

Neutral Citation No. - 2024:AHC:193011

Court No. - 82

Case :- APPLICATION U/S 378 No. - 68 of 2024

Applicant :- Smt Surekha

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Atul Kumar Singh, Sanjay Singh

Counsel for Opposite Party :- Abhai Kumar Singh, Awadhesh Kumar Singh, G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This Application for leave to appeal has been filed by the applicant/appellant feeling aggrieved with the judgment and order dated 25.8.2023 passed by the Judicial Magistrate Second, Hapur in Complaint Case No.168 of 2020 (Surekha Vs. Amit and others) under Section 406 IPC, Police Station Hafizpur, District Hapur whereby the opposite party no.2 has been acquitted by the learned trial court.

2. Heard learned counsel for the applicant/appellant, learned counsel for the respondent no.2 as well as learned A.G.A. for the State and perused the record including the impugned judgment.

3. Learned counsel for the applicant/appellant has submitted that the impugned judgment and order passed by the learned trial court is completely perverse and has been passed against the evidence on record. Learned trial court has not analysed the evidence on record in legal and proper manner. It is further submitted that only for want of the list of the articles, which were given in the marriage, impugned judgment and order has been passed. The complainant successfully proved its case on the basis of evidence of P.W.1 herself, P.W.2 Praveen Kumar, her cousin and P.W.3 Pushpendra, the native of the village of the complainant. It is further submitted that undue preference has

been given by the learned Magistrate to the defence evidence. It is further submitted that the respondents / accused persons fraudulently committed criminal breach of trust by grabbing the Stridhan of the complainant lady and in an arbitrary manner, the learned Magistrate recorded an order for acquittal of the accused Amit, the husband of the complainant / appellant which is not sustainable under law and in the interest of justice, leave to appeal should be granted to the applicant / complainant.

4. Per contra, learned counsel for the respondent no.2 vehemently opposed the present application for leave to appeal and it is submitted that in the present case, the respondent no.2 has been falsely roped only on account of being the husband of the complainant. It is further submitted that no cogent evidence was adduced by the complainant in this case to prove the allegations made against the answering respondent. It is further submitted that the complainant / appellant and respondent no.2 are wife and husband and earlier a compromise had taken place between them and the complainant was residing with the respondent no.2 / accused, but subsequently she left away her matrimonial house and filed a frivolous criminal complainant against the respondent no.2. On these grounds, learned counsel for the respondent no.2 vehemently argued that the application for leave to appeal is liable to be rejected.

5. Since it is an appeal against the acquittal, it will be relevant to note the principles of law laid down by the Apex Court with regard to the appreciation of evidence in the appeal against the acquittal. Recently in **Mallappa v. State of Karnataka, 2024 SCC OnLine SC 130**, the Apex Court has held as under:-

“37. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

6. In the case of **Bannareddy v. State of Karnataka, (2018) 5 SCC 790**, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and it has been held that “the High Court

should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities”.

7. In the light of the submissions made by the learned counsel from both the sides, this Court has carefully gone through the evidence available on record, analysis and appreciation thereof and conclusion arrived at by the learned trial court in the impugned judgment and order dated 25.8.2023.

8. In order to prove its case, the complainant has produced three witnesses as oral evidence.

9. P.W.1, the complainant in her statement under Section 244 Cr.P.C. has stated that in her marriage with the accused / respondent, her family spent about Rs.10 lakh and dowry and several gift items were also given but her in-laws were not pleased with the dowry and they started demanding Alto Car or Rs.5 lakh as additional dowry and she was subjected to cruelty and harassment for the said demand. On 01.05.2009, her in-laws grabbed her entire jewellery and she was ousted from her matrimonial house. A legal notice was also sent by her to her in-laws to return her Stridhan but the same was not returned. In her cross-examination, she admits that she is not in a position to submit duplicate bills of the articles, which were purchased from Hapur market in connection with her marriage. Further, in her cross-examination under Section 246 Cr.P.C. she has clarified that in 2017 a compromise had taken place between the couple and she had been residing with her husband for a period

of about eight months and at that time the present case under Section 406 IPC was pending and on the basis of compromise, the case under Section 125 Cr.P.C. came to an end. She further admits that the list of items, which were given in the marriage, is not available on record. Although she states that in the case of Domestic Violence Act, she has submitted the list before the court but, however, she did not submit the same before the learned trial court.

10. P.W.2 Praveen Kumar is the cousin of the complainant, who affirms the factum of marriage and dowry and gifts given in the marriage of the complainant and also verifies the fact that Alto Car was demanded by the in-laws of the complainant as additional dowry and when the said demand was not fulfilled, they ousted the complainant from her matrimonial house on 01.05.2009 and grabbed her Stridhan. In his cross-examination under Section 246 Cr.P.C., the said witness Praveen Kumar has admitted that the list of articles was prepared during marriage but the same is not available on record. He exactly does not remember the name of the shop where from the purchasing in connection with marriage was made but states that the shop was in Hapur. He further admits that the bills relating to the main articles purchased in the marriage are also not on record and the same were handed over to the in-laws of the complainant.

