

**In the Court of Sh. Amandeep- UID No. PB-0336
Judicial Magistrate Ist Class, Patiala.**

P.Ch. No.25/05.06.2013
Computer Regd. No.CHI/56804/2013
CNR No.PBPT03-004723-2013
Date of decision: 21.02.2018

State

Versus

1. Indu Bala Handa w/o Jagdish Kumar Handa
2. Jagdish Kumar Handa s/o late Madan Lal, residents of SCF 58, Phase-I, Urban Estate, Jalandhar, now village Tipra, PS Kalka, Panchkula (Haryana). **(Since deceased)**

-----Accused.

FIR No.08 dated 14.01.2012
U/Ss 406,498-A, 420 of IPC
Police Station: Women Cell, Patiala.

Present: Sh. Deepinder Singh, Addl. P.P for the State assisted by Mrs. RK Nagpal, Adv.
Accused Indu Bala on bail represented by Sh. RN Kaushal, Adv.
Proceedings against accused Jagdish Handa abated.
Accused Gaurav Handa Proclaimed person.

JUDGMENT

1. The Police of Police Station, Women Cell, Patiala has sent the abovesaid accused to stand trial for offence punishable U/Ss 406,498-A,420 IPC.

2. Briefly stated, as per the prosecution story, the present case emanates from the statement dated 30.11.2011 made by complainant Kanika d/o Sh. Randhir Chand against 1) Gaurav Handa (husband) s/o Jagdish Kumar Handa r/o Australia, 2) Indu Bala Handa (mother in law) w/o Jagdish Kumar Handa, 3) Jagdish Kumar Handa (father in law) s/o late Madan Lal residents of above said address, 4) Mrs.Sonam Beri @

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Ritu (sister in law) w/o Sh. Rajesh Beri, 5) Rajesh Beri @ Bunty (brother in law) s/o Nand Lal, 6) Samriti Handa (Geeta) (sister in law), Guddi w/o Manohar Lal Bhalla (Massi) and Manohar Lal Bhalla (Massar) whereby she stated that her marriage was solemnized with Gaurav on 12th March 2009 at Vatika Farms, Rajpura Road, Patiala according to Hindu rites and ceremonies with great pomp and show and a sum of Rs.25 lacs was spent on the marriage and other functions as per demand of her husband and her relatives and valuable gifts including shagun in the shape of cash and gold and silver ornaments were given in the marriage, list of which is enclosed. Accused no.1to8 specifically directed to solemnize all the functions and marriage in an aristocrat manner as accused no.1 was holding Australian citizenship and NRI status and accused no.2&3 specifically directed to serve liquor for their guests on all the functions and arrange for their accommodation as well. After the marriage complainant lived with accused no.1 in her matrimonial house at Jalandhar for one week i.e. 20.03.2009 and on that day accused no.1 went to Australia. During this one week, complainant alongwith accused no.1to3 went to pay obeisance at Temple Chintpurni, Jawala Ji and Chamunda Ji and accused no.2&3 never allowed married couple to roam freely and even they hired one room for their stay during the above said journey. On 15.03.2009 complainant alongwith accused no.1to5 visited her parents house for Phera ceremony and on 16.03.2009 their marriage was registered in the office of Sub Registrar, Patiala where complainant and her parents came to know that accused no.1 is a divorcee and he did not mention this fact in

the matrimonial advertisement published in the newspaper The Tribune on 06.12.2008. After this, complainant and her parents objected for the same upon which accused no.1to5 pacify the complainant and her parents asking that earlier marriage was only paper marriage with a view to obtain Australian Citizenship of accused no.1 to get settled in Australia and further assured to send complainant to Australia as early as possible and demanded Rs.5 lacs for sending the complainant to Australia.

