

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

CRM-A-1352-MA of 2014 (O&M)

Date of Decision: 23.10.2017.

Mamtesh

... Applicant/Appellant

Versus

Dhanraj

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : None for the applicant/appellant.

JITENDRA CHAUHAN.J.(ORAL)

This is an application under Section 378(4) Cr.P.C seeking special leave to appeal against the judgment of acquittal dated 28.05.2014 passed by Judicial Magistrate First Class, Karnal vide which the respondent was acquitted in complaint case titled as “Mamtesh vs. Dhanraj and others” under Sections 323, 498-A, 406 and 506 IPC.

Brief facts of the case as mentioned in the judgment passed by the trial Court are as under:-

“Facts in brief, as set out in the complaint are that the marriage of the complainant was solemnized with accused Dhanraj on 8.12.2001 and out of this wedlock, two children were born. It is averred that though the parents of the complainant had given sufficient dowry articles in the marriage and had

spent an amount of more than Rs.2,00,000/-, but the accused and his family members were not satisfied with the quality and quantity of the dowry brought by her. After solemnization of her marriage, accused Dhanraj and his family members started taunting and maltreating her for bringing inadequate dowry. Accused Dhanraj often used to beat the complainant at the instigation of his family members. The complainant narrated all the incidents to her parents, who persuaded her that all things would go normal with the passage of time. However, the accused and his family members did not mend their ways. It is alleged that even during her pregnancy, the complainant was not provided with proper treatment and diet. All the expenses on account of birth of the children were borne by the father of the complainant. It is further alleged that number of panchayats were convened where the accused promised to mend their ways, but each time, they did not kept their promise and after keeping the complainant nicely for few days, started torturing and harassing her. In the month of July 2009, the accused persons raised the demand of motorcycle and colour television and on refusal,

the complainant was given merciless beatings.

Ultimately she was turned out from the matrimonial home along with minor children and since then is residing at the mercy of her parents. The complainant also reported the matter to the police, but no action was taken against the accused, hence, the present complaint. ”

After holding trial, the learned trial Court observed that in the entire version of the complainant as contained in the complaint Ex.C1 as well as in the deposition of the complainant's witnesses, there is no mention of any specific allegations of demand of dowry or acts of cruelty against the accused-husband. Neither in the complaint nor in her deposition, the complainant has given any date, time or place of the alleged demand of dowry and acts of mental/physical cruelty allegedly committed by the accused. The allegations levelled against the accused are general in nature. It has been further observed that as regards the charges under Section 323 and 506 of IPC, there is nothing on record which may substantiate such charges against the accused. No specific date, time and place of alleged physical torture has been proved on record. Further though the complainant (CW-1) specifically stated in her cross-examination that on account of the beatings given by the accused-husband, she got herself medically examined and that all the medico-legal reports have

been placed on the file, but in-fact there is no such report. CW-3 (brother of the complainant) categorically stated in his cross-examination that no such medical examination of the complainant was got conducted. This clearly falsifies the version of the complainant. Further, none of the witnesses uttered anything regarding threat to life allegedly extended by the accused. Therefore, no offence under Section 323 or 506 IPC is made out against the accused. It has been further observed that as regards the offence punishable under Section 498-A of IPC, the complainant has failed to prove that the accused committed cruelty against her within the meaning of the term statutorily provided under Section 498-A of IPC. There is lack of cogent and convincing evidence on record to support the allegations of alleged demand of dowry or entrustment of dowry articles. Even in the deposition of the complainant (CW1) there is no specific allegation against the accused/husband on this account. In her cross-examination she has stated that demand of motor-cycle was made on 10.7.2009 and in the same breath she has stated that the accused started maltreating her after 2-3 months of the marriage.

There is no representation on behalf of the applicant/appellant.

Perused.

The evidence on record is indeed not sufficient to

bring home the guilt to the respondent. Mere allegations unsupported by evidence have been rightly discarded by the learned trial Court. The complainant-applicant has examined CW-2 father and CW-5 brother who deposed that they could not tell any date, time and place when the alleged demand of motor cycle was made by the accused. It has been alleged that the accused started torturing the complainant on account of bringing less dowry immediately after the marriage but raised demand for motorcycle only after about eight years of the marriage. This seems to be improbable. The present complaint was filed after nine years of marriage. No complaint to any authority prior thereto was made by the complainant. This being so, this Court finds itself in agreement with the view taken by the trial Court. Further, there is an unexplained and inordinate delay of 22 days in filing the application seeking special leave to appeal. No cogent reason has been cited for delayed filing of application.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (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 in his favour; first the 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.

Consequently, the special leave to appeal is declined
and the application for condonation of delay is also dismissed.

23.10.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No