. Thereafter, she stayed in her matrimonial home for about few weeks and

during this period her in-laws started taunting that her parents had not given sufficient dowry as per their status. They have not given a big car according to their status. They started mal-treating respondent no.2. It is the case of respondent no.2 that they used to tell her parents and the family members that insufficient dowry had been given according to their status. The parental family of respondent no.2 many times made the accused understand not to taunt by saying about inadequate dowry. During this period, respondent no.2 became pregnant. The parents of respondent no.2 told that they had already spent sufficient amount on the marriage and they cannot give more. On this, the in-laws started mal-treating and harassing respondent no.2. A female child, namely, Khushpreet Kaur was born. All the expenses were borne by the parents of respondent no.2. At that time, the in-laws of respondent no.2 demanded Rs. 2 lacs and pressed upon her to bring the same, otherwise they would not allow her to enter the house. It is alleged that the same has happened at the house of respondent no.2 in the presence of various persons. It is alleged in the FIR that the in-laws were habitual to use filthy language and threatened that if respondent no.2 came to the matrimonial house, she must bring a Safari Car and Rs. 2 lacs. The demand continued to increase from time to time. Thereafter, inquiry was conducted and FIR was registered. The FIR is very lengthy. The sum and substance of the same has been extracted herein above.

Pursuant to notice, respondents have filed their respective replies. Respondent no.1 in his reply has submitted that the FIR has been registered after due enquiry. Challan has been presented and charge has

been framed. The case has been fixed for prosecution evidence. It is further submitted that FIR has been registered and during investigation it has been found that petitioner no.1 is the real brother of the husband of respondent no.1 and petitioner no.2 is Jethani of respondent No.2. During investigation, it has been found that they took active part in the family affairs and living separately is no excuse.

Respondent No.2 also submitted in her reply that sufficient dowry was given. The behaviour of in-law was very harsh towards respondent no.2. Many times demand was raised. When a female child was born to respondent no.2, they further demanded a car and threatened that if respondent no.2 failed to bring Safari car and Rs.2 lacs then she should not enter their house. The behaviour of the in-laws was always cruel towards respondent no.2 and they have mentally harassed her.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners submits that in fact respondent No. 2 and Surjit Singh had solemnised the marriage by way of Anand Karj in a very simple manner and no dowry articles were given or accepted at the time of marriage by the petitioners. Petitioner No.1 is elder brother of husband of respondent No.2 and petitioner no.2 is the wife of petitioner no.1 i.e. Jethani of respondent no.2. They are residing separately. There is no allegation in the FIR that what demand the petitioners raised. Only allegation against the petitioners are that some articles were given to them at the time of marriage which are gift items

and cannot be treated as dowry articles specifically when the petitioners never made a demand of any articles from the in-laws of Surjit Singh. They will not be otherwise benefitted from the alleged dowry articles as they were already residing separately from their parents and other members of the family.

Learned Counsel for the State, as well as, learned counsel for respondent no.2 vehemently opposed the contentions raised by the learned counsel for the petitioners.

In support of his contentions, the learned counsel for the petitioners relied upon judgments of this Court and Hon'ble Supreme Court rendered in *Shinder Pal @ Kakke v. State of Haryana, 2004(2) RCR(Criminal) 398* *Rajinder Mohan Kashyap v. Om Parkash Sharma, 2005(1) RCR(Criminal) 274*, *Neelu Chopra and another vs. Bharti, 2010(1) RCR (CrL) 115* and *Preeti Gupta and another Vs. State of Jharkhand and another, 2010(4) RCR (CrL) 45*. Mr. Shukla then submitted that it has become a tendency in matrimonial disputes to implicate all the family members, some times even the distant relatives on vague allegations for certain oblique motives.

Learned counsel for the petitioners further submitted that there are no specific allegations against the petitioners with regard to entrustment of dowry articles and causing harassment and taunting her by the petitioners. The allegations against the petitioners are vague and sweeping without any basis and without mentioning any specific averment and instances.