3. Complainant further stated that the moment accused no.1 left India, accused no.2to5 started taunting the complainant on account of inadequacy of dowry articles and said that her parents has not given Swift Dezire Car, LCD, Air Conditioner and other articles as per their wish and status and started maltreating her with cruelty inhumanly by calling bad names such as 'Kutti, Kamini, Kanjri' to her and her parents and used to get work her from as a slave. They also taunted her and remarks about her personal appearance. Her Nandoi threw the clothes given in the marriage upon the complainant by saying that the same are not of his standard. Accused no.2 said '*Kin Kangalon ke ghar se aayi hai, hamere to karam hi kharab hain jo hamne itne acchey rishtey nahi liye*', and he asked complainant either to bring the dowry articles, car and cash according to their wish or to leave their son as there are so many girls in queue and they will get marry their son with one girl namely Rupali who bring cars and other valuable articles as a dowry. Accused no.1 was also not happy with dowry articles and as such he did not talk complainant on phone properly from Australia and forced complainant to obey his parents and

other relatives. Accused no.2to8 used to instigate the husband of complainant against her due to which he tolerated all the cruelties meted out to her for the sake of her married life Parents of complainant managed her to send Australia and completed all the formalities and documentations and spent amount from their pocket but accused no.1to5,7 and 8 refused to return the money already given to them for the said purpose. Complainant stayed for four months in the matrimonial house after the marriage and during these months, she was taken by accused no.2&3 some time at Kalka house and sometimes at Jalanahdar and parents of complainant used to visit there with valuable gifts and cash but they were not satisfied and taunted for less dowry and of inferior quality.

4. Complainant further stated that on 14.07.2009 she joined accused no.1 at Australia where he used to maltreat and misbehaved with her at the instigation of his parents, sisters and brother in law on phone and his behaviour became rude and cruel towards complainant and he used to demand cash and dowry articles. All the accused used to taunt complainant that you are a burden on accused no.1 as she has been unable to get any job in Australia. Even accused no.2&3 taunted parents of complainant that their daughter is not fit for their son and is burden and trouble upon their son and compelled them to help her financially in Australia. In Australia complainant came to know that accused no.1 has a son namely Surya and accused no.1 compelled her to accept him as her son upon which complainant objected and refused the accept the same. Even accused no.1 threatened her not to disclose this fact either to her

parents or to her brothers or be ready to face with dire consequences. When complainant talked with her in-laws regarding the child, then they were already aware of this fact and they compelled complainant to adopt the child. Complainant got job in Australia and she used to deposit all her salary in joint account with accused no.1 and when accused no.1 went on deployment for four months from his work, he did not supply any financial help to complainant. In January, 2011 accused no.1 got cancelled complainant's name from his bank account and complainant remained alone in Sydney without any financial help from accused no.1. On 27.06.2011 accused no.2&3 reached Australia and complainant treated them nicely, but behaviour of accused no.2&3 remained same and they repeated the same demands of cash and other valuable articles and compelled the complainant to ask her parents and accused no.1 also supported them in their illegal demands. During their stay in Australia, accused no.1to3 threatened complainant either to adopt the child Surya or to leave accused no.1 and get divorce. Accused no.1 changed his relationship status on internet social networking website as single and does not have any child and seeking a woman for dating/alliance and wrote a lot against the complainant on internet with a view to defame her and her parents.

5. Complainant further stated that on 14.09.2011 accused no.1 to 3 received a marriage invitation card through post regarding the marriage of brother of complainant from India and thereafter accused became furious and started abusing complainant and her parents that they

have no manner to invite a son in law as they have not sent any cash, kind or gift alongwith marriage card and she was compelled to leave the huse. On 17.09.2011 complainant called police and the moment police entered the house, accused no.1 informed that he wants separation from the complainant. Upon this police left the place and they did not take any action against accused no.1to3. Thereafter she was taken to Melbourne on 18.09.2011 by her brothers who were settled in Melbourne, Victoria and Australia. She stayed there till 05.10.2011 and on 06.10.2011 she left for India. Accused did not come to attend the marriage of brother of complainant and then complainant narrated the whole story to her parents and thereafter her parents contacted accused no.1to3 on telephone in Australia, but they flatly refused to keep complainant with them as wife of accused no.1. All the dowry articles, gifts, etc. given as Istridhan of complainant are lying with the accused at Jalandhar and at Sydney who are misusing and misappropriating the same.

6. On the basis of statement of complainant, the present FIR was registered by the police against the above said accused. The Investigating Officer initiated the investigation and recorded the statements of the witnesses U/S 161 Cr.P.C. Accused Indu Bala and Jagdish Handa were arrested and and Gaurav Handa, could not be arrested as he was settled in foreign country and after completion of the investigation and other necessary formalities the instant challan was presented against the present accused.

7. On receipt of the challan, the requisite copies of the challan

and other documents attached with it were supplied to accused free of cost in compliance with the provisions of section 207 Cr.P.C.

