

(2008) 02 P&H CK 0318

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 731 of 1992

Nirmala Devi

APPELLANT

Vs

Roop Lal and others

RESPONDENT

Date of Decision: Feb. 12, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406, 498A

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: G.C. Dhuriwala, for the Appellant; R.N. Raina, for the Respondent

Final Decision: Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.

This Court is dismayed at the kind of reasoning undertaken by the Court of learned Judicial Magistrate 1st Class, Phagwara. Not only the reasoning is palpably untenable but the inferences drawn cannot be sustained. Therefore, the order dated 4.5.1992, whereby the accused were discharged in a complaint preferred by wife under Sections 406 and 498-A, IPC, is set aside.

2. Complainant/petitioner was married with Roop Lal on 6.11.1983 at Phagwara. She has given the details of stridhan given and cruelty, harassment and maltreatment inflicted upon her by the respondents. Complainant after institution of the complaint led her preliminary evidence and on the basis of which accused No. 1, 9, 11 and 12 were summoned. For the purpose of charge, complainant appeared as PW 1. She also examined Surinder Singh as PW 2 and her brother Amarjit as PW 3. The Court of learned Judicial Magistrate 1st Class, Phagwara, while discharging the accused, has given the following three reasons:

(1) It has been stated that ornaments have been meant for bride and were not worn at the time of marriage, therefore, inference should be drawn that no ornaments were given at the marriage;

(2) that the parents of the complainant had not appeared, therefore, it cannot be assumed that the dowry articles were given (the trial Court became oblivious of the fact that the complainant had examined her brother Amarjit);

(3) that since the marriage was performed under the photographs of Dr. Ambedkar and Mahatma, same is to be taken as a marriage as per Buddhist religious rites and Buddhism is a modern religion and in cross-examination, this fact was also admitted by the complainant.

The trial Court lost sight of the fact that in Indian society whatever religion its citizens may profess, dowry or stridhan is given at the time of marriage.

3. It is equally said that order of discharge, which was passed on 4.5.1992, is being set aside by this Court after 16 years. The wife has been made to suffer because the order passed by learned Judicial Magistrate 1st class, Phagwara, was for the reasons, which cannot be appreciated on the judicial side. A higher Court cannot say further than this.

4. Wife/complainant is required to be compensated. The present revision petition is accepted and cost of Rs. 10,000/- is awarded, which shall be borne by respondent No. 1-husband.

5. Mr. R.N. Raina, Advocate, who wanted to vehemently defend this judgment has stated that since period of 16 years has passed the parties may have the better sense and they should be given an opportunity to part gracefully or resume their life. Be as it may, this Court cannot at this juncture come to the rescue of the accused/respondent on the prayer made by Mr. Raina.

Revision petition accepted.