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

+ **CRL.REV.P. 399/2019 and CRL.M.A. 7140/2019**

SMT. SANGEETA KUMARI

..... Petitioner

Through: Mr Dileep Kumar Mishra, Advocate.

versus

THE STATE & ANR

..... Respondents

Through: Mr Amit Gupta, APP for State.

ASI Satbir Singh, PS Dwarka - Sector
23.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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03.03.2020

1. The petitioner has filed the present petition impugning a judgment dated 23.10.2018 (hereafter 'the impugned judgement') passed by the learned Additional Special Judge (hereafter the 'Appellate Court'), whereby the petitioner's appeal against a judgment dated 06.08.2014 passed by the MM-01/Mahila Court was dismissed. By the judgment dated 06.08.2014, respondent no. 2 herein (Sh Sheetal Prasad) was acquitted of the offences punishable under Sections 498A/406 of the Indian Penal Code, 1860 (IPC).

2. The petitioner contends that the impugned judgment dated 23.10.2018 ought to be set aside by this Court, since both the Trial Court and the Appellate Court had failed to observe that dowry amounting to ₹2 lakh was given by the petitioner's family to the family of respondent no. 2, under pressure, at the time of marriage. The petitioner further contends that she was abused and tormented by her in-laws due to non-fulfilment of dowry demands.

3. The petitioner and respondent no. 2 were married on 22.11.2002 and the petitioner claims that at that time, ₹7 lakhs were spent in the marriage and ₹3 lakh were given by the petitioner's family to respondent no. 2's family, separately. The petitioner claims that respondent no. 2, the petitioner's mother-in-law and brother-in-law used to harass her for dowry. She alleges that during her pregnancy, she was not given proper treatment and was asked to sleep on the floor. She also alleges that she was beaten and was not given proper food. She states that she stayed at her paternal house from Sept 2003 onwards. After delivering a male child in November, 2003 neither her husband nor his family came to see her. Further, her husband, brother-in-law, mother-in-law and her husband's brother-in-law and niece demanded a sum of ₹2 lakh as dowry. She also claimed that all dowry articles given during the time of marriage by her family were kept by her mother-in-law and the motorcycle given as dowry was retained by her husband.

4. The petitioner lodged an FIR (FIR No. 237/2005 under Sections 498A/406 of the IPC, registered with PS Dwarka Sector-23), pursuant to which charges were framed against the accused, who pleaded not guilty and the matter was set down for trial. However, after arguments on charge, the petitioner's brother-in-law and mother-in-law were discharged. During the course of the trial, the prosecution examined five witnesses and the defence did not lead any evidence.

5. By a judgment dated 06.08.2014, the Trial Court held that the prosecution had failed to prove, beyond reasonable doubt, that the accused (respondent no. 2 herein) was guilty of the offences for which he was

charged. The Trial Court acquitted the accused, *inter alia*, on the grounds that the complainant was unable to furnish any date or time or any other particulars of incidents of her alleged harassment. Further, the Trial Court found no credible evidence, which would prove that a demand of ₹2 lakh was made by the accused. With regard to the charge under Section 406 of the IPC, the Trial Court noted that since the complainant had admitted during proceedings before the CAW Cell that she had received articles given by her family as dowry; her claim could not be accepted. The court also observed that neither any bill/invoice nor any photograph of such articles was placed on record and therefore, the accused could not be convicted of the offence under Section 406 of the IPC.

6. Aggrieved by the judgment of the Trial Court, the petitioner preferred an appeal before the Appellate Court, *inter alia*, on the grounds (i) that the Trial Court had ignored the evidence relating to the demand of dowry; (ii) that the trial court overlooked the harassment inflicted on the petitioner by the accused and his family; (iii) that the Trial Court ignored a list of the dowry articles given by the petitioner; (iv) that the Trial Court failed to appreciate that the petitioner had provided photographs of dowry articles and cash given to the Investigating Officer (IO) but the IO had not placed the same on record; and (v) that the Trial Court erred in not appreciating that the petitioner was beaten up and thrown out of her matrimonial home in September, 2003 by the accused and his family members for the purposes of extracting dowry from her family.

7. The Appellate Court noted that before the Trial Court, the prosecution had examined two material witnesses – the complainant (PW1) and her

mother (PW2). The Appellate Court noted various discrepancies between her first complaint (Ex. PW1/C), which resulted in the aforesaid FIR and her testimony before the Trial Court. The Appellate Court found that the petitioner resided with her husband's family for a very short period and therefore, her allegations against them raised doubts on her credibility. The Appellate Court also found that the allegations of harassment could not be proved since the petitioner and her husband stayed separate from his family. Further, the Appellate Court was unable to accept that certain allegations made by the petitioner, such as her having to sleep on the floor, fell within the sweep of Section 498A of the IPC. It is not the petitioner's allegation that she alone had to sleep on the floor; her allegation is that respondent no.2 did not procure a bed or bring one from the village. The Appellate Court also accepted the view of the Trial Court that the petitioner was unable to provide any cogent material or evidence to substantiate that demands of dowry were made by her husband and her family. In his testimony, the IO stated that the petitioner had received the dowry articles prior to the registration of the aforesaid FIR during proceedings conducted before the CAW Cell.

8. The Appellate Court also observed that petitioner's real grievance seemed to be that at the time of marriage, she was allegedly promised that she would stay in Delhi, but was taken to the village.

9. This Court finds no manifest error in the impugned judgement. The Trial Court and the Appellate Court had evaluated the evidence as available on record and concluded that the prosecution had failed to establish that respondent no.2 is guilty of the offence for which he was charged. The said

view is a plausible view, given that the testimony of the petitioner was not consistent with her earlier complaint. Further, neither the petitioner nor her mother had produced any material to establish the source of the funds for the dowry allegedly given to respondent no.2 and her family.

10. The learned counsel appearing for the petitioner was pointedly asked by this Court as to whether there is any specific material on record that could substantiate the allegation of payment or demand of cash, as claimed. He submitted that such material was provided to the IO but he had not properly investigated the matter and had neglected to place the material on record. Be that as it may, the decision of the courts that the prosecution had failed to establish its case beyond reasonable doubt cannot be faulted.

11. It is also seen that the present petition has been filed after a delay of sixty-five days. The sole reason provided by the petitioner for such delay is that she could not approach her counsel to file the said petition due to economic constraints. This Court finds the said explanation unpersuasive.

12. For the reasons stated above, the petition is dismissed, both on limitation as well as on merits. The pending application is also disposed of.

VIBHU BAKHRU, J

MARCH 03, 2020
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