8. After going through the case file and hearing the submissions of both the sides, a prima facie case punishable U/Ss 420,406,498-A IPC was made out against the accused and accordingly accused were charged sheeted vide charge sheet dated 03.12.2013 under the abovesaid Sections. Charge was read over and explained to the accused in vernacular which they understood and pleaded not guilty and claimed to face trial. However during proceedings, accused Jagdish Kumar Handa died and proceedings against him were abated.

9. The prosecution, in order to prove its case against the accused, examined Kanika, complainant as PW1 who deposed in her examination in chief as per prosecution case which needs not to be reiterated and she proved on record her statement Ex.PW1/B and list of dowry articles as Ex.PW1/A. PW2 Ms. Daljit Kaur, produced the record relating to marriage registration of Gaurav Handa and Kanika Handa registered on 16.03.2009. PW 4 Surjit Kaur, SI, Incharge Women Cell, Patiala deposed about moving of complaint no.4941 dated 30.11.2011 and proceedings relating to it and proved inquiry report Ex.PW4/A. PW5 Rajwinder Kaur, SI, Incharge Women Cell, Patiala deposed that she registered the FIR Ex.PW5/A and proved endorsement Ex.PW5/B. She proved memo regarding taking into possession the photographs of marriage of Kanika as Ex.PW5/C and arrest memo of accused Jagdish Handa as Ex.PW5/D and his personal search memo Ex.PW5/E. Thereafter

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accused Indu Bala came in police station with bail and witness proved her personal search memo as Ex.PW5/F.

Prosecution further examined PW6 HC Baljinder Singh, deposed that on 08.01.2012 he alongwith ASI major Gir and accused Jagdish Handa had gone to residence of accused where accused Jagdish Handa produced two silver glass and one steel bucket which were taken into police possession vide memo Ex.PW6/A. He also proved memo Ex.PW6/B, arrest and intimation memo of accused Jagdish Handa as Ex.PW6/C and personal search memo Ex.PW6/D, memo regarding taking into possession purchase bill produced by complainant as Ex.PW6/E. Further PW7 Nirdosh Kaur, Retd. Inspector deposed that on 16.01.2012 the investigation of present case was handed over to her and she proved memo taking into possession alleged dowry articles i.e. one gold set (neck-less and tops), two gold chain sets (kitty sets), one gold gents bracelet, one gold ring gents, four silver glass, one blanket set, one water jar, one dinner set (28 piece), two stitched lady suit and one saari as Ex.PW7/A. PW8 Randhir Chand, father of complainant also corroborated the statement of complainant and proved list of dowry articles as Ex.PW1/A on which he identified his signatures at point A.

Prosecution further examined PW9 Kulwant Singh who attended the marriage ceremony deposed about the marriage of complainant with Gaurav Handa and deposed that Randhir Chand had given the dowry articles in the marriage as per his status and afterwards he came to know from Randhir Chand regarding the first marriage and son of

Gaurav Handa which was concealed by accused. PW10 Ashwani Kumar also corroborated the prosecution version and deposed as per version of PW9. Further PW11 ASI Major Gir deposed that on 14.01.2012 SI Rajbinder kaur took into possession documents from the father of complainant and on 18.01.2012 also recovered two glass and one bucket from Kalka which were taken into police possession recovery memo Ex.PW6/A prepared by him. PW12 SI Mangaljit Kaur, deposed about the presentation of challan in court. PW13 Balram Kumar deposed that he was Sarpanch in the year 2012 of village Tipra and on 18.01.2012 he was inducted in the police party and recovery of two silver glass and one steel bucket was effected in his presence, vide recovery memo Ex.PW6/A on which he identified his signature at point A.

Prosecution further examined PW14 Pandit Bal Krishan Sharma deposed that in the year 2009 he had got solemnized the marriage of Kanika with Gaurav Handa according to Hindu rites at Vatika marriage palace. PW15 Sangat Singh Nanda, deposed that in the year 2012 he was Ex.MC on 26.11.2008 and he proved application for advertisement by Tresh Handa, uncle of Gaurav Handa as Ex.PW15/A and memo Ex.PW6/B. PW16 Harjit Singh @ Jaggi deposed about the giving of matrimonial advertisement in English Tribune by and he proved copy of entry no.481 as Ex.PW16/A and information Mark A regarding non working condition of mobile given by Tresh Handa.

