

Kishore Kumar Gupta and others v. State of Haryana and another
(S. S. Grewal, J.)

behalf. In view of this, he left the matter referred to him, undetermined. The learned Senior Sub Judge while dismissing the petition under Sections 14 and 17 of the Act, has also observed :

“The arbitrator has not determined the differences between the parties rather he has left the matter in dispute undecided and directed the parties to lead evidence before the Estate Officer, Chandigarh.”

(9) The learned Senior Sub Judge in view of this finding ought to have remitted the award under clause (a) of sub-section (1) of Section 16 of the Act, to the Arbitrator for reconsideration and to determine finally the claim of the petitioner, in terms of reference dated 22nd April, 1983. Thus, the impugned order of the learned Senior Sub Judge, dismissing the petition under Sections 14 and 17 of the Act, for making the award a rule of the Court, is liable to be set aside. I, therefore, set aside the impugned order. Consequently, the revision petition is allowed, but with no order as to costs. The case is remanded back to the learned Senior Sub Judge, Chandigarh, who shall remit the award to the Arbitrator with a direction to determine the matter finally within four months from the date the parties appear before the arbitrator.

(10) The parties through counsel are directed to appear before the learned Senior Sub Judge, Chandigarh on 8th July, 1991.

R.N.R.

Before S. S. Grewal, J.

KISHORE KUMAR GUPTA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Criminal Misc. No. 7862-M of 1989.

19th July, 1991.

Indian Penal Code, 1860—Ss. 149, 420, 406, 498-A—Code of Criminal Procedure, 1973 (II of 1974)—Ss. 156(3), 482—FIR lodged against husband and his relatives on a complaint made by wife—No specific allegations of cruelty etc. made in the FIR—Mere vague and

general allegations would not be sufficient to make out a prima facie case under IPL—FIR liable to be quashed.

Held, that in the absence of any specific allegations against the petitioners, no prima facie case has been made out by the complainant against them. Mere vague and general allegations that they acted with cruelty towards the complainant or committed the offence of cheating etc. would not be sufficient to make out any prima facie case under the Indian Penal Code. Thus, continuation of proceedings on the basis of the impugned first information report against the present petitioners would amount to abuse of the process of the Court. (Para 7)

Petition U/s 482 Cr. P. C. read with Article 227 of the Constitution of India praying that the petition be accepted and F.I.R. No. 491/86 of Police Station, Ambala City under Sections 406/498-A/420/149 IPC (Annexure P-1) against the petitioners be quashed alongwith all other subsequent proceedings thereto.

It is further prayed that the since the challan has been produced against the petitioners and the case is fixed for consideration of charge, for 27th November, 1989 before the learned Chief Judicial Magistrate, Ambala the framing of charge may kindly be stayed and the personal appearance of the petitioners also be exempted during the pendency of the present criminal misc. petition and any other relief to which the petitioners are found entitled be also granted to them.

Kiran Bala Jain, Advocate, for the Petitioner.

Sunil Gaur, Advocate, for Respondent No. 2.

JUDGMENT

S. S. Grewal, J. (Oral)

(1) This petition under Section 482 of the Code of Criminal Procedure relates to the quashment of FIR No. 491/86 under Sections 406/498/149 and 420 of the Indian Penal Code registered on the basis of complaint made by Smt. Sucheta respondent No. 2 and sent for registration of the case under Section 156 (3) of the Code of Criminal Procedure 1973 by the Chief Judicial Magistrate on 31st October, 1986, and, consequent proceedings taken thereunder.

(2) In brief, facts relevant for the disposal of this petition as emerge from the impugned First Information Report, are, that the marriage of the complainant with Daya Nand Mittal resident of

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Modinagar district Gaziabad took place at Ambala City on 23rd of June, 1985. Proposal of this marriage was made by Ashok Kumar Gupta accused (cousin of the complainant's father) and his wife Smt. Rani, both of whom are also related to Daya Nand Mittal accused. Both Ashok Kumar Gupta and his wife in the month of June, 1985 informed the complainant and her parents that Daya Nand Mittal was a bachelor, graduate and used to earn Rs. 5,000 per month from business, and, further assured them that Daya Nand Mittal owns a house at Gaziabad and being related to them they knew him and had verified his particulars and antecedents. According to the complainant, on the basis of the said assurance and representation made by Ashok Kumar Gupta and his wife Smt. Rani, complainant gave her consent for her marriage with Daya Nand Mittal accused. Betrothal ceremony was performed on 16th of June, 1985 and at that time a sum of Rs. 5,100 was given to Daya Nand Mittal and Rs. 500 each to the relations including the present petitioners by the parents of the complainant. Besides a golden ring and a Safari suit were given to Daya Nand accused. They also gave Rs. 3,500 in cash for purchase of T.V. set on demand of Daya Nand Mittal. Ashok Kumar Gupta and Smt. Rani accused. On 20th June, 1985 on the demand made by Ashok Kumar Gupta and Smt. Rani accused, Rs. 6,500 was paid to them for purchase of furniture, which was to be given to the complainant on her marriage. It was further alleged that at the time of the marriage the parents of the complainant gave her a gold set consisting of necklace, ear rings, nose-ring, finger ring, weighting about 6 tolas and ten saris blouses, packed in a brief-case, which, was handed over and entrusted to the accused including the present petitioners at Ambala City before the departure of the Barat. After the marriage, the complainant was taken to the house by her husband, and, on the very next day the accused except Ashok Kumar Gupta and Smt. Rani started taunting and harassing the complainant that nothing has been brought by the complainant in dowry and the clothes and ornaments were not upto the expectation and wishes of the accused. The complainant was also treated with cruelty by the said accused who gave her beating, in order to pressurise her to bring more dowry articles from her parents. The complainant in order to pacify the accused, and, in order to fulfill their demands asked her husband to accompany her to Ambala City and that she would get him a sum of Rs. 5,000 from her parents for payment to her husband. Both of them went to Ambala City on 16th August,