The learned counsel for the petitioners while relying upon a judgment of this Court rendered in *Harjinder Kaur and others v. State of Punjab, 2004(4) RCR(Criminal) 332* lastly contended that may be the challan against the petitioners has since been filed by the prosecution agency and charge has been framed by the Court, yet there is no absolute bar to entertain the petition under Section 482 as each case is to be examined on its own facts.

On the basis of the aforesaid submissions Mr. Shukla prays for quashing of the FIR and the subsequent proceedings arising therefrom qua the present petitioners.

While controverting the submissions advanced by Mr. Shukla, Mr. Kataria and the learned State counsel stated that this is not the stage for quashing of the proceedings against the petitioners as the challan against all has already been filed by the prosecution agency, and even charge has been framed, therefore, all the pleas taken herein by the petitioners can very well be agitated at the appropriate stage before the trial Court.

On merits, learned counsel for respondent No.2 contends that the petitioners have no cause as there are specific allegations against each of them and the plea projected by the petitioners. Rather the complainant was insulted by the petitioners side on different dates whenever they tried to resolve the dispute. The Panchayats were convened many a times for the amicable settlement of the dispute. He then contended that the dowry articles have not been returned till date and, therefore, the petitioners have

no escape from the liability. *Prima facie* also Sections 498-A/406 IPC are attracted qua the petitioners and therefore, they are not entitled to the relief sought herein. The aforesaid petitioners are very well connected with every incident that happened in the matrimonial home.

Learned State counsel adopted the arguments advanced by learned counsel for respondent No. 2.

After hearing rival contentions of either side and going through the records minutely, I am of the view that respondent no.2 has no case against the petitioners and the instant petition qua them deserves to be allowed. While arriving at this conclusion, I have not only appreciated the totality of the facts and circumstances of the case in hand but also kept in consideration that the things have taken a reverse trend now-a-days and women are abusing beneficial provision of Section 498-A IPC by implicating all the family members of her in-laws. It is quite often noticed by the Courts that the cases of this type create some what formidable hurdle in reconciliation efforts and give rise to lot of bickerings between the two families. Parties rush to the Court in a huff in matrimonial cases. In some judgments a suggestion is also given to the Law Commission and the Parliament that if Section 498-A IPC has to continue on the statute book in the same form, it should be made a non-cognizable and a bailable offence so that the provisions are not misused to harass innocent people.

I am quite conscious of the settled legal position that generally the proceedings should not be quashed when the challan is filed by the prosecution agency and charge is framed and thereafter the exercise should

be left to the trial Court to proceed with the case in accordance with law. But at the same time there is no hard and fast rule that the proceedings cannot be quashed after the filing of the challan and the framing of charge. It depends upon the facts of each case. It is, however, the duty of the Court to see that the stream of justice is kept clean. In Harjinder Kaur's case (supra), the same issue had cropped up and this Court while relying upon certain judgments of Apex Court and of this Court held that there is no bar to entertain the petition under Section 482 Cr.P.C. even after filing of the challan or even after framing of the charge. I am appreciating the case in hand from that angle qua certain accused booked in this case.

I have perused the FIR very minutely. Although either side has not placed on record the documents of challan and the charge framed for its perusal but in my considered view the prosecution should go by what is alleged in the FIR (Annexure P-1). A bare perusal of the FIR indicates that it has been drafted with certain oblique reasons so that all the family members of in-laws of respondent no.2 are taken in. The petitioners have been implicated in this case with the allegation that respondent no.2 was being harassed at the behest of the petitioners, who are elder brother (Jeth) and sister-in-law (Jethani) of respondent No.2. In the FIR it is stated that several dowry articles including Istridhan were given to the respondent No.2 exclusively for her use. I am surprised as to how the petitioners can be said to have any nexus with the entrustment of dowry articles when there is no specific allegations except the fact that some customary gifts were given to the petitioners which cannot be treated

as dowry articles. The petitioners have been arrayed as accused with the general allegations of demand of dowry, entrustment of dowry articles and the harassment at their hands. The petitioners are residing separately, this fact has been admitted in the reply of respondent no.1 wherein it is mentioned that residing separately is no excuse. They cannot even be remotely connected with both the offences as alleged viz. 498-A/406 IPC. In my considered view, their involvement in the instant case is an outcome of usual hatred in the mind of respondent no.2 and her parents after the matrimonial discord. This rather goes to strengthen my observation that a tendency has developed for roping in all the relations in dowry cases.

