

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: August 30, 2013
Pronounced on: September 23, 2013*

+ **CRL.REV.P. 406/2003**
MANJU KADAM Petitioner
Through: Mr. C.Mohan Rao, Mr. Deepak
Khadaria and Ms. Sangeeta
Chandra, Advocates with petitioner
in person
versus

SURENDER KADAM & ORS. Respondents
Through: Mr. J.M. Bari, Advocate with
respondents No.2 & 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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JUDGMENT

1. Petitioner is the complainant/first-informant of the FIR No.250/1995 under Sections 406/498A of *IPC* registered at P.S. Prasad Nagar, Delhi. She is aggrieved by trial court's judgment of 29th January, 2003 vide which respondent-accused has been acquitted.
2. Challenge to the impugned judgment by learned counsel for petitioner is on the ground that the findings returned in the impugned judgment are contrary to the evidence on record. During the course of the hearing, learned counsel for petitioner had drawn the attention of this Court to the deposition of petitioner herein, who had deposed as PW-1

before the trial court and also to the deposition of *Ramesh (PW-4)*, who is brother of petitioner, to submit that from their deposition, the ingredients of the offence under Sections 406/498A of *IPC* are firmly established and their deposition has been erroneously discarded by the trial court on the wrong assumption of there being discrepancies in their deposition.

3. According to learned counsel for petitioner there cannot be parrot like narration of events by witnesses and there is no material discrepancy *inter se* the evidence of witnesses recorded warranting acquittal of respondent-accused. Learned counsel for petitioner had pointed out that even if there is any discrepancy in the evidence of petitioner-complainant (*PW-1*) and of her mother *Smt. Vidyawati (PW-5)*, then the deposition of petitioner-complainant (*PW-1*) ought to have been relied upon as from the evidence of petitioner-complainant (*PW-1*), the prosecution case stands proved beyond reasonable doubt and the trial court has gravely erred in acquitting respondent-accused. Thus, according to learned counsel for petitioner, the impugned judgment is perverse and it deserves to be set aside.

4. At the hearing, learned counsel for respondents No.2 & 3-accused persons while supporting the impugned judgment had submitted that there is no illegality or infirmity in the impugned judgment warranting retrial. It was pointed out by learned counsel for respondents No.2 & 3-accused persons that petitioner-complainant (*PW-1*) has categorically deposed that she had not demanded back the remaining dowry articles from respondents-accused persons and so, no offence under Section 406 of *IPC* is made out.

5. It was also asserted by learned counsel for respondents No.2 & 3-accused persons that no dowry articles of petitioner-*complainant* (PW-1) were retained and infact, first respondent-*husband* of petitioner had filed petition for restitution of conjugal rights which belies petitioner's case of respondent-accused subjecting petitioner to cruelty.

6. Lastly, it was submitted on behalf of respondent-accused that the finding returned in the impugned judgment is strictly in consonance with the evidence recorded and the evidence led by petitioner is neither cogent nor reliable and thus, it has been rightly discarded by trial court and that there is no merit in this petition. In support of the above submissions, reliance was placed by learned counsel for respondents-accused persons upon decisions in *K. Chinnaswamy Reddy v. State of Andhra Pradesh and Another* AIR 1962 SC 1788; *Bansi Lal and Others v. Laxman Singh* AIR 1986 SC 1721; *Kalluri Vema Reddy v. Gangi Reddi and Others* AIR 1958 AP 571; *Hasib v. The State of Bihar* AIR 1972 SC 283; *Nanhku Singh v. The State of Bihar* AIR 1973 SC 491; *Dharma Ram Bhagare v. State of Maharashtra* AIR 1973 SC 476; *Prabhdeep Singh v. Sukhwinder Kaur* 2003 (1) RCR (Crl.) 92; *Krishan Jeet Singh v. State of Haryana* 2003 (1) RCR (Crl.) 183; *Savitri Devi v. Ramesh Chand and Others* 2003 (3) RCR (Crl.) 823; *Besai Venkata Ramana Murthy v. State by Station House Officer IV Town Law & Order Police Station, Visakhapatnam* 2003 (4) RCR (Crl.) 597; *Penchala Sadaiah and Others v. State of A.P.* 2004 (2) RCR (Crl.) 355; *Pratibha Rani v. Suraj Kumar & Anr.* 1985 SCC (2) 370 and *Smt. Rashmi Kumar v. Mahesh Kumar Bhada* 1997 (2) SCC 397.

