

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-225-MA-2016 (O&M)

Date of decision: 02.03.2016

Maya Devi

..... Applicant

Versus

Smt. Savita and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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. Sandeep Singh Sangwan, Advocate
for the applicant.

RAMENDRA JAIN, J.

CRM-4191-2016

Sufficient cause has been shown to condone the delay in filing the application for grant of special leave to appeal.

Therefore, the application is accepted. The delay of 118 days in filing the accompanying application under Section 378 (4) Cr.P.C. is condoned.

CRM-A-225-MA-2016

The applicant by way of a private complaint prosecuted the respondents under Sections 406/418/419/420/465/467/468/471 and 120-B of the Indian Penal Code (IPC) with the allegations that they after the

death of her son Mandeep in collusion with each other got transferred his motor-cycle in the name of respondent No. 2-Sunil by preparing his false and forged affidavit.

2. It was alleged that though respondent No. 1 was married with one Bijender of village Baloda, District Jhunjhunu (Rajathan) since the year 1996, but was having illicit relations with respondent No. 2. They both hatched a conspiracy. Pursuant thereto, respondent No. 1 started living with her unmarried son Mandeep (since deceased) as his wife without getting divorce from her earlier husband. During this period, both the respondents kept on maintaining illicit relations with each other. However, when Mandeep (son of the applicant) came to know about the earlier marriage of respondent No. 1 and her illicit relations with respondent No. 2, he went under depression. Finally, apprehending his insult, he committed suicide. He was having a motorcycle. After his death, both the respondents got transferred the same by preparing a forged and false affidavit purported to be that of her deceased son Mandeep.

3. After recording the evidence and hearing learned counsel for both the sides, the learned trial Court dismissed the complaint vide impugned judgment dated 27.05.2015.

4. Being not satisfied, the applicant has filed the present application under Section 378 (4) Cr.P.C. seeking leave to file accompanying appeal against the impugned judgment.

5. Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. It was well

proved on the record that motorcycle of deceased Mandeep was transferred in the name of respondent No. 2 after his death on 05.08.2011 by preparing a forged affidavit dated 20.07.2012 (Ex. PW-3/A) purported to be executed and signed by the deceased. The learned trial has failed to appreciate that a dead person cannot execute an affidavit. The learned trial Court by considering this aspect of the case ought to have convicted both the respondents.

6. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant, we find the instant application completely devoid of any merit for the reasons to follow.

7. The learned trial Court has acquitted both the respondents by observing as under:-

“Apart from this, during the arguments, it has also come to the knowledge of this court that after the death of said Mandeep, the whole dowry articles were handed over to the accused no. 1 by the complainant side including the said motorcycle regarding which the affidavit Ex. PW-3/A was allegedly executed by accused No. 1 and when it is proved that all the articles including the motorcycle was handed over to the family of the accused no. 1, then it is clear that the complainant or her deceased son had no right of any kind in the same as the same had been given to the accused no. 1 in her marriage by her parents, but the registration of it was got conducted in the name of said

Mandeep but the actual payment was given by the parents and family members of the accused no. 1. Firstly when it is proved that the motorcycle belongs to the accused no. 1 or her family members, then in that case, no offence under Section 406 IPC is made out as a owner cannot commit the breach of trust of his own property and secondly when the said motorcycle was in possession of the whole family of accused no. 1, then how it can be deduced that it is only the accused no. 1 who had executed the alleged false affidavit despite the fact that there are various family members and acquaintance of the accused no. 1. Documents Ex. D1 to Ex. D8 were presented by the accused in their defence and through all these documents, it is clear that there are various litigation between the complainant and accused No. 1 and from the said litigation, it is clear that the complainant wants to take all the benefits of accused no. 1 which she is entitled to get on the death of her husband namely Mandeep. These documents also creates the doubt in the mind of the court to the effect that the complainant wants to take the benefits which should be gone in favour of the accused no. 1 and when there was a dispute regarding those benefits, then all the aforesaid cases i.e. Ex. D1 to Ex. D8 and the present

complaint was filed by the complainant to pressurize and humiliate the accused no. 1 who had already lost her husband at the mere age of 20-21 years.

8. Learned counsel for the applicant has failed to put any dent in the above observation of the learned trial Court. We also find no illegality or perversity in the above findings, more particularly, when the applicant has miserably failed to prove its case. Even there is no whisper that the son of the applicant had committed suicide on coming to know of alleged illicit relations in between both the respondents. The applicant-complainant could not lead any specific evidence that who and when the affidavit in question Ex. PW-3/A was got executed and further that respondents had any involvement in the death of her son Mandeep.

9. In view of the above discussion, respondents have rightly been acquitted by the learned trial Court. The instant application being completely devoid of any merit is, therefore, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 02, 2016
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