In *Rajinder Mohan Kashyap's case* (supra) relied upon by learned counsel for the petitioners, this Court while quashing the proceedings qua some of the family members of in-laws of the wife has also observed that it has become a tendency in matrimonial disputes to implicate all the family members, even some time the distant relations, on the vague allegations. In the said judgment this Court has relied upon a judgment of Hon'ble Supreme Court rendered in *M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate, 1997(4) RCR(Crl.) 761 (SC)* in which their Lordships have observed as under :-

".. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must

reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused."

Another judgment rendered in Shinder Pal @ Kakke's case (supra) relied by Mr. Sukla, this Court while relying upon a judgment of Apex Court rendered in *Kans Raj v. State of Punjab and others, 2000(2) RCR(CrL) 695 (SC) : AIR 2000 Supreme Court 2324* wherein their Lordships have observed that a tendency has developed for roping in all the relations in dowry cases which ultimately weakens the case of the prosecution even against the real accused.

My view is also fortified by the latest judgment of Hon'ble Supreme Court rendered in *Ramesh Kumar and others v. State of Tamil Nadu, 2005(2) RCR(Criminal) 68 (SC)* in which their Lordships while quashing the proceedings against sister-in-law who was staying at a different place observed that there were bald allegations to rope in a many relations of the husband.

Another judgment of the Hon'ble Apex Court rendered in *Sushil Kumar Sharma v. Union of India and others, 2005(3) RCR (Criminal) 745* where issue of striking down Section 498-A IPC had sprouted, their Lordships observed that in such type of cases the "action" and not the "section" may be vulnerable and the Court by upholding the provisions of law may still set aside the action, order or decision and grant

appropriate relief to the persons aggrieved. Their Lordships while dealing with the dowry menace, however, observed in para 17 as under :-

"The object of the provisions is prevention of the dowry menace. But as he has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy (ignominy ?) suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well- intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty

and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the Courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the Courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the Courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

In Neelu Chopra's case (supra), the Hon'ble Apex Court has observed as under:-

"5. In order to lodge a proper compliant, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and

has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.

6. The High Court has merely mentioned that the allegation in the complaint are of retaining jewellery articles in possession of the husband and the petitioners. Now if the articles were in the possession of the husband, there is no question of the present appellants being in possession of the appellants. This is apart from the fact that it has already been expressed by us that there is no mention of the date on which the said ornaments, if any, were entrusted to the appellants or even the date when they were demanded back and were refused to be given back by the appellants or any one of them. Insofar as the offence under Section 498A IPC is concerned, we do not find any material or allegation worth the name against the present appellants. All the allegations appear to be against the Rajesh.”

In the latest judgment in Preeti Gupta's case (supra), the Hon'ble Apex Court observed as under:

“28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases

emanating from section 498-A of the Indian Penal Code which reads as under :-

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

Explanation.--For the purposes of this section, 'cruelty' means :-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) 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."

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bonafide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the

social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been

living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary

changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

Taking into consideration the totality of the peculiar facts and circumstances of the instant case and following the rationale of the judgments referred herein above, specifically Preeti Gupta's case (supra), Neelu Chopra's case (supra) and Sushil Kumar Sharma's case (supra), in my considered view, the instant petition qua the present petitioners deserves to be allowed. Ordered accordingly.

Resultantly, the instant petition is partly allowed and FIR No. 127, dated 20.08.2009, under Sections 498-A/406 IPC registered at Police Station Sadar Faridkot and all further proceedings arising therefrom including presentation of challan and charge framed qua the present petitioners are hereby quashed.

September 07, 2012
vkd

[Paramjeet Singh]
Judge