

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-A-1847-MA of 2014.  
Date of decision: 08.05.2015.

Smt. Sunita Devi

.... Applicant/Appellant

Versus

Sunil Kumar and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH**

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. Sanjeev Kumar Panwar, Advocate  
for the applicant/appellant.

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**PARAMJEET SINGH, J. (ORAL)**

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 07.10.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri whereby complaint filed by applicant under Sections 494, 406, 506, 120-B of the Indian Penal Code has been dismissed and respondents have been acquitted of the charge framed against them.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 494, 406, 506, 120-B of the Indian Penal Code alleging that applicant-complainant is legally wedded wife of respondent No. 1-Sunil Kumar and their marriage was solemnized about 10/11 years ago at Village Dhanno Kheri, Tehsil Indri,

District Karnal as per Hindu rites and ceremonies. The parents of applicant-complainant gave sufficient dowry articles i.e. jewellery, clothes and furniture etc. in the marriage, which were entrusted to respondents-accused. After the marriage, they started residing in Village Bakarpur and cohabited with each other as husband and wife under the same roof and out of their wedlock, one male child, namely, Gaurav and one female child, namely, Mithali were born. Applicant-complainant was kept with love and affection by respondent No. 1-accused up to 2007, but in late 2007, respondent No. 1-accused started showing some indifferent attitude towards the applicant-complainant as the respondent No. 1-accused developed illicit relation with a lady, namely, Meena Saini and he also started avoiding his marital duties towards the applicant-complainant and her children. The fact of illicit relationship of accused No. 1 became proved when it came to the knowledge of the complainant and her family members that respondent No. 1-accused has got married himself with respondent No. 2-accused Meena Saini in order to give legal shape to his illegal illicit relationship with said Meena Saini while said Meena Saini and her parents i.e. respondents No. 3 and 4/accused were very well within the knowledge that respondent No. 1-accused Sunil Kumar is married, but they solemnized the marriage of their daughter Meena Saini with Sunil Kumar and started keeping him in their house. Due to this illegal act and conduct on the part of respondents No. 1 to 4/accused, applicant-complainant and her parents convened a panchayat, but respondents-accused did not listen the genuine request of complainant. Thereafter, family member of respondent No. 1 and other tried their level best for dissolution of relationship between respondent No. 1 and said Meena Saini and thereafter, relationship

between them was dissolved vide panchayati settlement reduced into writing on 08.04.2008 and the same was got attested from Notary Public and the said Meena Saini had also executed an affidavit that she will not interfere into the married life of respondent No. 1-accused and applicant-complainant and also undertook that she will not keep any relationship with Sunil Kumar in future. Thereafter, Sunil Kumar started living with the complainant at Village Bakarpur and after sometime, he again started showing indifferent attitude towards the complainant and her children and again started living outside the house for 2/3 days continuously and thereafter, he left the house by taking away an amount of ₹2,50,000/- and golden jewellery of the complainant lying in the house and again started living with respondent No. 2 Meena Saini in Bharat Sewak Nagar, Jagadhri with the consent of her parents i.e. respondents No. 3 and 4 herein. Thereafter complainant requested accused No. 1 Sunil Kumar and Meena Saini to get separated from each other and send Sunil Kumar back in Village Bakarpur, but accused Nos. 2 to 4 flatly refused to do anything for the complainant. The matter was reported to the police, but no action was taken against the respondents/accused persons. In the second week of August 2009, accused No. 1 at the instance of accused Nos. 2 to 4 reached village Bakarpur and threatened the complainant to leave his house in order to settle with said Meena Saini in Village Bakarpur knowingly and intentionally and on refusal of the complainant, accused No. 1 caught hold of her and openly threatened her. Complainant again moved an application dated 24.08.2009 against accused No. 1 and others and requested that legal action be taken against the accused. Therefore, the complaint was filed.

On the basis of preliminary evidence, respondents-accused

were ordered to be summoned to face trial for the commission of offences punishable under Sections 494, 120-B IPC.