7. Upon scrutiny of the impugned judgment and evidence on record and on perusal of the decisions cited in light of the submissions advanced by both the sides, this Court finds that the exercise of revisional power in petitions against acquittal is much more restricted and unless glaring injustice has been done, judgment of acquittal is not to be interfered. There must be substantial and compelling reason to interfere with the judgment of acquittal and merely because this Court comes to a different conclusion, is not sufficient to upset the acquittal.

8. To test whether the findings returned in the impugned judgment are contrary to the evidence on record, deposition of petitioner-complainant (PW-1) has been scrutinized by this Court and it is found that petitioner has categorically deposed that she had not demanded back the dowry articles from respondents-accused persons. It has been so stated by petitioner-complainant (PW-1) in her chief-examination. In the face of such deposition, there can be no conviction for the offence under Section 406 of *IPC*. So far as the offence under Section 498A of *IPC* is concerned, it has come in the deposition of petitioner-complainant (PW-1) that for a period of 2-3 months after the marriage, she was kept well by accused persons. This has been so stated by petitioner-complainant (PW-1) in her chief-examination.

9. Normally, harassment on account of bringing insufficient dowry or for pressurizing the complaint-wife and her family to bring more dowry is made soon after the marriage and not after 2-3 months. In any case, a bare reading of deposition of petitioner-complainant (PW-1) reveals that when petitioner-complainant had become pregnant within few months of her

marriage and husband of petitioner-*complainant* had told her to get the child aborted as he wanted to adopt the son of his elder brother and petitioner-*complainant* was opposed to it and she had delivered a son within nine months of her marriage. Petitioner-*complainant* (PW-1) had also disclosed in her evidence that her husband was having illicit relations with her *Bhabhi-Kalpana*, whose behavior was not good towards the petitioner-*complainant* (PW-1) and her *Bhabhi-Kalpana* wanted petitioner to leave her matrimonial house.

10. In the face of aforesaid revelations made by petitioner-*complainant* (PW-1) in her deposition, prosecution version of respondents-accused persons harassing petitioner-*complainant* on account of bringing insufficient dowry does not seem to be probable and trial court has rightly discarded the version of petitioner-*complainant* and her witnesses. Such a view can be reasonably taken as petitioner-*complainant* (PW-1) in her deposition has also revealed that she had seen respondent-*husband* with his *Bhabhi-Kalpana* in compromising position. It appears that the relation between petitioner-*complainant* and respondent-*husband* had become strained leading to petitioner-*complainant* leaving her matrimonial house and respondent-*husband* filing petition for restitution of conjugal rights.

11. It is not the case of petitioner-*complainant* that soon after the marriage, any demand of dowry was made and petitioner-*complainant* had assured that the said demand would be met and for this reason, she was not subjected to cruelty soon after the marriage for 2-3 months. It is also not the case of petitioner-*complainant* that she had left the matrimonial house upon discovery that her husband had illicit relations

with his *Bhabhi-Kalpana*. The allegations of illicit relations of respondent-*complainant* with his *Bhabhi-Kalpana* are not the basis of prosecution of respondent-*husband* and his brother and Bhabi. Infact, the case of prosecution rests upon petitioner-*complainant* being subjected to harassment or cruelty on account of bringing insufficient dowry.

12. In the considered opinion of this Court, impugned judgment has analytically dealt with the evidence on record and on sound reasoning, has returned the verdict of acquittal.

13. Finding no glaring illegality or infirmity in the impugned judgment, this petition is dismissed.

(SUNIL GAUR)
Judge

SEPTEMBER 23, 2013

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