Further PW17 Khushpal Singh, photographer proved the photographs relating to shagun function as Mark X1 to Mark X17. Further

PW18 Braham Bhushan Bansal proved the bills regarding purchase of clothes from his shop as Mark PW18/A to PW18/F . PW19 Sunil Kumar, jeweller proved the bill regarding the making of gold jewellery as Ex.PW19/A. PW20 Sanjiv Gupta, jeweller also proved bills regarding preparing of silver glasses as Ex.PW20/A. PW21 ASI Inderjit Singh proved the endorsement dated 30.11.2011 regarding marking of enquiry as Ex.PW21/A and proved the signatures of Sh. Gautam Singal, SP head Quarter on the inquiry report no.1150/WC/SP/Head Quarter dated 07.01.2012 as Ex.PW21B and endorsement as Ex.PW21/C and inquiry report as Ex.PW21/D. Thereafter, prosecution evidence was closed by order as prosecution failed to conclude the evidence despite availing several opportunities.

10. Thereafter, the accused was examined U/S 313 Cr.P.C wherein all the incriminating evidence appearing against the accused was put to accused Indu Bala to which she denied all the allegations leveled against her by prosecution and pleaded herself to be innocent and claimed that she has been falsely implicated in this case. She further stated that before the settlement of marriage the family of complainant was in the knowledge that Gaurav is a divorcee and one male child was born out of his first marriage who is living with his wife and this fact was mentioned in forms of registration of marriage. Since previous marriage status was informed to the family of complainant by our family, so no fraud has been with complainant or her family. Complainant resided in the matrimonial house till 14.07.2009. The Air Tickets were purchased by them from

Jalandhar for complainant. From 15.07.2009 to 18.09.2011 complainant lived with her son as his wife happily and during this period, she never made any complaint regarding any maltreatment or demand of dowry articles by use or by her husband. During the period upto 18.09.2011, photographs on different occasions were clicked which clearly prove that parties were leading happy married life. Just after the confirmation of permanent residence status of complainant in Australia due to the defence job of Gaurav, she changed her behaviour and left the matrimonial house with her brother and she took all the jewellery and other belongings, even her Air Ticket was purchased by Gaurav as she was to visit in India to attend wedding of her brother. We never raised demand of any dowry articles nor ever maltreated complainant in any manner. Now after making statement in this court, complainant got her marriage dissolved ex-parte in Australia and solemnized second marriage with the son of her close relative. Complainant and her parents solemnized her marriage with Gaurav just to get Visa of permanent residency. The present case is false and she has not committed any offence as alleged by prosecution. However in defence evidence accused produced copy of diary Ex.D1, photographs Ex.DX/1 to EX.DX/46 and closed the same.

11. I have heard the respective submissions raised by Ld. APP for the State and defence counsel. After hearing the Ld. APP for the State and Ld. Defence Counsel, I have made the following points of determination:-

(a) Whether before the date of marriage on 12.03.2009

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to 18.09.2011 accused cheated complainant Kanika d/o Randhir Chand and dishonestly induced her at the time of registration of marriage with Gaurav Handa by concealing the fact of first divorce of Gaurav Handa and having a son from first wedlock and preparing of fake divorced papers for permanent PR in Australia?

(b) Whether at the time of marriage with Gaurav Handa, accused were entrusted with the dowry articles and Istridhan of complainant, but accused converted the same to their own use and committed criminal breach of trust with complainant and also harassed her mentally as well as physically and beaten her for demand of dowry i.e. Swift Dezire Car, LCD, Air Conditioner and other more dowry articles and cash amount for the settlement in Australia?

(c) Whether the evidence led by the prosecution is sufficient to hold the accused guilty of the abovesaid offence?

Points (a) to (c)

12. During the course of arguments Ld. APP for the State submitted that the prosecution has fully proved its case against the accused by leading cogent and convincing evidence. Therefore, the accused be convicted and sentenced as per law. On the other hand, Ld. Defence counsel argued that the accused has been falsely implicated in the present case and that the prosecution has failed to prove this case beyond any shadow of reasonable doubt. Therefore, accused, must be given benefit of doubt and be acquitted in this case.

