

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

CRM-A-757-MA-2016 (O&M)
Date of decision : 05.12.2017

Anuradha Joshi

...Applicant

Versus

Gauri Shankar Kalia and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Malhar Singh Dhami, Advocate,
for the applicant.

JITENDRA CHAUHAN, J.

The applicant seeks special leave to appeal against judgment dated 16.02.2016 passed by the learned Sub-Divisional Judicial Magistrate, Balachaur (S.B.S. Nagar) (for short, 'the trial Court'), whereby, the accused-respondents have been acquitted in a criminal complaint under Sections 498-A, 406 and 323 of the Indian Penal Code (for short, 'the IPC').

It is the case of the applicant/complainant, her marriage was solemnized with accused/respondent No.1, Gauri Shankar Kalia, on 28.02.2001. Two children were born out of the wedlock. Sufficient dowry had been given to the accused/respondents at the time of marriage. However, the respondents started demanding more dowry and on the pretext thereof, the complainant was subjected to continuous harassment and maltreatment at the hands of the accused/respondents. Ultimately, accused-respondent No.1 threw her out of the matrimonial home. The parents of the complainant convened Panchayats and the complainant was rehabilitated,

but the conditions did not improve. In May, 2011, she was attacked by the respondents and again thrown out of the matrimonial home. She was removed to the Civil Hospital, Balachaur where she was medically examined. Rapat No.16 dated 14.05.2011 was also recorded at P.S. Nawanshahr.

After hearing learned counsel for the parties and appreciating the evidence on record, learned trial Court dismissed the complaint and acquitted the accused-respondents of the charges framed against them after holding that the complainant failed to prove on record by leading cogent evidence that during the subsistence of marriage of Anuradha Joshi and Gauri Shankar, the alleged demand of dowry was raised by the accused on any specific date. It was further held that the complainant also failed to prove that she was ever subjected to physical cruelty so as to bring home the charge under Section 498-A IPC.

Hence the instant application.

From the perusal of the case file, it emerges that the allegations levelled in the complaint are vague and lack specificity. The complainant while appearing as CW1 has categorically deposed in her cross-examination that she does not remember the date or month when the alleged Panchayats were convened on earlier occasions. She was also not aware of the dates on which the accused allegedly demanded money. She also admitted to have stayed happily along with the accused-husband at Manila, Philippines for a considerable time. The complainant has stated that she reported the matter with regard to giving her beatings on 12.05.2011 to the Sarpanch, however, she did not examine the said Sarpanch to prove this fact. The medical

evidence in the shape of MLR of the complainant, Ex.C2, which clearly shows that there were only abrasions, does not corroborate the ocular version that she had suffered injuries, including on the head, with blunt weapon. Further, the complainant has categorically stated that her brother accompanied her to the hospital, however, the said fact has been denied by her brother, Vikas Joshi, CW-2. The alleged incident of bearing is dated 12.05.2011, the DDR Ex.C4 was recorded on 14.05.2011, whereas, the instant complaint was filed on 27.07.2011, after a lapse of more than two months. No explanation has come forth to explain this inordinate delay. As far as the pendency of civil litigation between accused-respondent Gauri Shankar and Vikas Joshi, CW2, the brother of the complainant is concerned, the same stood culminated against the latter vide judgment Ex.D1. The plea of the defence that the present complaint is a counter-blast to the civil litigation appears to be probable.

It is a settled law as has been held 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 complainant has miserably failed to prove on record the charges framed against the accused and therefore, 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.

Accordingly, the present application is dismissed and the impugned judgment rendered by the trial Court is affirmed.

Special leave declined.

05.12.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No