11. P.W.3 Pushpendra is the nearby villager of the complainant who also affirms the factum of marriage of the complainant with accused Amit and other contents of cruelty and harassment caused to the complainant for the demand of additional dowry and he further affirms the fact that in May

2009, complainant was ousted by her in-laws from her matrimonial house on account of non-fulfilment of the demand of dowry and her Stridhan was also grabbed by them. Contradicting the statement of P.W.1 and P.W.2, this witness in his cross-examination under Section 246 Cr.P.C. states that no list of articles was prepared in the marriage, rather it was announced orally.

12. The accused produced D.W.1 Sudhir and D.W.2. Arjun Tewatiya to support the defence version and in his statement under Section 313 Cr.P.C. he completely denied the truthfulness of the evidence rendered by the complainant. D.W.1 Sudhir, who is known to the accused respondent, has deposed that he had attended the marriage of Surekha and Amit and nothing was given in the marriage except some minor articles. He further states that the Stridhan of the complainant has not been grabbed by Amit or his family members. He has denied of having any knowledge of the various articles and jewellery which are said to be given in the marriage. DW.2 Arjun Tewatiya is also known to the accused respondent. He was also present in his marriage. He states that the Stridhan of the complainant has not been grabbed by Amit or his family members.

13. The learned trial court elaborately scrutinized and analysed the evidence on record. It was found by the learned trial court that no bill or receipt in respect of purchasing the articles relating to Stridhan was available on record. Further, no list of articles, which were given in the marriage or which were relating to the Stridhan of the complainant, was available on record. The evidence on record is not consistent and reliable to prove even the existence of any such list. The complainant has

further been unable to prove as to who prepared the said list and where the said list was kept.

14. The learned trial court further relied upon the decision promulgated by the Hon'ble Supreme Court in **Pratibha Rani Vs. Suraj Kumar & Anr.**, AIR 1985 SC 628 decided on 12.03.1985 wherein it was held that "In the absence of a separate agreement and specific entrustment by the wife to the husband and / or his relatives and vice versa of the property of the husband to the wife and / or her relation, it would not be possible to draw an inference of entrustment of custody or dominion over the property of one spouse to the other and his or her relations so as to attract the stringent provisions of section 406 IPC."

15. The evidence rendered by the complainant certainly lacks the proof of such specific entrustment or agreement, as required by law.

16. Sections 405 and 406 IPC provide like this -

405. Criminal breach of trust.— Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both.

17. The essential ingredients to bring a case within the purview of Section 405 IPC have been elaborated in **C.M. Narayan Vs. State of T.C., AIR 1953 SC 478** and **Sardar Singh Vs. State of Haryana, (1977) 1 SCC 463**.

18. For a successful conviction under Section 406 IPC the essential ingredients to constitute an offence of criminal breach of trust are to be compulsorily established. In **C.M. Narayan (supra)**, the Hon'ble Apex Court had an occasion to deal with the subject and it has been held as under :

“To constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract by the accused himself or by someone else which he willingly suffered to do. It follows automatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.”

19. The same view has been expressed by the Hon'ble Apex Court in **Sardar Singh (supra)** case.

20. From the above, it is explicit that without there being clear case of entrustment and criminal breach thereof, no offence under Section 406 IPC is made out. The existence of mens rea

or fraudulent inducement is necessary to hold a person guilty of offence under Section 406 IPC.

21. In the case in hand, the Stridhan of the complainant / appellant was when and to whom entrusted is not proved by the evidence on record. It has been found earlier that there is no list of the articles which can be placed in the category of Stridhan and in absence of the same, it cannot be safely concluded that the Stridhan of the complainant / appellant was entrusted to any particular accused person and it consisted of some particular articles. Even the complainant / appellant in her deposition before the Court failed to show the same and has been unable even to produce the bills of the articles which were allegedly purchased from the Hapur Market in connection with her marriage.

22. In the facts and circumstances of the case, it seems that the judgment and order of acquittal of the trial court under judicious scrutiny is firm footed and unblemished, which does not warrant any interference by this Court. If the findings recorded by the trial court in the impugned judgment and order are minutely analysed with the facts and evidence in consonance with the submissions raised by learned counsel for the parties, no illegality, infirmity or perversity is found in the impugned judgement and order passed by the trial court.

23. Thus, the application moved by the appellant / complainant to grant leave to appeal for the reasons discussed here-in-above is not liable to be allowed and same is rejected.

24. Since the application for grant of leave to appeal has been rejected, the appeal is also not liable to be admitted and same is accordingly dismissed.

Order Date :- 13.11.2024

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