

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

CRR-4042-2016 (O&M)

Date of Decision: 22.7.2022

Rekha

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. A.S. Walia, Advocate, for the petitioner.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J.

CRM-34464-2016

The present revision has been filed with a delay of 48 days.

It has been contended by learned counsel for the applicant that the impugned order was passed on 23.5.2016 and the copy of the same was applied by her counsel and collected on 9.6.2016. The applicant came to know about the acquittal of the accused on 25.8.2016, when she contacted with her counsel and collected the requisite record of the case. He submits that delay of 48 days in filing the revision is totally unintentional and bonafide. It is also prayed that the petitioner would suffer irreparable loss, if the delay is not condoned.

Notice in the application.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab, accepts notice.

Heard.

For the reasons recorded in the application, the same is allowed and delay of 48 days in filing the revision is condoned.

Main case

The petitioner has approached this Court by way of filing the present revision petition impugning the order dated 23.5.2016 passed by the learned Additional Sessions Judge, Gurdaspur, whereby the appeal filed by petitioner against the order dated 13.10.2015 passed by learned JMIC, Gurdaspur acquitting the respondents-accused, was allowed and the acquittal of the respondent-accused in a case FIR No.127 dated 4.6.2009, under Section 498-A, 406 and 506 IPC, at Police Station Dinanagar was upheld.

As per facts of the case, the petitioner was married with respondent No.2 Ramesh Kumar on 9.12.2001. From the marriage, the couple was blessed with two children. However, the behaviour of the husband and that of co-accused became very cruel. She was being harassed for more dowry by respondent No.2- Ramesh Kumar (husband), respondent No.3-Nasib Chand (brother-in-law) and respondent No.4-Thuru Ram (father-in-law). On 14.1.2008, respondent No.2-husband came drunk and beat the complainant. With the intervention of the respectables, the matter was settled, however, the beating and harassment to the complainant remain continued thereafter as well. After conducting enquiry against the accused by the DSP (Rural-2), the present FIR was lodged against the accused. After lodging the FIR, investigation commenced and the challan was presented under Sections 498-A, 406, 506 and 34 IPC.

It has been contended by learned counsel for the petitioner that the prosecution carried out a thorough investigation and presented the challan. He submits that after framing of charges under Section 498-A, 406,

506 and 34 IPC against the accused, in all the prosecution examined 9 witnesses alongwith documentary evidence as under:-

PW-1	Rekha Rani	Complainant
PW-2	Bawa Lal	Witness
PW-3	Mohan Lal	Witness
PW-4	Balwinder Singh	Witness
PW-5	ASI Jaswinder Singh	Witness
PW-6	ASI Joginder Pal	Witness
PW-7	Punam Kumari	Witness
PW-8	HC Harjinder Singh	Witness
PW-9	ASI Iqbal Singh	Witness

Learned counsel for the petitioner submits that PW-1 Rekha Rani, PW-2 father of the complainant and PW-8 Mohan Lal duly supported the case of the prosecution, however, both the Courts below have drawn a wrong conclusion in disbelieving the witnesses. He has submitted that there were specific allegations of demand of dowry, beating of the complainant and causing cruelty to the complainant through out, however, both the Courts below failed to appreciate unimpeachable evidence produced by the prosecution. He also submits that the compromise arrived between them was exhibited as Ex.PA, which was effected between the complainant and the family of the accused and it was accepted also by the respondents-accused. Both the Courts below drawn wrong conclusion by misreading the evidence produced on record. He has submitted that PW-5 ASI Jaswinder Singh recovered dowry articles from the house of accused-respondents and proved the recovery memo Ex.PC., thus enstrustment of Istridhan was also proved. However, learned trial Court misread the evidence produced on record and thus, failed to appreciate the same. He submits that the view taken by the Courts below is against the facts proved on record and thus, the impugned

orders dated 13.10.2015 and 23.5.2016 deserve to be set aside and the respondents be convicted for the charges for which they were tried.

Heard learned counsel for the parties and perused the record.

The relationship between the petitioner and the accused is an admitted fact. The prosecution produced oral as well as documentary evidence on record. From re-appreciation of the evidence, it is apparent that the learned trial Court has appreciated the evidence threadbare. After giving date of some incidents, there was a delay in lodging the FIR. This is an established proposition that every dispute between the husband and wife cannot be termed as cruelty under Section 498-A IPC. For the appreciation of cruelty, a perusal of statutory provisions of Section 498-A is relevant, which reads as under:-

“[498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.-For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

By reading the language of statutory provisions, it is apparent

that the cruelty defined within the above mentioned Section, is wilful

conduct, which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman and further harassment with a view to coerce her for any unlawful demand for any property or valuable security. From the reading of the deposition made by the witnesses PW-1, PW-2 and PW-3, it is apparent that there are material contradictions, which make their testimony not sufficient to prove the case beyond reasonable doubt. The alleged admission of compromise between the parties also does not amount to confession of the allegations levelled by the accused. It is a cardinal principle of law that the prosecution has to stand on its own legs and the burden does not shift on the accused for proving his innocence. The evidence produced by the petitioner was re-appreciated by the learned Appellate Court as well and the view taken by the learned trial Court was upheld. Needless to say that evidence produced was appreciated by both the Courts below and thus, there are concurrent findings of acquittal in favour of the respondents-accused. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there is a double presumption of innocence in his favour. In **Jafarudheen and others vs State of Kerala** 2022 SCC Online SC 495, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:

“While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been

analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

While looking into the facts and circumstances of the case and in the light of the law settled, this Court finds no infirmity in the view taken by the both the Courts below. Thus, the present revision petition fails and resultantly, the same is dismissed being devoid of any merit.

22.7.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No