13. After hearing the submissions of the Ld. APP for the State assisted by counsel for complainant and defence counsel, I am of the considered view that the arguments advanced by the learned Defence counsel carries weightage and substance as complainant has miserably

failed to prove the offence against the appearing accused beyond any shadow of reasonable doubt. It is the case of the prosecution that marriage of the complainant was solemnized with Gaurav on 12th March 2009 at Patiala according to Hindu rites and ceremonies with great pomp and show and a sum of Rs.25 lacs was spent on the marriage and other functions as per demand of her husband and her relatives and valuable gifts including shagun in the shape of cash and gold and silver ornaments were given in the marriage, as per the list of dowry articles but accused intentionally misappropriated the whole articles and have not returned to the complainant and all the accused physically and mentally harassed the complainant for demand of dowry, car and cash amount. Further it is also the case of the prosecution that accused have cheated the complainant before the marriage that accused Gaurav Handa has already been married and prepared false papers of divorce and thus accused have committed the offence of cheating. In order to prove this fact on record, the prosecution examined complainant Kanika as PW1, on the basis of whose statement, the criminal law was set into motion against the accused, who deposed on the similar lines of the case of prosecution and proved on record the documents already referred in above paras. In support of its pleadings, prosecution has also examined, father of complainant namely Randhir Chand as PW8 who has also deposed on the similar lines of prosecution, but from the careful perusal of testimony of both these witnesses, this court is of the view that evidence of both these witnesses does not inspire any confidence and accused cannot be convicted for the commission of

offence alleged to have been committed by her.

14. Marriage in the present case is not disputed at all. To prove the offence u/s 406 IPC against the accused, it was incumbent upon the prosecution to prove specific entrustment that complainant family entrusted dowry articles to accused and the accused dishonestly misappropriated or controverted it to their own use. In order to prove the offence of entrustment of dowry articles to the accused, prosecution has proved on record the list of dowry articles i.e. Ex.PW1/A on record. In spite of the list proved on record by the prosecution in the testimony of PW1, prosecution has failed to prove on record that it was given to the family of accused. No specific date has been given with regard to the demand of dowry articles which are alleged to have been entrusted to the accused person. It was obligatory for the complainant to make specific and distinct allegations against the accused showing the entrustment of any articles and the same has been mis-appropriated by the accused with the dishonest intention of the accused. Perusal of the material available on the record makes it clear that there are only allegation with regard to the entrustment but detail of entrustment have also not given. Merely by mentioning that certain amount of gold, silver ornaments were given to the family of accused, does not dispense with the proof that same were given to the family of accused in the form of dowry and this court is of the confirmed view that gold ornaments and shagun given in the shape of cash given at the time of marriage or other ceremonies cannot be considered as dowry, rather these articles can certainly be termed as gifts

which are normally given by the families at the time of marriage ceremony, which is a prevalent custom in the country like India. On this, I place reliance upon the law laid down by Hon'ble Punjab & Haryana High Court in case titled as Anju Bala and others vs State of Punjab and another 2006(3) RCR (Criminal) 191. Similarly I also place reliance upon the law laid down by the Hon'ble Supreme Court of India in case titled as Bhaskar Lal Sharma & Anr. Vs Monica 2009(3) RCR (Criminal) 866, in which Apex Court of India categorically held that *“any gift made to the bridegroom or his parents- whether in accordance with any custom or otherwise also would not constitute any offence u/s 406 of Indian Penal Code”*. In this eventuality, this court is of the view that merely by giving the aforesaid gold ornaments to accused no.1 Indu Bala at the time of marriage ceremony would not constitute an offence u/s 406 IPC against the accused.

15. Moreover as per the allegations leveled by the prosecution with regard to the giving of amount of Rs.5 lacs by parents of complainant for sending complainant to Australia the prosecution has miserably failed to prove on record that the above said amount has been given by the family of the complainant to the accused. There is not even an iota of evidence from which an inference can be drawn that the said amount has been given to the family of accused. No source of the said amount has been explained by the prosecution regarding the giving of such amount to the family of accused. Therefore this court is of the view that this amount of giving of Rs.5 lacs by the family of complainant to the

