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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 204/2020**

MANISHA GUPTA

..... Petitioner

Through: Mr Deepak Bansal, Advocate.
versus

STATE & ORS.

..... Respondents

Through: Ms Meenakshi Chauhan, APP for
State with SI Vikrant, PS Anand
Vihar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.03.2020

CRL.M.A. 4903/2020

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner has filed the present petition impugning a judgment dated 10.01.2020 (impugned order) passed by the learned ASJ, whereby the appeal preferred by the petitioner against the judgement dated 17.11.2018 passed by the learned MM (Mahila Court-02), Shahdara, Karkardooma Court was dismissed. By the said judgment dated 17.11.2018, the Trial Court acquitted respondent nos. 2 and 3 of the charge of committing offences punishable under Sections 498A/406/34 of the Indian Penal Code, 1860 (IPC).
4. The petitioner contends that the judgments dated 17.11.2018 and 10.01.2020 are based on conjectures and surmises and ought to be set aside by this Court. Further, the petitioner contends that the courts below have

erred in holding that the allegations levelled by the petitioner are vague and general in nature. The Courts erred in not convicting the accused based on the testimonies of the petitioner and her maternal uncle, which, the petitioner contends are unequivocal and cogent.

5. The petitioner and respondent no. 2 were married on 23.02.1995 as per Hindu rites. It is the petitioner's case that at the time of her marriage, sufficient dowry was given by her parents. However, respondent no. 2 and his family kept demanding further dowry and treated the petitioner with cruelty. On 13.07.2010, the petitioner lodged a complaint with the Crime Against Women (CAW) Cell, Krishna Nagar against respondent no. 2 and his family members. Since the matter could not be settled, she filed a complaint under Section 156 (3) of the Code of Criminal Procedure, 1973 (CrPC) which resulted in FIR No. 465/210, under Sections 498A/406/34 of the IPC and Section 4 of the Dowry Prohibition Act, 1961 being registered with PS Anand Vihar. Thereafter, a chargesheet under Sections 498A/406/34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 was filed before the Trial Court. The accused persons were summoned. During the pre-charge stage, one of the accused – Rama Murti Devi (the mother-in-law of the petitioner) expired and thus, proceedings *qua* her were dropped by an order dated 12.11.2014.

6. By an order dated 29.07.2017, charges under Sections 498A/406/34 of the IPC and Section 4 of the Dowry Prohibition Act, 1961 were framed against respondent no. 2. Further, charges under Sections 498A/406/34 of the IPC were framed against respondent no. 3 (the petitioners' brother-in-law). The petitioner's sister-in-law (Sushila Gupta) was discharged for want of sufficient evidence against her.

7. The accused pleaded not guilty and the matter was set down for trial. During the course of the trial, the prosecution examined seven witnesses. The defence chose not to lead any evidence.

8. By the impugned judgment dated 17.11.2018, the Trial Court acquitted respondent nos. 2 and 3 of the offences for which they were charged. The Trial Court found that the entire case of the prosecution rested on the testimonies of the complainant (petitioner herein) and her maternal uncle (Dinesh Kumar Jindal). The petitioner's father could not be examined since he expired before he could be examined and the petitioner's mother was not examined as she did not appear, even though numerous summons were served upon her.

9. The Trial Court held that the allegations regarding the demand of ₹3 lakhs as dowry appeared to be vague and ambiguous. The Trial Court reasoned that the petitioner had not provided any specifics, as to the roles of the various persons accused in the aforesaid demand of dowry, either in her complaint or testimony before the court. The petitioner had stated in her complaint that 80 *tolas* of gold and other jewellery items were given at the time of her marriage by her father and all the items were forcibly taken by respondent no. 2 and her mother-in-law (Ramamurti) in the month of June, 1995. However, in her reply to the notice given under Section 91 of the CrPC, she stated that all her jewellery was in the possession of her husband (respondent no. 2) till December, 1997. In her testimony, she stated that all her gold articles were forcibly taken by her mother-in-law, brother-in-law and husband. The Trial Court noticed that there was a material improvement in her narrative and the petitioner was improving her version to implicate each member of her husband's family.

