

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

CRM-A-1117-MA-2014 (O&M)

Date of decision : 08.11.2017

Kulwinder Kaur

...Applicant

Versus

Jaswinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the applicant.

Mr. Himanshu Monga, Advocate,
for the respondents.

JITENDRA CHAUHAN, J.

The applicant seeks special leave to appeal against judgment dated 12.12.2013 passed by learned Judicial Magistrate 1st Class, Hoshiarpur (for short, 'the trial Court'), thereby acquitting the accused-respondents in a criminal complaint under Sections 498-A and 406 of the Indian Penal Code (for short, 'the IPC').

It is the case of the applicant/complainant that her marriage was solemnized with accused/respondent No.1, Jaswinder Singh, on 11.04.2004. Sufficient dowry had been given to the accused/respondents in the marriage. One male child was born out of the wedlock. After a few months of the marriage, the complainant and accused No.1-husband shifted to Chandigarh as the latter was employed there. However, from the very beginning, the accused and their relatives were not satisfied with the dowry given in the

marriage and used to taunt her. The accused demanded Rupees one lakh cash from the complainant. In the month of October, 2007, the complainant and her minor son were thrown out of the matrimonial home by the accused. Efforts were made to reconcile the matter but to no avail. Prior to this incident, the complainant was subjected to maltreatment by the accused persons on 25.06.2007 but a compromise was effected.

In order to prove her case, the complainant in preliminary evidence, examined Charanjit Singh as CW1; herself as CW2; Raman Kumar as CW3; and Gurdev Singh as CW4. Thereafter, the complainant closed her preliminary evidence vide separate statement recorded on 03.03.2010.

On finding a prima facie case, all the accused were summoned to face trial under Sections 498-A and 406 IPC vide order dated 02.06.2010. However, complaint against accused No.3, Satwinder Singh, was dismissed as withdrawn on 15.09.2012.

In the post-charge evidence, the complainant chose not to re-examine any of the CWs and accordingly, the witnesses were cross-examined.

The statements of the accused under Section 313 Cr.P.C. were recorded wherein all incriminating evidence was put to them to which they denied and pleaded not guilty. It was pleaded that they were innocent and falsely implicated in the present case. They specifically denied of having made any demand of dowry and having maltreated the complainant. In defence, the accused examined HC Tarsem Singh as DW1 and tendered statement of Kulwinder Kaur, complainant as Ex.D1; statement of Jaswinder

Singh, accused as Ex.D2; photocopy of application under Section 125 Cr.P.C. as Ex.D3; and photocopy of request No.4566 dated 18.12.2007 with report as Ex.DW1/A.

After hearing learned counsel for the parties and appreciating the evidence on record, learned trial Court dismissed the complaint qua respondent Nos.1 and 2 and acquitted them of the charges framed against them.

Hence the instant application.

From the perusal of the case file, it emerges that the complainant resided with accused No.1-husband, away from respondent No.2-mother-in-law, in a rented accommodation at Chandigarh for a period of about three years. During this period, a male child was also born out of the wedlock. The complainant has admitted that she remained on visiting terms with her parents during the period in question and she never filed any complaint whatsoever regarding alleged demand of dowry. As regards the alleged incident of October, 2007 is concerned, there is no medical evidence in support of the assertions raised that she was beaten to such an extent as would require medical treatment. She has herself admitted that after the incident, she came back to her parental home after boarding a bus. As far as the allegations of entrustment of dowry articles are concerned, the complainant in her cross-examination of her pre-charge evidence, was unable to produce any receipts with respect to the list of dowry articles, Mark A. She has also admitted that till the time she remained in the company of her husband, all the expenses were borne by him. She also admitted that they have now divorced and her husband is still paying the

maintenance. Similarly, CW-4, Gurdev Singh, brother of the complainant admitted that all the expenditures of his sister were borne by accused No.1-husband. He also admitted that in fact, one complaint had been moved by accused No.1 against him. Nothing substantial could be enunciated from the testimonies of CW-1 and CW-3 either. Therefore, in the absence of any cogent and conclusive proof against the accused-respondents, the learned trial Court was well within its wisdom to acquit them of the charges framed against them.

Otherwise also, it is a settled law as laid down in ***C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750*** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption of innocence; and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In ***State of Rajasthan vs Shera Ram @ Vishnu Dutta, (2012) 1 SCC 602***, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be

adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

In view of the above, this Court is of the considered opinion that the findings recorded by the trial Court are based on correct appreciation of facts and evidence on record and no illegality or perversity can be said to have been committed by it. The complainant has miserably failed to prove her case against the accused-respondents beyond a shadow of reasonable doubt.

The instant application suffers from delay of 118 days which has also not been explained sufficiently.

Accordingly, the present application is dismissed on the ground of delay as well as on merits and the impugned judgment rendered by the trial Court is affirmed.

Special leave declined.

08.11.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No