family of accused is an afterthought which the complainant has mentioned to the investigating agency at the time of investigation. Moreover with regard to other amount given by the family of complainant to the accused and their family at the time of engagement, shagun and marriage ceremony as already discussed, cannot be termed as dowry because these are the customary gifts which are exchanged between the family of the groom as well as bridegroom because it has also been admitted by the complainant in her cross-examination that she was also given the gifts by her in-laws family. Although in order to prove the purchase of cloths and gold ornaments, prosecution has examined PW18 Braham Bhushan Bansal who proved the bills regarding purchase of clothes from his shop as Mark PW18/A to PW18/F, PW19 Sunil Kumar, jeweller who proved the bill regarding the making of gold jewellery as Ex.PW19/A and Sanjiv Gupta as PW 20 who proved bills regarding preparing of silver glass as ExPW20/A, but as already discussed in above paras, since such cloths and ornaments cannot be termed as dowry articles. Therefore the evidence of these witnesses cannot be given weightage. Similarly the complainant has also failed to prove on record that the cash amount of Rs.10 lacs was given to the family of accused for the purchase of Car and furniture as mentioned in item no.12 in list of dowry articles as Ex.PW1/A as already discussed in above paras, also no source of the said amount has been explained by the prosecution regarding the said amount given to the family of the accused. As such this version of the prosecution also appears to be an afterthought. With these

observations, this court is of the view that complainant has miserably failed to prove the offence u/s 406 IPC against the accused.

16. So far as the other offences, alleged to have been committed by the accused, are concerned, complainant has also miserably failed to prove on record that she was being harassed and subjected to mental as well as physical harassment by them for demand of dowry or any fraud was committed by them. It is the case of complainant that she was harassed and maltreated by the accused persons for bringing more dowry and Dezire car and they treated her with cruelty and threatened her for the said reason. To prove the offence u/s 498-A IPC, it is required to prove that any other, who is either being the husband or a relative of the husband of a woman, if commits such cruel act against the woman, then such a person could be accused of that offence. However complainant has also failed to prove on record that how and in what manner, accused maltreated and subject to her cruelty. Furthermore it has been admitted by the complainant herself in her cross-examination conducted by learned defence counsel that her father in law was already having a car at the time of marriage. Therefore this court is of the view that it cannot be presumed that the person who is already having a car, can still force complainant to bring one more car for him. Moreover it is an admitted fact on record that complainant resided with Gaurav Handa at Australia for about two years, but had there been any strained relation between them, the complainant could have file the application or complaint before the Australian police regarding the maltreatment by Gaurav Handa and his relatives, but since

the complainant has failed to prove on record any such application or complaint before the Australian police, this also shows that story put forth by the complainant is not trustworthy. Moreso from the perusal of the application given by the complainant to the SSP, Patiala as Ex.PW1/B on the basis of which the present FIR was registered against the accused, it reveals that accused have demanded that the liquor should be served for their guests in all the functions of marriage including marriage and marriage function should be performed in an aristocrat manner. Even for the sake of arguments, it is presumed that it was demanded by the accused that marriage should be performed in an aristocrat manner, even then it cannot be held that they have demanded the dowry from the complainant's family and have maltreated the complainant for bringing less dowry. The prosecution story further suffered a blow as accused has proved on record the personal diary of complainant as Ex.D1 written by complainant Kanika herself in which she has written her views from the date of marriage and after the marriage that she is living happily with her in laws family and there is no dispute at all. The factum of writing of that diary has been admitted by PW1 Kanika in her cross-examination conducted by learned counsel for the accused. As such, this court is of the view that this diary Ex.D1 should be given weightage as the same has been written by the complainant herself. The prosecution has also failed to prove on record that during her stay with Gaurav Handa at Temple Chintpurni, Jawala Ji and Chamunda Ji, the accused no.2&3 hired one room for their stay during the above said journey, which allegedly

amounts to cruelty. Moreover prosecution has also failed to prove on record that accused Gaurav Handa used to defame the complainant on internet by writing lines against her. These allegations are merely oral assertions and are vague and general in nature and cannot be given more weightage in order to connect the appearing accused in this case for the commission of offence alleged to have been committed by the accused. So, in this eventuality, in view of the above narrated facts, it cannot be presumed that complainant was ever subject to any cruelty or harassment, even within a short span of time of her stay in the matrimonial house. Moreover there is a normal tendency to involve the entire family of the husband of a woman by her family to put pressure on in-laws. On this point I place reliance upon citation laid down by Hon'ble Punjab & Haryana High Court in case titled as **Shinder Pal @ Kakke vs State of Haryana 2004(2) RCR (Criminal) 398.** Although there is also no evidence on record with regard to the threatenings as alleged by the prosecution to the complainant by the accused persons.