In pre-charge evidence, the complainant herself appeared into witness-box as CW1 besides examining Bharat Singh as CW2, Shiv Kumar as CW3, Dr. Anil Gautam as CW4, Rashida as CW5, Kiran Singh, Clerk as CW6, Rajender Kumar as CW7. On the basis of pre-charge evidence, respondents-accused were charge-sheeted for the commission of offences under Sections 494, 120-B IPC, to which, they pleaded 'not guilty' and claimed trial.

Statements of respondents-accused under Section 313 Cr.P.C. were recorded wherein they pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted all the respondents-accused from the charges framed against them, vide impugned judgment dated 07.10.2014. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

*“12. In the instant case, the complainant has levelled specific allegations against accused No. 1 that he contracted second marriage with accused No. 2 in criminal conspiracy with accused No. 3 and 4 in spite of the fact that complainant is legally wedded wife of accused No. 1 and has not been divorced till date. The relationship of husband and wife between accused No. 1 and complainant is not disputed. It is also not in dispute that accused No. 1 has not till date obtained divorce from competent court from complainant. It was incumbent upon the complainant to*

*prove that the accused No. 1 contracted and solemnized marriage with accused No. 2. To prove the same, the complainant has examined as many as seven witnesses and has also relied upon the panchayati settlement, which is Ex. CW1/D. All the witnesses have deposed that they have not seen the accused No. 1 getting married with accused No. 2, rather they obtained this information from other sources. The complainant has also admitted in her cross-examination that she cannot place on record any proof of marriage between both the accused persons. Neither any evidence has come up on record as to whether the marriage of accused persons took place in some temple or otherwise. The panchayati settlement relied upon by the complainant Ex. CW1/D-Mark A/3 is photocopy of the same and the original has not been produced by the complainant and neither any attesting witness of the compromise has been examined by complainant and in these circumstances, said compromise does not stand to be proved. Even otherwise, if said compromise is read as it is in the evidence of complainant, then also it does not mean that the marriage between the accused No. 1 and 2 stands to be proved because, mere some admission by accused No. 1 and 2 in some compromise cannot prove the factum of solemnization of marriage between them because to prove the ingredients of Section 494, burden will lie upon the prosecution/complainant to have produced sufficient evidence on record and by leading cogent evidence to show that marriage has been solemnized between the accused persons as per Hindu law, because they are Hindus by religions and marriage was performed with proper religious ceremonies. In the entire complaint, not even a single witness has been examined by complainant to show that the*

*marriage between the accused No. 1 and 2 took place by following religious ceremonies i.e. Sapatpadi etc., as provided under Hindu Law or prevailing customs in the community and accordingly, this Court comes to the conclusion that the complainant has miserably failed to prove the status of accused Nos. 1 and 2 as husband and wife and accordingly, their guilt does not stand to be proved.*

*13. Further, learned counsel for the accused has relied upon the Judgment in Anand Parkash's case (supra), wherein it has been held that marriage under Section 494 IPC means valid marriage and merely living as husband and wife before the society does not confer the status of husband and wife unless it was shown that the accused persons were married according to proper religious ceremonies. In the instant case also, offence under Section 494 IPC is not made out due to lacking of proper religious ceremonies.*

*14. As far as role of accused Nos. 3 and 4 is concerned, since main offence of bigamy has not been proved by the complainant, accordingly offence under Section 120-B IPC to commit such kind of offence also does not stand to be proved. In these circumstances, all the accused persons are acquitted of the charge framed against them. Their bail bonds stand discharged. Superdginama, if any for all purposes stands discharged. File after needful be consigned to the record room.”*

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***

***vs. State of Karnataka*** 2014(2) RCR (Criminal) 507 has held as under:

***“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court***

*should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.*

*11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”*

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu v. State; [AIR 1954 SC 1], Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637], Atley v. State of U.P.; [AIR 1955 SC 807], Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217], Balbir Singh v. State of Punjab; [AIR 1957 SC 216], M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200], Noor Khan v. State of Rajasthan; [AIR 1964 SC 286], Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450], Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v.*

*State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R.(Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R. (Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R. (Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R.(Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such*

*conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."*

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, application for leave to appeal is dismissed on merit.

**May 08, 2015.**  
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**(PARAMJEET SINGH)**  
**JUDGE**