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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-65-2019

Date of Decision: April 08, 2022

Shashi

.....Petitioner

Versus

Hari Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Virender Kumar, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

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RAJESH BHARDWAJ, J.(ORAL)

This revision petition has been filed by the petitioner-complainant impugning the order dated 21.10.2015 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the respondents-accused have been acquitted, and the judgment dated 09.10.2018 passed by learned Additional Sessions Judge, Karnal, vide which the appeal filed by the petitioner-complainant against the above mentioned order dated 21.10.2015, has been dismissed.

Adumbrated facts of the case are that the complainant-petitioner filed a complaint, which was referred to the Police station, under Section 156(3) Cr.P.C. on the order of Shri P.R.Sharma, learned CJM, Karnal. It was alleged in the complaint that the petitioner was married with respondent No.1 on 07.06.2006 as per Hindu Rites and ceremonies. The parents of the complainant had spent a sum of Rs.10.00 lacs in the marriage and all the dowry articles were given by the parents of the complainant to accused persons as per the settlement made by Smt.Meena wife of Shri Narender

the marriage. After the marriage, the couple cohabited with each other, however, no child was born out of the wedlock. Thereafter the accused persons started taunting the complainant and she was sent back to her parental home on 16.06.2006 alongwith T.V.and Refrigerator by asking her to get these items replaced with Home Theatre TV and 196 ltrs. Refrigerator of double door. Father of the complainant gave a sum of Rs.2.8 lacs to respondent No.1-husband for purchasing an Alto car but respondent No.1 demanded more money for purchasing the swift car. Father of the complainant agreed to replace the TV and Refrigerator on which the complainant was taken by respondent No.1 to her matrimonial home in the month of October 2006. However, thereafter the accused persons again gave beatings to the complainant on the demand of a big car. She was driven out of the matrimonial home and was told by the respondents-accused that she would not be accepted back in the matrimonial home unless their demands are not met with. After the marriage of the brother of the complainant, she was not taken back by respondent No.1 in the matrimonial home. Father of the complainant also convened a panchayat for resolving the dispute but to no avail. In the month of August 2007, respondent No.1 got job in Hutch Mobile Company and was posted at Ashoha, District Unnao (U.P.) and the complainant remained with her in-laws. She was pregnant but respondent Nos.2 and 3 did not give proper medicine to her. She was administered some wrong medicine due to which her three months' foetus got aborted. Having faced the harassment and cruelty at the hands of the respondents persistently, the complainant filed a complaint on the basis of which the FIR in question was registered with a prayer to take legal action against the culprits. The investigation was completed, the challan was presented and on

the basis of the same, the learned trial Court took the cognizance of the case.

The prosecution examined the complainant -Shashi as PW2, PW3 SI Prem Chand the Investigating Officer. In all, the prosecution examined seven witnesses.

Statements of respondents were recorded under Section 313 Cr.P.C. in which they denied the allegations levelled against them. The respondents-accused examined Narender Singh as DW-1.

The complainant entered the witness box as PW-2 for proving the allegations in the complaint. Sharwan Kumar was examined as PW-4 for proving the convening of the Panchayat. PW-5 Vivek Singh deposed about the marriage having been solemnised as per the customs.

On the appreciation of the oral as well as documentary evidence, learned trial Court appreciated the evidence threadbare. It was observed by the trial Court that as per the version of the complainant at the time of marriage, sufficient articles were given alongwith cash amounting to Rs.2.8 lakhs for purchase of an Alto car. However, it was not shown by the complainant that the alleged car was either purchased or not. No bill or receipt in support of the same was produced before the Court. No account statement from the bank was also shown for proving the withdrawal of this amount. The photographs of the articles, as alleged, were also not adduced into evidence by the prosecution. Learned trial Court also observed that a suggestion was put to PW2-complainant that she was not found in the hostel on many occasions and due to same, she did not return back to the matrimonial home. Besides this, copy of the petition filed under Section 9 of the Hindu Marriage Act filed by respondent No.1 was also produced in

remained absent from the hostel on many occasions. On appreciation of evidence, learned trial Court found that the prosecution has failed to prove its case beyond reasonable doubt and as a result the respondents-accused were acquitted of the charges framed against them vide its order dated 21.10.2015.