17. So far as the offence u/s 420 IPC is concerned, it is the specific allegations of the prosecution that accused was already married and this fact was not disclosed to the complainant. On the other hand, it is the case of the defence that the complainant's family was already informed about the first marriage of Gaurav Handa and by admitting the same, the marriage of Gaurav Handa with complainant Kanika was performed on 12.03.2009. From the careful perusal of evidence led by the complainant to prove the offence u/s 420 IPC, this court is of the view

that the prosecution has failed to prove the ingredients of section 420 IPC, because as per section 420 IPC it is provided that :-

“420. Cheating and dishonestly inducing delivery of property.--Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

Even otherwise also PW2 has placed on record the record regarding the registration of marriage which was registered on 16.03.2009 of Kanika with Gaurav Handa in which two affidavits of Indu Bala Handa and Gaurav Handa as Mark A and Mark C respectively are attached which clearly proves that Gaurav Handa was divorcee at the time of his marriage with Kanika. Moreso it is admitted case of the prosecution that it has come to the knowledge of family of complainant at the time of registration of marriage regarding his first marriage. The plea taken by the complainant that the accused had already told her that it was only a paper marriage with a view to obtain Australian citizenship of accused, is not tenable at all because this court is of the view that when the complainant had already come to know, as per allegations of prosecution on dated 16.03.2009 at the time of registration of marriage regarding first marriage of Gaurav Handa, they could have move to the police authorities or take any other appropriate action for the alleged cheating by the accused Gaurav Handa, but failure on the part of complainant party to act upon the same proves fatal to the story of prosecution as put forth by the

prosecution in this case. Furthermore the advertisement of the marriage of Gaurav Handa dated 06.12.2008 is concerned (though photocopy of the same has been produced), same has not been proved on record in accordance with law by the prosecution as this document has not been exhibited in this case and as such this advertisement also cannot be given weightage. However in order to prove the offence u/s 420 IPC, prosecution further examined PW15 namely Sangat Singh Nanda, who proved on record the application for advertisement by Tresh Handa, uncle of Gaurav Handa as Ex.PW15/A as per which Taresh Handa has applied to the Tribune newspaper regarding the change of phone number in the newspaper, but perusal of this application shows that it was written on 16.03.2012 and the marriage of Kanika with Gaurav Handa was already performed on 12.03.2009. Furthermore PW16 namely Harjit Singh @ Jaggi was examined by the prosecution who proved on record the entry for the publication of the advertisement as Ex.PW16/A, but this court is of the view that merely by mentioning the entry in the register for giving advertisement is not sufficient to determine this fact on record that accused had concealed this fact from the family of complainant regarding his first marriage.

18. The other witnesses PW9 Kulwant Singh, PW10 Ashwani Kumar are the interested witnesses and they have deposed regarding the marriage ceremony of complainant with accused no.1 and stated that marriage was celebrated with great pomp and show and the fact with regard to the first marriage of accused no.1 and a son from that marriage,

but evidence of all these witnesses are hear-say evidence and as such their evidence cannot be given weightage being interested witnesses. The other witnesses examined by the prosecution witnesses are the official and formal witnesses and their testimonies are not sufficient to prove the offence against the appearing accused. With these observations, this court is of the view that the prosecution has miserably failed to prove the offence u/s 420 IPC alongwith other offences U/Ss 406 and 498-A IPC against the accused.

19. Therefore, due to my abovesaid discussion, this court is of the view that in the present case the prosecution has miserably failed to prove its case against the accused beyond any shadow of any reasonable doubt. In these circumstances, accused Indu Bala is hereby, acquitted from the charges framed against her by giving her the benefit of doubt. Their bail bonds and surety bonds furnished u/s 437-A Cr.P.C. shall remain intact till the expiry of the period of limitation of appeal or revision, as the case may be. Case property if any be dealt with as per the rules after the expiry of the period of limitation of appeal or revision, as the case may be. File be consigned to the record room after necessary compliance.

**Announced in open court
on: 21.02.2018**

**Amandeep-UID No.PB0336
Judicial Magistrate Ist Class, Patiala.**

Veena Rani
Stenographer Gr. II

Amandeep, PCS, JMJC, Patiala