

CASE NO.:
Appeal (crl.) 490 of 2008

PETITIONER:
Mohinder Kaur

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 14/03/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT

CRIMINAL APPEAL NO. 490 OF 2008
(Arising out of SLP (Crl.) No. 8213 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court dismissing the petition filed in terms of Section 438 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.').
3. The appellant had sought for protection in terms of aforesaid provision in FIR No. 105 dated 15.8.2007 registered at the Police Station Bhogpur, District Jalandhar. The complainant had alleged that she was married to Ranjit Singh, son of the appellant on 23.10.2002. The said Ranjeet Singh went abroad in February, 2002 and came back after about one year. Alleging that the complainant was harassing her for bringing insufficient dowry, the complaint was lodged in the police station. The appellant filed a petition under Section 438 Cr.P.C. for protection. The High Court observed that ordinarily in such cases the court is inclined to grant protection against arrest to family members of husband of the complainant, however the facts of the present case were different. It was stated that the appellant herself was a retired police officer who was serving as an inspector of Punjab police. Her son was residing abroad and she had transferred/bequeathed her property in favour of her grand son who is born to another son who is settled abroad. No part

of the immovable property has been given to grand daughter born to the complainant. The High Court, therefore, concluded that the complainant and her minor daughter were left without any source of livelihood. It was noted that serious allegations were made against the appellant. The hostile treatment meted out to the grand daughter speaks loudly that the allegations leveled carry prima facie substance. After making these observations, the High Court also accepted the contention that the appellant being a recently retired police officer, the local police were hob-nobbing with her and the investigations were not being done properly. The High Court therefore, dismissed the petition. But at the same time it directed the Senior Superintendent of Police, Jalandhar to depute a fairly senior police officer to monitor the on-going investigation and take all lawful measures to interrogate the appellant and recover the dowry articles. Her passport was also seized and she was not to be permitted to go abroad without the permission of the Court.

4. Learned counsel for the appellant submitted that the conclusions of the High Court are clearly without any foundation. The appellant was serving neither as an inspector nor was she retired recently. She was serving as a constable and had retired nearly 10 years back i.e. in May, 1999. Further it is inconceivable that a retired constable who had retired 10 years back would have influence over the police officials to render the investigation ineffective. It is printed out after death of her husband, she was inducted as a Constable on compassionate grounds.

5. The direction for recovering dowry articles clearly means as if certain dowry articles were there. It is therefore submitted that all the directions are insupportable.

6. Learned counsel for the State on the other hand submitted that looking into the gravity of the accusation order has been passed.

7. As rightly submitted by learned counsel for the appellant the High Court seems to have completely acted on materials which do not support the conclusions. By way of illustration, it can be said that the appellant was not serving as an inspector but was a constable who had retired about a decade back. Therefore the conclusion of the High Court that she was in a position to make the investigation ineffective does not have any foundation. The other directions given like recovery of dowry articles etc. need not have been given while dealing with an application under Section 438 Cr.P.C. filed by her. The directions for seizing the appellant's passport also could

not have been given a petition under Section 438 Cr.P.C. filed by her.

8. The directions regarding deputation of a senior police officer to monitor the investigation and/or recover the dowry articles to seize her passport stand deleted.

9. The parameters for exercising of power under Section 438 Cr.P.C. has been highlighted by this Court in *Adri Dharan Das v. State of W.B.* (2005(4)SCC 303).

10. Keeping in view the parameters highlighted in *Adri Dharan Das's* case (*supra*), we direct in case the appellant surrenders before the concerned court and moves for bail the application shall be disposed of expeditiously preferably on the date it is filed. We make it clear that we have not expressed any opinion on the acceptability of the prayer for bail to be made in terms of the aforesaid direction.

11. The appeal is allowed to the aforesaid extent.