Aggrieved by the same, the complainant-petitioner filed an appeal under Section 372 Cr.P.C. in the Court of learned Additional Sessions Judge, Karnal, impugning the order dated 21.10.2015. The learned Appellate Court re-appreciated the evidence and the arguments raised by the parties. The appellate Court in its conclusion found no infirmity in the conclusion arrived at by the trial Court, as a result the appeal filed by the petitioner was dismissed and thus, acquittal of the respondents was upheld by the appellate Court vide its order dated 09.10.2018.

Learned counsel for the petitioner has vehemently contended that both the Courts below have fallen in error in appreciating the evidence on record. He has submitted that prosecution has very well proved its case by leading the oral as well as the documentary evidence on record. He submits that production of the MLR is not mandatory and the harassment of the petitioner-complainant on account of demand of dowry was duly proved from the oral evidence produced by the prosecution. He submits that entrustment of the dowry articles was made to all the accused persons and the same were misappropriated by them, as duly proved by the prosecution and thus, the charge under Sections 498-A and 406 IPC was duly proved, however, the Courts below have failed in applying their judicial mind and thus, have drawn a wrong conclusion in acquitting the accused.

learned counsel for the petitioner has submitted that although the respondents have been acquitted by both the Courts below, yet the State has not filed any revision against their acquittal.

Heard.

The prosecution in its support has produced the oral as well as the documentary evidence before the trial Court. On the basis of the appreciation of the same, it has been concluded by the trial Court that the prosecution has failed to prove its case beyond reasonable doubt and thus the respondents were acquitted. The allegations against the accused-respondents were general in nature. The entrustment of the dowry articles were not duly corroborated. The demand alleged though was orally, however, the prosecution failed to bring any supporting document in support of the same. The cash amount alleged to have been given to the accused persons in pursuance to the demand made was also not proved by showing any account statement from the bank and hence, the same was also not free from doubts. Besides this, respondent No.1 had filed a petition under Section 9 of the Hindu Marriage Act and the complainant was living separately from her husband for the last six years also created doubt in the prosecution case. The complainant also made admission by stating that she was not found in the hostel during those days and she failed to give any satisfactory answer to her in-laws and her husband and hence, due to shame, she did not return to the matrimonial home. Thus, the evidence produced and the argument advanced were appreciated by the trial Court which were re-appreciated by the Appellate Court and thus, both the Courts below found the case against the respondents not having been proved beyond reasonable doubt and hence

the law settled by the Hon'ble Supreme Court in plethora of judgements it has been observed that appeal against conviction and that of acquittal rests on two different pedestals. The higher Court can interfere with the findings of the trial Court while acquitting the accused only in case where it observes any perversity in the findings arrived at by the trial Court. It has been further observed by the Hon'ble Supreme Court that as per criminal jurisprudence, there lies a presumption of innocence in favour of the accused until proved guilty. But once the accused is acquitted by the trial Court and order of acquittal is upheld by the appellate Court, there lies double presumption of innocence in his favour and thus, his innocence is further strengthened after having been granted acquittal by two Courts. Hon'ble the Supreme Court has also settled the law by holding that if there are two views possible in a case then the one which is favourable to the accused should be adopted by the Court. Reliance can be placed on **Shivaji Chintappa Patil vs State of Maharashtra** (2021) 5 Supreme Court Cases 626. In the case in hand, the respondents were charged under Sections 406 and 498-A IPC. After the trial, they were acquitted and the same was upheld by the appellate Court. Hence, there is a concurrent finding of acquittal in favour of the accused-respondents.

Weighing the facts and circumstances of the present case on the anvil of the law settled by the Hon'ble Supreme Court, this Court finds no infirmity in the conclusion arrived at by both the courts below.

Resultantly, the present petition being devoid of any merit is hereby dismissed.

April 08, 2022
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(**RAJESH BHARDWAJ**)
JUDGE