

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. A-1582-MA of 2015 (O&M)
Date of decision: 25.02.2016**

Smt. Suman

..Applicant

Versus

Mukesh

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. S.N. Pillania, Advocate
for the applicant.

Daya Chaudhary, J.

CRM-30893 of 2015

There is delay of 72 days in filing the application for granting leave to appeal against judgment of acquittal passed by the trial Court.

Application is allowed as per the grounds mentioned therein and delay of 72 days in filing the application is condoned.

CRM-A-1582-MA of 2015

The present application has been filed under Section 378(4) of the Code of Criminal Procedure for granting leave to appeal against judgment of acquittal dated 03.04.2015 passed by the Chief Judicial Magistrate, Fatehabad, whereby, complaint filed by the

applicant under Sections 498-A, 323, 406 and 506 of Indian Penal Code (for short 'IPC'), has been dismissed and the accused-respondent has been acquitted of the charge.

Briefly, the facts of the case as per prosecution version are that marriage of applicant was solemnized with the respondent on 27.07.2007. The applicant was harassed by the respondent for giving insufficient dowry. She filed a complaint wherein notice was issued to respondent. Thereafter, preliminary evidence was recorded before the trial Court. The complainant reiterated the allegations made in the complaint while appearing as CW1. A report was also filed by local Police under Section 202 Cr.P.C. The respondent was summoned in that complaint to face trial for offence punishable under Sections 498-A and 323 IPC. However, the complaint was dismissed qua the allegations levelled under Section 506 IPC vide order dated 09.06.2014. In pre-charge evidence, the complainant again reiterated the same allegations as mentioned in the complaint. She also tendered a list of dowry articles. One Inder Raj also appeared as CW2 as he was witness to the marriage between the parties. By finding a prima facie case for offence punishable under Sections 498-A and 323 IPC, charge was framed against the accused-respondent but he pleaded not guilty and claimed regular trial. After framing of charge, the evidence of the complainant was closed on 23.01.2015 by order of the Court as the complainant failed to lead any fresh evidence in spite of giving sufficient opportunities.

Statement of accused under Section 313 Cr.P.C. was recorded wherein he denied all the allegations and opted to lead evidence in defence.

On perusal of evidence lead by both the parties, the trial Court acquitted the accused-respondent of the charge vide judgment dated 03.04.2015.

Learned counsel for the applicant submits that the charges were duly proved against the accused-respondent but still he has been acquitted of the charge. Specific allegations were there for demand of dowry and harassment but still the same have not been appreciated by the trial Court. Not only the complainant herself but CW2-Inder Raj has also proved on record that there was a quarrel between the applicant and the respondent. Several panchayats were also convened in this regard and CW2-Inder Raj was also a participant in those panchayats. The judgment of acquittal is not based on proper appreciation of evidence whereas specific allegations of demand of motorcycle and of ₹50,000/- in cash were alleged in the complaint and the same were proved by the complainant as well as CW2-Inder Raj in their statements.

Heard arguments of learned counsel for the applicant and have also perused the judgment of acquittal passed by the trial Court as well as other documents available on the file.

Admittedly, the marriage between the applicant and respondent was solemnized on 27.07.2007. Only after 2 days of

marriage, when the complainant went to her parental house, the accused-respondent complained to her parents that they had not given motorcycle in marriage. It has also come on record that marriage of sister of the complainant was also solemnized with brother of the accused. Even her sister was alleged to be given beatings and ousted from her matrimonial house. In support of complaint filed by the applicant, she appeared as CW1 and reiterated the same allegations as have been mentioned in the complaint. One Inder Raj, who is husband of sister of her mother, was also examined as CW2. He has stated in his statement that he attended the marriage and was well aware with the status of their marriage. In cross-examination of the complainant, she stated that for a period of 2 years even after birth of her daughter, she was being kept properly and there was no demand of dowry. As per statement of the complainant, she was harassed by the respondent for demand of dowry but in cross-examination, she has categorically admitted that no demand was ever raised for a period of 2 years. Neither any date of demand of dowry nor any specification regarding any dowry item was mentioned in the complaint. Even nothing has been said as to when the beatings were given. Moreover, no medical evidence is there to support the allegations of giving beatings. Simply it has been stated that the accused used to taunt her regarding her dark complexion and for giving birth to a daughter. The complaint qua Sections 406 and 506 IPC was dismissed vide order dated 09.06.2014. From the statements

of the complainant as well as CW2-Inder Raj, neither any demand of dowry nor harassment is proved. By appreciating the evidence of both sides, the trial Court acquitted the accused-respondent of the charge.

On perusal of statements of CW1 as well as CW2 and the judgment of acquittal, it appears that there is no reason to interfere as neither any demand nor any entrustment of dowry or causing any injury to the applicant has been proved. Moreover, a limited scope is there to interfere with the judgment of acquittal unless it is proved that the findings recorded by the trial Court is contrary to the evidence or the trial Court has not appreciated the evidence available on record. In case, two views are possible, one view accepted by the trial Court if goes in favour of the accused then the benefit goes to the accused.

Hence, there is no merit in the contentions raised by learned counsel for the applicant. Therefore, the application granting leave to appeal against judgment of acquittal is dismissed.

25.02.2016
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(DAYA CHAUDHARY)
JUDGE