

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 176 OF 2019
(Arising out of SLP (CRL.) No.8851 of 2018)

PALLAVI

Appellant(s)

VERSUS

STATE OF U.T. CHANDIGARH & ORS.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) This appeal arises out of judgment and order dated 12th September, 2018 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No.23774 of 2018 in and by which the High Court affirmed the order of the Sessions Judge setting aside the order of framing of charge against respondents no.2 and 3 under Sections 406 and 498-A I.P.C.

(3) The case of the appellant is that her marriage was solemnized with Rajesh Kumar, son of the second respondent-

Kamla Devi on 27th February, 2009 and it was a love marriage. According to the appellant, after her marriage she was living with her parents and thereafter with the consent of the family members of her husband-Rajesh Kumar their marriage was solemnized on 22nd September, 2010 in Hotel Residency. Out of their wedlock a boy child was born on 5th December, 2010. According to the appellant, at the time of her marriage on 22nd September, 2010 she and her husband-Rajesh Kumar were given gold ornaments and other household articles. The appellant alleged that when she was staying with her husband along with her mother-in-law (second respondent) and *Jethani* (third respondent) they were harassing her, demanding for more dowry and gold ornaments. The appellant has alleged that private respondents have induced them to transfer a booth shop held by the appellant's father as a power of attorney holder of one Suresh Singh. After the death of her father, the appellant requested her brother-Devansh Sobti and accordingly Suresh Singh transferred the said booth shop to sisters of her husband-Rajesh Kumar, namely, Bharti and Meena. The appellant filed a complainant before SSP, Chandigarh, based on which FIR NO.91 dated 15th March, 2014 was registered. After completion of investigation, chargesheet was filed against Rajesh Kumar, husband of the appellant, and respondents no.2 and 3. On 11th May, 2015 charges were framed against the respondents for the offence under Sections 406 and 498-A and the respondents pleaded not guilty and claimed trial.

(4) Respondents no.2 and 3 challenged the order of framing of charge before the Session Court. The Sessions Court vide order dated 15th October, 2015 allowed the revision on the ground that there was not even a single word mentioned by the appellant against respondents no.2 and 3 regarding harassment of the complainant for dowry articles or any misappropriation of dowry articles by them. The Sessions Court referring to a publication dated 25th February, 2009 in the newspaper, "Punjab Kesri", pointed out that the second respondent, mother-in-law of the appellant, had disowned her son Rajesh Kumar-husband of the appellant way back on 25th February, 2009. The Sessions Court also pointed out that as the marriage of the complainant and Rajesh Kumar-husband on 27th February, 2009 was a love marriage, there is unlikelihood of any demand of dowry by respondents no.2 and 3 and also by the appellant's husband-Rajesh Kumar. In revision, the High Court has affirmed the order of the Sessions Court by the impugned order.

(5) We have heard Mr. Akshay Verma, learned counsel appearing for the appellant and Mr. Sushil K. Tekriwal, learned counsel appearing for respondents no.2 and 3 and also perused the impugned judgment and other materials on record.

(6) Upon perusal of the chargesheet and the materials filed thereon, the Trial Court on being satisfied that there are prima facie materials to proceed against respondents no.2 and 3, framed the charge against respondents no.2 and 3 who pleaded

not guilty.

(7) When the Judicial Magistrate has, based on the chargesheet and on the materials filed along with the chargesheet, satisfied himself, order of framing of charge against respondents no.2 and 3. At the stage of framing of charge, the court is concerned only with the aspect that there is prima facie materials presuming that the accused has committed the offence. At the initial stage the court is not called upon to examine the sufficiency or otherwise of the materials produced by the prosecution and also to examine whether the same are sufficient to sustain the conviction of the accused thereon. The learned Sessions Judge, in our view ought not to have gone into the merits of the materials and erred in setting aside the order of the Judicial Magistrate framing charge against accused.

(8) At this stage, Mr. Sushil K. Tekriwal, learned counsel appearing for respondents no.2 and 3, submitted that both the Sessions Court and the High Court have recorded the concurrent findings that there are no specific allegations against respondents no.2 and 3 to proceed under Section 406 I.P.C. and, therefore, rightly set aside the order of framing of charge and such concurrent findings recorded by both the courts, cannot be interfered with.

(9) On the other hand, Mr. Akshay Verma, learned counsel

appearing for the appellant-complainant, has drawn our attention to certain materials like photographs and the document transferring booth shop in favour of sisters of Rajesh Kumar, namely, Bharti and Meena to contend that based on those materials the Trial Court rightly proceeded to frame the charge and therefore it cannot be said that it is a case of no material.

(10) Though it was submitted that the courts have recorded the concurrent findings that there are no sufficient materials to proceed against respondents no.2 and 3, such contention in our opinion does not merit any acceptance. We are not inclined to go into the merits or demerits of the contentions raised by learned counsel for the parties at this stage. Suffice it to note that the satisfaction of the Judicial Magistrate was based on the materials placed before it and the Sessions Court in exercise of its revisional jurisdiction ought not to have set aside the order of framing of charge.

(11) When the order of the Trial Court does not suffer from any perversity, the High Court, in our considered view, fell in error in quashing the order of framing of charge against respondents no.2 and 3 thereby affirming the view taken by the Sessions Court.

(12) In view of above, the impugned order is set aside and the appeal is allowed.

(13) We make it clear that we have not expressed any opinion on the merits of the matter. The concerned Trial Court shall proceed with the trial and decide the matter on its own merits.

.....J.
(R. BANUMATHI)

.....J.
(R. SUBHASH REDDY)

NEW DELHI,
JANUARY 29, 2019.