10. The petitioner had also stated that in the month of December, 2009 respondent no. 2 took her to the bank and asked her to take out all the jewellery articles from the locker for the purpose of evaluation. The next day, the petitioner gave a diamond set worth ₹2 lakhs to her sister-in-law (*nanad*) but she had not returned the same to her. However, the Trial Court noted that the petitioner had not filed any bill or receipt in respect of the said *stridhan* (the aforesaid diamond set) despite such a demand being made by the Investigating Officer (IO). The Trial Court observed that the petitioner had not mentioned that the said diamond set was gifted to her by her parents at the time of her marriage. During her cross-examination, the petitioner stated that out of the 80 *tolas* of gold given to her by her parents, she only kept her *mangal sutra* in the locker. However, she changed her answer and stated that she kept the entire 80 *tolas* of gold in the locker. The Trial Court noted that the bank locker in which the petitioner kept her jewellery was last operated by the petitioner on 30.04.2008 and the same was not operated by the petitioner in the month of December, 2008. However, the prosecution did not lead any evidence to this effect.

11. Further, in her complaint, the petitioner had stated that her father had given her 80 *tolas* of gold at the time of her marriage. However, her uncle (PW3) testified that he and his brothers had given her two gold necklaces weighing 15 *tolas* and one gold *tagri* weighing 10 *tolas*. The prosecution did not produce a single bill, receipt or photograph to show that any such jewellery article was given in the petitioner's marriage by her father or her maternal uncle. The IO stated that despite him serving notices upon the petitioner to provide bills of the said dowry articles, the petitioner had not

done so.

12. The Trial Court also held that no reliance could be placed on the list of dowry articles furnished by the petitioner, since the same was prepared on 12.07.2010, that is, during the course of investigation and no document from the time of marriage was exhibited before the Trial Court. It was also noted that the IO had done nothing except record the statements of the petitioner and her close family members. He had not even enquired whether the petitioner or her family did, in fact, have the capacity to afford the aforesaid jewellery articles allegedly given as dowry.

13. The Trial Court also examined an allegation made by the petitioner that respondent nos. 2 and 3 and their family members were involved in a conspiracy to kill her. She alleged that in April, 2008 respondent no. 3 went into the kitchen and opened the knob of the stove and thereafter, her mother-in-law asked her to make tea. But, on smelling gas leaking from the stove, she did not do so. However, she neither remembered the date of this incident nor did her parents file a complaint with the police on becoming aware of such an incident. Her uncle also did not depose to the said effect.

14. The Trial Court also based its decision on the fact that the petitioner had filed the complaint after fifteen years of her marriage (which was solemnized on 23.02.1995) and there were no cogent reasons provided by the prosecution for this long period of silence on part of the petitioner. Given the aforesaid facts, the Trial Court acquitted the accused of all the offences they were charged with.

15. Aggrieved by the same, the petitioner approached the Appellate

Court. By the impugned judgement, the Appellate Court upheld the decision of the Trial Court. The Appellate Court held that the Trial Court had correctly acquitted the accused persons of the offences for which they were charged, since there was no evidence on record to prove the articles that the petitioner alleged to have been given as dowry were, in fact, purchased by her and her family and thereafter, given to the family of the respondents as dowry. It held that the allegations levelled against respondent nos. 2 and 3 are vague and general in nature and thus, conviction could not be sustained on such allegations. The testimonies of the petitioner and her maternal uncle regarding the petitioner being harassed for dowry did not inspire confidence.

16. The Appellate Court held that the Trial Court had examined each and every aspect of the case before it and gave a well-reasoned judgment and thus, the Appellate Court did not interfere with the decision of the Trial Court.

17. The decision of the Trial court and the impugned judgement do not suffer from any manifest error. The view taken by the Trial Court and the Appellate Court, after evaluation of all evidence, is a plausible view and therefore, this Court finds no compelling reason to interfere with the same.

18. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

MARCH 05, 2020
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