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

+ CRL.REV.P. 522/2014

SMT SUSHILA DEVI & ANR

..... Petitioners

Through: Mr.Jawahar Narang , Advocate

versus

SHYAM SUNDER & ORS

..... Respondents

Through: Mr.Kewal Singh Ahuja, APP for the
State/R-6.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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19.01.2016

CRL.M.A.13552/2014

For the reasons stated in the application, the delay in re-filing of the petition is condoned.

The application stands disposed of.

CRL.M.A.13551/2014

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The application stands disposed of.

CRL.REV.P. 522/2014

1. The petitioner No.1 Smt.Sushila Devi is wife of respondent No.1 and petitioner No.2 namely Ramphal is brother of petitioner no.1. The case FIR No.198/1997 under Sections 498-A/406 IPC PS Pahari, Tehsil Pataudi, Distt. Gurgaon has been registered on the basis of complaint made by

Sh.Ramphal, brother of petitioner No.1. In the said FIR, only respondent No.1 Sh.Shyam Sunder – husband of petitioner No.1 was made an accused.

2. The respondent No.1 was charged for committing the offence punishable under Sections 498-A/406 IPC. After trial, he was acquitted by the learned Trial Court.

3. Mr.Jawahar Narang, Advocate appearing on behalf of the petitioner has referred to Question No.2 put to the respondent No.1/accused Shyam Sunder during recording his statement under Section 313 Cr.P.C. as well as the answer given by him to the said question and contended that on the basis of answer given by respondent No.1/accused, a case under Section 406 IPC stands proved against him, hence he should have been convicted for the said offence. Question No.2 put to respondent No.1 and the answer given by him is extracted as under:-

“Q2. It is further in evidence against you that you were entrusted with Istridhan of complainant which you have dishonestly misappropriated the same and did not return it to the complainant despite her demand to return the same. She also made a complaint to CAW Cell which is Ex.PW2/A, What have you to say?

A. Some are lying in my house. I have attended the proceedings at CAW Cell.”

4. Learned counsel for the petitioner has argued that in view of the answer given by the respondent No.1/accused, learned Trial Court could not have acquitted him of the charge under Section 406 IPC hence the impugned order needs to be set aside.

5. I have considered the submissions made on behalf of the petitioner and perused the Trial Court Record. The learned Trial Court has acquitted the respondent no.1 after considering the statement of both the petitioners.

The respondent No.1 has been acquitted for the reasons that the testimony of both the material witnesses i.e. his wife and brother-in-law, who are the petitioners before this Court, was found to be inconsistent on the issue of dowry demand. There was no evidence of entrustment of istridhan by the petitioners. Further the jewellery was stated to have been given by petitioner No.1 to the mother of the respondent No.1 who was not an accused before the learned Trial Court. Hence there was no material against the respondent No.1 to convict him for the offences punishable under Sections 406 IPC.

6. While dealing with the allegations made against the respondent No.1 for committing the offence under Section 498-A IPC, learned Trial Court has referred to the testimony of the petitioner No.1 (wife of respondent No.1/accused) which disclosed that in fact the real problem with the respondent No.1 was due to his extra-marital affairs and re-marriage as well inability of the petitioner No.1 to conceive. Learned Trial Court has specifically recorded that there was no material to prove on record any dowry demand and there were contradictions in the statement of PW-1& PW-2 regarding the alleged demand of ₹ 30,000/-. As per petitioner No.1, only ₹ 10,000/- was given by her father to the respondent No.1 for getting some job and such help does not fall in the category of ‘dowry demand’.

7. On the issue of entrustment, in para Nos.19 & 20, learned Trial Court has given the following reasons:-

“19. In the present case , however, it was alleged in the testimony of PW3 that after about four years of her marriage, all the jewellery articles were taken by mother in law as she thought that she should not wear the jewellery daily. But the mother in law is not the accused or was never summoned in the present case. Moreover, no specific time or incident has been mentioned. It

has not been stated that on which date, time and occasion specific demands for entrustment of any dowry article was made. Complainant has not specified any date of incident, manner of beating, the role played by the accused, at any place of her complaint. No specific date of demand of return has been mentioned. However, after filing of the present complaint reconciliation proceedings were started. Presuming that demand for returning of dowry articles was made at that time. Then, in this regard, PW6 who was the IO in that case has deposed that she denied for the same and submitted that she wanted to live with the accused that again goes to show that these articles were not demanded back.

20. Therefore, in view of the aforesaid discussion offence u/s. 406 IPC is not proved against the accused Shyam Sunder as prosecution has even failed to prove entrustment of any specific article, leave aside the time, date and manner of entrustment.”

8. Legal position is well settled that in a criminal case the guilt has to be proved by the prosecution beyond reasonable doubts. While answering question No.2 extracted above, the limited answer given by the respondent No.1 is that some articles are lying in his house. That one line answer to question No.2 in itself is not sufficient to satisfy the ingredients of Section 406 IPC. In the absence of any evidence led by the complainant or his sister, who was married to the respondent No.1 herein regarding entrustment of istridhan to her husband, the demand by her to return and thereafter his failure to return, learned Trial Court had rightly acquitted the respondent No.1 for the offence complained of.

9. The law with regard to the grant of leave is well settled. Leave to appeal can be granted where it is shown that the conclusions arrived at by the trial court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain petition merely because another

view is possible or that another view is more plausible. In *Arulvelu and Anr. Vs. State represented by the Public Prosecutor and Anr. 2009 (10) SCC 2006*, while referring with approval the earlier judgment in *Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450*, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an appeal against acquittal. The principles are:-

- ‘1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court’s acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellant court can re-appreciate the entire evidence on record. It can review the trial court’s conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*
- 4. The appellate court may only overrule or otherwise disturb the trial court’s acquittal if it has ‘very substantial and compelling reasons’ for doing so.*
- 5. If two reasonable or possible views can be reached – one that leads to acquittal, the other to conviction – the High Courts/appellate courts must rule in favour of the accused.*
- 6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside*

because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law.'

10. In the case reported as ***Ramanand Yadav v. Prabhunath Jha 2004 Cri LP 640***, the Supreme Court has observed as under:-

"There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

11. Reverting to the facts of the present case, neither in the FIR nor during the course of evidence, any material had come before the learned Trial Court to prove the offence punishable under Section 406 IPC against respondent No.1. Legal position is well settled that prosecution has to prove its case beyond reasonable doubt. Thus, mere answer by respondent No.1/accused to the effect that some articles are lying in his house, is not

sufficient to prove either the entrustment or failure of the accused to return the same on demand. The finding by the learned Trial Court based on the statement of the Investigating Officer that the petitioner No.1 refused to take back the articles and expressed her desire to live with the respondent No.1/accused was sufficient to show that these articles were never demanded back by her, is another reason to hold that no case under Section 406 IPC was proved against respondent No.1/accused.

12. The revision petition is dismissed,

13. Trial Court Record be sent back alongwith copy of this order.

PRATIBHA RANI, J.

JANUARY 19, 2016

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