

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

CRM-A-962-MA-2017 (O&M)
Date of decision : 05.12.2017

Sumanjit Kaur

...Applicant

Versus

Kulwinder Singh @ Bhupinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. H.S. Mann, Advocate,
for the applicant.

JITENDRA CHAUHAN, J.

The applicant seeks special leave to appeal against judgment dated 02.03.2017, passed by learned Judicial Magistrate 1st Class, Mansa, (for short, 'the trial Court'), thereby acquitting the accused-respondent under Section 406 of the Indian Penal Code (for short, 'the IPC') (convicted under Section 498-A IPC) in a criminal complaint under Sections 498-A and 406 IPC.

It is the case of the applicant/complainant that her marriage was solemnized with the accused/respondent on 16.02.2008. At the time of marriage gold ornaments weighing 510 grams, costly electronic and household items were given in dowry. After some time of the marriage, the couple resided at Village Chottia and thereafter at Village Jaurkian, Mansa. A girl child was also born out of the wedlock. The accused-respondent started harassing the complainant for not giving birth to a male child. The accused-respondent also misappropriated the dowry articles i.e. gold and a car and did not return the same and thereafter, left the house. On

08.06.2011, there was Bhog ceremony of her mother-in-law. After the bhog ceremony, the accused/respondent was requested by the panchayat to accommodate the complainant and her minor daughter to which the accused refused. On 10.05.2011, the complainant moved an application to the SSP, Mansa for taking action against the accused but to no avail. Thus, the instant complaint.

After hearing learned counsel for the parties and appreciating the evidence on record, learned trial Court, while convicting the accused-respondent under Section 498-A IPC, acquitted him under Section 406 IPC by holding that the articles were lying in the Kothi at Mansa and thus, were in the possession of the complainant. No misappropriation could be attributed to the accused.

Hence the instant application.

In the instant case, the applicant-complainant is aggrieved against the judgment the acquittal of accused-respondent under Section 406 IPC. Before delving further, it would be apt to reproduce the relevant provisions, which are as under:-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

A plain reading of the above provisions would show that in order to bring home guilt under Section 406 IPC, the complainant was required to prove that the accused dishonestly misappropriated, converted or used the dowry articles entrusted to him for his personal use. While appearing as CW-1, the complainant deposed that her marriage was solemnized with Kulwinder Singh @ Bhupinder Singh on 16.02.2008. As per the demand of accused Kulwinder Singh, her parents had spent an amount of Rupees twenty two lakh on the marriage. A car was also booked by her father in his own name after paying a sum of Rupees seven lakh. After the marriage, the car was transferred in the name of accused- Kulwinder Singh. Apart from other household items, 51 tolas gold was also given. Two months after the marriage, father of the complainant arranged a rented accommodation at Mansa for them and after taking along with them all the jewellery and household items, the couple had shifted there. Thus, once the articles were in the custody of the complainant, the same cannot be said to have been misappropriated by the accused. The essential ingredient of the offence punishable under Section 406 IPC i.e. 'entrustment', is missing. Therefore, in the considered opinion of this Court, the accused has rightly been acquitted of the charge framed against him under Section 406 IPC.

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 feels that the complainant has miserably failed to prove on record that the offence under Section 406 IPC against the accused and therefore, the findings recorded by the trial Court in this regard 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 accordingly.

05.12.2017
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(JITENDRA CHAUHAN)
JUDGE

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