

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 40444 of 2012 (O&M)
Date of decision : 17.9.2018

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Dhirender Tyagi @ Ashu and others

.....Petitioners

vs.

Ram Singh Tyagi and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sanjiv Gupta, Advocate
for the petitioners.

Mr. Surender Saini, Advocate for respondent No.1.

Ms. Aditi Girdhar, Assistant Advocate General,
Haryana.

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H. S. Madaan, J.

Briefly stated, facts of the case are that Dhirender Tyagi @ Ashu, alongwith his co-accused faced trial by Additional Sessions Judge, Gurgaon, for offences under Sections 304-B, 406, 34 IPC, on the allegations that Swati d/o Ram Singh complainant was married with Dhirender Tyagi @ Ashu on 22.2.2002. However, after the marriage she was harassed, maltreated, tortured in connection with demand of dowry. The couple was blessed with two daughters. Fed

up with her such harassment and ill treatment at the hands of her husband and his family members, Swati committed suicide by hanging from a ceiling fan. It was within seven years of her marriage. However, vide the judgment in question by Additional Sessions Judge, Gurgaon, all the accused were acquitted of the charge framed against them.

The dowry articles of the deceased were released on superdari to her father, which left the husband and children of the deceased aggrieved and they have approached this Court by way of filing the present petition for issuance of direction to Ram Singh Tyagi, father of the deceased to return/handover the dowry articles/istridhan to the petitioners.

This petition is being resisted by respondent No.1.

I have heard learned counsel for the petitioners, learned counsel for respondent No. 1, as well as learned State counsel for Haryana, besides going through the record.

A perusal of the impugned order goes to show that petitioners had moved an application before the trial Court asking for similar relief. The application was disposed of by the trial Court/Additional Sessions Judge, Gurgaon, vide order dated 16.4.2011, observing that appeals against the judgment of acquittal passed by the trial Court, filed by the complainant Ram Singh Tyagi, father of the deceased, as well as by the State have been admitted for regular hearing by this Court. The order passed by the trial Court that it being so, no further order can be passed by the trial Court, since the appeal is nothing but continuity of trial, though at a different

level. Reliance has been placed upon authority *Salauddin Sarkar vs. State 1999 DLT 47 (Delhi)* and *Bhupinder Singh vs. State of Haryana 1988 (1) RCR (Criminal) 166 (P&H)*. As regards the observations have been made that appeal is nothing but continuity of trial, though at different level and that trial Court has no jurisdiction to review its order allowing superdari of its property during pendency of its proceedings. Therefore, it was held that during pendency of proceedings before this Court no further order touching the aspect of superdari be passed by the trial Court. Therefore, application was dismissed, which left the petitioners aggrieved and they have approached this Court.

Section 452 Cr.P.C. deals with order for disposal of property at conclusion of trial. It provides that when an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitle to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. It being so, the trial Court was required to pass order in that regard in the impugned judgment itself. In the judgment, it has been observed that case property/dowry articles be returned to lawful heirs of the deceased. Though this judgment has been challenged but there is nothing to show that the direction issued regarding disposal of the case property has been ordered to be stayed during the pendency of the appeal before this Court. As it comes out, such articles are already

on superdari with Ram Singh Tyagi, complainant, who happens to be father of the deceased, but release of articles on superdari is only a temporary arrangement, since the articles are to be released to the rightful owner and till such orders are passed, the temporary custody is to remain with the superdar.

Now the question that who are the rightful heirs of the deceased, is to be seen and determined by the trial Court. Petitioner Dhirender Tyagi @ Ashu, is accused of being responsible for dowry death of his deceased wife. Though he has been acquitted by the trial Court, the appeal filed by the complainant, as well as, by the State of Haryana are pending in this Court, which have been admitted for hearing. The other two petitioners, namely, Paurvika Tyagi and Lavnika, both minor daughters of the couple are residing with Dhirender Tyagi @ Ashu. On account of their minority, they cannot be expected to take charge of such istridhan articles. As a matter of fact such articles would remain in possession of Dhirender Tyagi @ Ashu, which is certainly not called for.

Under the circumstances, it would be proper and appropriate if decision of the appeals is awaited since if the judgment by the trial Court giving verdict of acquittal in favour of Dhirender Tyagi @ Ashu is affirmed, then he could certainly lay the claim for release of the articles. However, if the judgment is reversed, and he is convicted for the charge framed against him, his claim will come to an end or till the petitioners No. 2 and 3 attain majority, whichever is earlier and in that event on an application having been filed by the petitioners, the trial Court may pass an appropriate order thereon.

However, there is no ground to interfere with the order passed by the trial Court.

Counsel for the petitioner has placed reliance upon authorities *Sanjeev and others vs. Sher Singh 2010 (2) RCR (Criminal) 304*, *Kuljit Singh vs. Jasbir Singh 2002 (4) RCR (Criminal) 707* and *Rakesh Kumar @ Naresh Kumar vs. Prem Lal 1997 (4) RCR (Criminal) 258*, but those judgments are not applicable due to different facts and circumstances of the present case.

In view of the above discussion, the petition stands dismissed.

17.9.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No