

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-797-MA-2015
Date of decision-28.11.2017

Sukhraj Kaur

...Applicant

Vs.

Jagir Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rahul Bhargava, Advocate,
for the applicant-appellant.

JITENDRA CHAUHAN, J.

The applicant seeks special leave to appeal against judgment dated 19.11.2014, passed by learned Judicial Magistrate 1st Class, Amritsar (for short, 'the trial Court'), thereby acquitting the accused-respondents in a criminal complaint filed under Section 494 read with Section 149 of the Indian Penal Code (for short, 'the IPC').

Briefly stated facts of the present case, as noticed in the impugned judgment, are reproduced as under:-

“2. Brief facts of the present case are that the complainant was married with the accused no.1 according to Sikh religious rites and rituals on 13.2.1998 at Amritsar. Complainant and accused no.1 lived and cohabited together as husband and wife and out of this wedlock one male child namely Harpreet Singh was born

who is under the lawful custody of complainant. From the very inception of the marriage, accused no.1 started maltreating and harassing complainant on ground of bringing insufficient dowry and ultimately turned her out from matrimonial house on 23.5.1999. Accused no.1 then filed a divorce petition against complainant in the court of Shri M.S. Randhawa, the then Additional District Judge, Amritsar and complainant also filed a petition under Section 125 Cr.P.C against the accused no.1. Complainant and her minor son were awarded maintenance to the tune of Rs.1050/- per month. Divorce petition was dismissed. Accused no.1 then filed an appeal before the Hon'ble Punjab and Haryana High Court, Chandigarh which was also dismissed. Complainant also filed an application for restoration of case against accused no.1 to 3 under Section 406/498-A IPC. Accused no.1 to 3 were arrested and Ld. Judicial Magistrate Ist class awarded rigorous imprisonment for one year to all the accused with fine. Accused no.1 to 3 then filed an appeal against the conviction which was also dismissed. On or about 22.6.07, complainant came to know from Manjit Kaur and Jasbir Singh that accused no.1 had married again during the life time of complainant with accused no.4. On enquiries, it transpired that accused no.1 infact has remarried with accused no.4 on 11.11.2006 at Gurdwara Chak Mukand Tehsil and District Amritsar and marriage ceremony was performed by Baldev Singh granthi of said Gurdwara by way of Anand karaj. Marriage of accused no.4 was performed by parents of accused no.1 to 3. At the time of marriage ceremony, Anoop Singh was also present and he also told parents and sisters of accused no.4 i.e

accused no.5 to 7 and sisters and brother in laws of accused no.1 who were also present there that accused no.1 had already married with complainant but despite that parents and sister of accused no.4 have married accused no.4 with accused no.1. After solemnization of marriage, accused no.1 and 4 started living together as husband and wife at village Rajatal, Tehsil and District Amritsar. Accused no.4 became pregnant also from the loins of accused no.1 but she was got aborted from some private nursing home by accused no.1. Accused no 4 again gave birth to a female but she was also done to death by accused no.1 after one month from the date of birth. As accused no.1 and 4 are living as husband wife and accused no.1 has married again in life time of complainant, hence the present complaint.”

The accused were summoned under Sections 494 IPC read with Section 149 IPC after holding preliminary enquiry. The complainant led pre-charge evidence by examining Manjit Kaur as CW1; again Kuldeep Singh as CW1; Anoop Singh as CW2; again Poonam Tara as CW4 and herself as CW4.

The accused were charged under Section 494 IPC read with Section 149 IPC to which they pleaded not guilty and claimed trial.

In her post-charge evidence, the complainant examined Manjit Kaur as CW1; Anoop Singh as CW3 and herself as CW4-A.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating material appearing against them and pleaded innocence. However, they did not lead any evidence in defence.

Learned trial Court, after appreciating the evidence available on record, convicted Paramjit Singh, co-accused/husband of the complainant, whereas, the remaining accused-respondents were acquitted of the charges framed against them.

It is contended that the learned trial Court, while rightly convicting co-accused husband of the complainant, namely, Paramjit Singh, fell into error in acquitting the co-accused respondents without appreciating the evidence brought on record in its right perspective. All the accused-respondents attended the marriage ceremony of co-accused husband knowing fully well that his first marriage with the complainant was still subsisting.

I have heard learned counsel for the applicant/appellant and perused the case file.

It is not in dispute that co-accused/husband of the petitioner, Paramjit Singh had solemnized second marriage with accused-respondent, Sukhwinder Kaur @ Rajji, respondent No.3 and was convicted under Section 494 IPC and sentenced to undergo RI for 01 year by the trial Court. However, as far as the present respondents are concerned, they have been rightly acquitted by the trial Court as except for the bald assertion that all the accused-respondents attended the second marriage ceremony of the co-accused/husband, there is not even an iota of evidence to show that they ever agreed to do any illegal act with common intention. Moreover, Section 494 IPC can be attracted only against the husband who has contracted second marriage during the subsistence of the first marriage.

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.

Therefore, this Court is of the considered opinion that the trial Court has rightly acquitted the accused-respondents of the sole charge framed against them under Section 494 IPC. There is no ground to interfere in the well-reasoned judgment passed by the trial Court, which is hereby affirmed.

The instant application also suffers from unexplained and inordinate delay of 80 days. There is no plausible ground to condone the delay. Accordingly, CRM-14933-2015 is hereby dismissed.

Consequently, the present application is dismissed on account of delay as well as on merits.

Special leave declined.

28.11.2017

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(JITENDRA CHAUHAN)
JUDGE

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