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

**CRR-2387-2022 (O&M)  
Date of Decision: 09.01.2023**

**Monika****...Petitioner****Versus****State of Haryana and Another****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. S.S. Momi, Advocate for the petitioner  
Ms. Priyanka Sadar, AAG, Haryana  
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**JAGMOHAN BANSAL, J. (Oral)**

1. The petitioner through instant petition under Section 401 Cr.P.C is seeking setting aside of judgment dated 04.05.2022, whereby Appellate Court has set aside the judgment dated 02.06.2018 passed by Trial Court, acquitting respondent No.2 from charges of commission of offences punishable under Sections 498-A & 506 of IPC.

2. Shorn of unnecessary details, the brief facts emerging from the record and which are necessary for the adjudication of the present petition are that marriage of the petitioner was solemnized with respondent No.2 on 08.03.2011. On the complaint of the petitioner, an FIR No.61 dated 20.12.2015 under Sections 498-A & 506 of IPC, came to be registered at Women Police Station, Jhajjar, against the respondent No.2. The police after completing investigation filed its report under Section 173 Cr.P.C. The Trial Court framed charges and prosecution led its evidences. The prosecution examined 5 witnesses as PW-1 to PW-5.

Respondent No.2 was confronted with prosecution evidence and his

statement under Section 313 Cr.P.C. was recorded in which he claimed innocence.

3. Learned Trial Court, on the basis of evidences on record and arguments of both sides, vide judgment dated 02.06.2018 and order of sentence dated 05.06.2018 held respondent No.2 guilty for the offences under Section 498-A and sentenced to undergo rigorous imprisonment of 1 year and to pay a fine of Rs.500/- for commission of offence punishable under Section 498-A IPC. In default of payment of fine, he was further sentenced to undergo simple imprisonment of one month.

4. The respondent No.2, feeling aggrieved from judgment of the Trial Court, preferred an appeal before the Sessions Court, Jhajjar, wherein Additional Sessions Judge, Jhajjar, vide impugned judgment dated 04.05.2022 allowed appeal of respondent No.2 and acquitted him of charges under Section 498A IPC. The relevant extracts of the judgment of Appellate Court read as under :

*“37. This Court hence, is of the view that the impugned judgment is wholly unfounded. There was nothing on record to show that there was a demand of dowry by the appellant or any of his relatives either prior to the marriage, during the marriage or after the marriage. The record also does not disclose anywhere that the husband of the complainant acted with a view to coerce her or any person related to her, to meet any unlawful demand of any property or valuable security.*

*38. In view, of the blurred allegations and as this Court found that the complainant was only levelling bald, vague and omnibus allegations against the accused-husband, this Court is of a firm opinion that the prosecution has miserably failed, to prove its case against the accused beyond reasonable doubts and to bring his act and conduct, within the four corners of said provisions of law constituting any of such offence alleged within the legal ambit, which would warrant his conviction and punishment in the present case, as awarded by the Ld. Trial Court, vide the*

*impugned judgment. Therefore, the impugned judgment is hereby set aside, being wrong, illegal and misreading of facts, evidence and law.*

*39. In view, of the cardinal principle of law that 'the prosecution must prove the guilt of the accused beyond reasonable doubts and every benefit of doubt must be given to the accused' the appellant/convict is entitled to every benefit arising out of the lacunae in the prosecution case and is hereby acquitted of the charges framed against him in the present case. Meaningful substance found in the grounds raised in the appeal in hand thus, stand swallowed."*

5. Learned counsel for the petitioner *inter alia* submits that Appellate Court has wrongly set aside judgment of trial court. The statement of petitioner was duly corroborated by statement of father and mother of the petitioner. There was medical evidence of physical cruelty on the part of respondent No.2 and respondent No.2 withdrew petition filed under Section 13 of HMA, 1955 which shows conduct of the respondent. Thus, findings recorded by Appellate Court are not sustainable in the eye of law.

6. I have heard the arguments of learned counsel for the petitioner and scrutinized the record. The present petition being bereft of merit deserves to be dismissed and accordingly hereby dismissed.

7. Learned Trial Court found the respondent No.2 guilty of commission of an offence punishable under Section 498A of IPC, however, the Appellate Court has set aside judgment of trial court.

8. The petitioner has invoked revisionary jurisdiction of this court. The scope of interference while exercising power of revision against judgment of acquittal is very limited.

8.1 While advertent with Section 439 of old Criminal Procedure Code which in its present avatar is Section 401, a four judge bench of Hon'ble Supreme Court in ***D. Stephens v. Nosibolla; 1951 SCC 184*** has held:

*“12. The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record.”*

8.2 A four judge bench of Hon'ble Supreme Court reiterating the above opinion in ***Logendranath Jha v. Polai Lal Biswas, 1951 SCC 856*** has held:

*“9. ... Though sub-section (1) of Section 439 authorises the High Court to exercise, in its discretion, any of the powers conferred on a court of appeal by Section 423, sub-section (4) specifically excludes the power to ‘convert a finding of acquittal into one of conviction’. This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court could in the absence of any error on a point of law, reappraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him.*

*10. By merely characterising the judgment of the trial court as 'perverse' and 'lacking in perspective', the High Court cannot reverse pure findings of fact based on the trial court's appreciation of the evidence in the case. That is what the learned Judge in the court below has done, but could not, in our opinion, properly do on an application in revision filed by a private party against acquittal”.*

8.3 A three judge bench of Hon'ble Supreme Court in ***K.Chinnaswamy Reddy v. State of A.P., (1963) 3 SCR 412*** has observed:

*7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of*

*acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.*

8.4 A two judge bench of Hon'ble Supreme Court after noticing its previous judgments in ***Mahendra Pratap Singh v. Sarju Singh (1968), 2 SCR 287*** has held:

*“8. The practice on the subject has been stated by this Court on more than one occasion. In D. Stephens v. Nosibolla [1951 SCC 184 : AIR 1951 SC 196 : 1951 SCR 284] only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a*

*wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. Again, in Logendranath Jha v. Polai Lal Biswas [1951 SCC 856 : AIR 1951 SC 316 : 1951 SCR 676] this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is 'perverse' or 'lacking in true correct perspective'. It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the subordinate court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in K.Chinnaswamy Reddy v. State of A.P.[AIR 1962 SC 1788 : (1963) 3 SCR 412] it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court".*

9. Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate/revisionary courts in dealing with an appeal/revision against an order of acquittal has elucidated:

(i) An appellate court has full power to review, re-

appreciate and reconsider the evidence upon which the order of acquittal is founded.

- (ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (iii) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
- (iv) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having

secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

- (v) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

10. In the case in hand, the petitioner has failed to advance any convincing reason to form an opinion, different from Appellate Court below. Concededly, the State has not assailed judgements of court below.

The medical report enclosed with the petition is post registration of FIR which cannot be relied upon. The fact of withdrawal of petition under Section 13 of HMA, 1955 cannot be justified to hold respondent guilty of an offence committed offence punishable under Section 498A IPC. Presence or absence of corroboration of statements cannot be basis to form an opinion different from judgment of acquittal. Thus, having regard to the findings recorded by Appellate Court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no infirmity or irregularity in the impugned order passed by Appellate Court, whereby order of conviction and sentence passed by the Trial Court has been set aside. Accordingly, this Court fully agrees with the finding recorded by the Appellate Court.

The impugned judgment and order being speaking; based upon correct

appreciation of facts, applicable law & judicial precedents and well-reasoned, needs no interference of this Court.

(JAGMOHAN BANSAL)  
JUDGE

09.01.2023  
*Mohit Kumar*

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| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |