
(1998) 03 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 41 of 1998

Kharati Lal

APPELLANT

Vs

Veena Rani

RESPONDENT

Date of Decision : 23-03-1998

Acts Referred:

Citation : (1998) 2 RCR(Criminal) 700

Hon'ble Judges : R.L.Anand, J

Advocate : A.S. Virk, Ramesh Sharma, Advocates for appearing Parties

Judgement

R.L. Anand, J. (Oral)

1. This is a criminal revision and has been directed against the order dated 10.12.1997 passed by the Court of Sub Divisional Judicial Magistrate, Rajpura vide which the learned Magistrate summoned Kharati Lal and Sita Devi as coaccused alongwith Paramjit.

2. Smt. Veena Rani filed a criminal complaint under sections 406/498A I.P.C. read with section 34 I.P.C. against Paramjit, Kharati Lal, Sita Devi and eight others. The learned Magistrate after recording the preliminary evidence stated that since the dowry articles were entrusted only to accused No. 1 i.e. Paramjit being the husband of the complainant and it is the normal tendency of the villagers that ladies do not go to attend the Barat and summoned Paramjit for the offence under Sections 406 and 498A I.P.C. and dismissed the complaint qua respondents No. 2 to 11. The operative portion of the order dated 22.7.1996 is as follows :

"3. I have gone through the preliminary evidence led by the complainant and find that prima facie case is made out against accused No. 1 only u/S 406, 498A IPC. Dowry articles were entrusted only to accused No. 1 being the husband of the complainant. It is normal tendency in the villages that ladies do not go to attend the barat. In the present case ladies have been shown having attended the barat and having been entrusted with dowry articles. So the remaining accused who

are male persons are not residing with accused No. 1 and thus question of keeping dowry articles by them does not arise. The version has been alleged in the complaint intentionally in such a manner that all the accused have been shown to be entrusted with dowry articles just to implead them as accused which is normal tendency prevailing amongst such complainants. So under these circumstances no offence is made out against accused Nos. 2 to 11 and thus the complaint is dismissed qua them. Accused NO. 1 be summoned by PF and copy of complaint and list of witnesses for 9.10.1996."

3. Thereafter an application dated 12.11.1997 was moved before the learned Magistrate and it was averred in the said application that the complainant many times got warrant of arrest of accused No. 1 but whenever the complainant reached at the residence of accused No. 1, his father Kharati Lal favoured for the disappearance of accused No. 1 from his place of residence and different kinds of reports were got made. It has also been averred by the complainant that Kharati Lal is harassing her as he was not summoned by the Court and no property stands in the name of respondent No. 1 Paramjit. In fact, the application was for requesting the court for the appearance of accused Paramjit, but the learned Magistrate instead of granting the prayer as made has adopted a procedure not known to law. He relied upon an authority *Sulochna Devi v. Sunita Rani*, 1996(3) Recent C.R. 777 and summoned Kharati Lal and Sita Devi for the offence under Sections 406/498A/34 I.P.C. by reviewing his earlier order through which he dismissed the complaint of the complainant partly visavis respondents No. 2 to 11.

4. The learned counsel appearing on behalf of the respondent submits that the learned trial Court had acted rightly. But I am not in a position to agree with the submission raised by the learned counsel for the respondent in view of the earlier order passed by the Magistrate which became final. A complaint on new facts is certainly maintainable, but the request of the complainant was not for an additional offence or for the commission of the same offence by new averments. She was all the times praying to the court for the production of her husband Paramjit. The authority which has been relied upon by the Magistrate is not applicable to the facts of this case. Rather the same is to the contrary. It lays down that in the event of a person has been summoned an accused, such accused has the right to make a submission before the Magistrate in order to show that the complaint was nothing but an abuse of the process of law and that the summoning order requires to be recalled. This is also in conformity with the provisions of section 245(2) Cr.P.C. In these circumstances, the impugned order dated 10.12.1997 is hereby set aside and directions are given to the Magistrate to prosecute with the complaint only against Paramjit. The Magistrate shall request the Chief Judicial Magistrate, Patiala to write to the passport authorities and Ministry of External Affairs for bringing Shri Paramjit to India. The Magistrate shall adopt all coercive methods, in order to secure the presence of Paramjit, including the attachment of the share of the said accused in any immovable property.

Revision allowed.