1986 and parents of the complainant paid Rs. 3,000 to Daya Nand Mittal accused. Leaving the complainant at Ambala City on the plea that he would come after a fortnight to take her to Gaziabad, he never turned up to take her back.

(3) The learned counsel for the parties were heard.

(4) It has rightly been submitted by the counsel for the petitioners that no allegation in the first information report has been levelled against the present petitioners which would constitute offence under Section 420 of the Indian Penal Code. No specific allegations whatsoever have been made that any of the present petitioners either did anything in order to cheat the complainant or her parents, nor, made any dishonest inducement either to the complainant or to her parents, which, could persuade either the complainant or, her parents for solemnisation of complainant's marriage with Daya Nand Mittal accused. According to the complaint dishonest inducement or false representation was made by Ashok Kumar accused and his wife Itani to the complainant and her parents that Daya Nand accused was a bachelor, graduate and was earning Rs. 5,000 from business and they further assured that Daya Nand Mittal owns a house at Gaziabad and being related to them, they knew and had verified his particulars and antecedents. Mere general allegations that all the accused committed the offence of cheating punishable under section 420 read with Section 149 of the Indian Penal Code for concealing the true facts and inducing the complainant to give her consent to marriage with Daya Nand Mittal accused by dishonest and false representation would not be sufficient to hold that *prima facie* any offence punishable under Section 420 read with Section 149 of the Indian Penal Code has been made out as far as the present petitioners are concerned.

(5) As far as the offence under Section 406 of the Indian Penal Code is concerned there are only vague and general allegations concerning the entrustment of ornaments and clothes packed in a brief-case jointly to the six accused except Daya Nand Mittal at the time of the departure of the Barat. It hardly seems probable that entrustment of one brief-case could be made jointly to the six accused. In the peculiar facts and circumstances of the present case the allegations concerning handing over of brief-case to the six accused to my mind would not be sufficient to *prima facie* hold that articles of dowry had actually been entrusted to the present petitioners within the meaning of Section 406 of the Indian Penal Code. Furthermore, there are no allegations against the present

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petitioners that they had dishonestly misappropriated or converted to their own use either the ornaments or the clothes allegedly entrusted to six accused including the petitioners. Thus *prima facie* it cannot be said at this stage that any offence under Section 406 of the Indian Penal Code has been made out against the present petitioners.

(6) It is true that as per allegations in para No. 13 of the impugned first information report, on the very next day of the marriage i.e. 25th June, 1985, the accused including the petitioners are alleged to have taunted and harassed the complainant for not bringing dowry according to their expectation and wishes. The said accused are also alleged to have treated the complainant with cruelty and gave her beating in order to pressurise her to bring more dowry from her parents as per their demands. However, according to the complainant in order to pacify the accused, and, in order to fulfil their demands she asked her husband to accompany her to Ambala City and there she got Rs. 3,000 from her parents and handed the same to her husband.

(7) There are no specific allegations against the present petitioners that they acted with cruelty towards the complainant. Only vague and general allegations referred to above would not in the circumstances of the present case be sufficient to make out any *prima facie* case under Section 498-A of the Indian Penal Code against the present petitioners who according to the allegations in the impugned first information report, are, not even related to the husband of the complainant. Thus continuation of proceedings on the basis of the impugned first information report against the present petitioners would amount to abuse of the process of the Court.

(8) For the foregoing reasons, the impugned first information report and consequent proceedings as far as these relate to the present petitioners, the same are hereby quashed. However, there would be no legal bar for the learned trial Court to proceed with the trial against the remaining accused according to law. This petition is allowed to the extent indicated above. However, it is clarified that nothing herein observed for the disposal of this petition shall in any manner be construed to affect the trial of the case, as far as the remaining accused are concerned. Copy of this order be sent to the trial Court for information.
