

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

238

CRR-4936-2016

Date of Decision: 08.05.2023

Rajesh Kumari

...Petitioner

Versus

Nepal Singh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. S.N. Yadav, Advocate for the petitioner

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 401 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking setting aside of impugned judgment dated 06.10.2016 whereby learned Additional Sessions Judge, Gurgaon has upheld the judgment passed by the Additional Chief Judicial Magistrate, Gurgaon whereby vide order dated 21.03.2014 the respondents have been acquitted.

2. The brief facts emerging from the record are that on the complaint of the father of the petitioner an FIR No.351 dated 01.05.2002 came to be registered at Police Station City, Gurgaon under Sections 498-A, 406 IPC. In the FIR, it was alleged that petitioner got married with Nepal Singh on 20.04.1996 as per Hindu rites and ceremonies. Parents of the petitioner gave enough dowry articles and spent enough on the marriage ceremonies but in-laws of the petitioner were not happy with the amount of dowry and started harassing her for not bringing

sufficient dowry. On one occasion the husband of the petitioner demanded Rs.33,000/-. When petitioner gave birth to a child in the hospital, all the expenses were borne by father of the petitioner. On 15.07.2001, the respondent took the petitioner to his house, however, due to the harassment caused by the respondents she came back after two and half months. The police, after completing investigation, filed its report under Section 173. Learned Trial Court framed charges against the respondents and recorded evidence of prosecution witnesses as well as defence witnesses. The Trial Court after considering the evidence led by both side and documents on record acquitted the respondents vide judgment dated 21.03.2014.

3. The petitioner feeling aggrieved from the judgment of Additional Chief Judicial Magistrate, Gurgaon preferred an appeal before Sessions Court, Gurgaon which came up for consideration before Additional Sessions Judge, Gurgaon who vide order dated 06.10.2016 dismissed the appeal of the petitioner and upheld the judgment passed by the Trial Court.

4. Learned counsel for the petitioner submits that Trial Court has acquitted the respondents on the ground that the prosecution failed to prove its case beyond reasonable shadow of doubt and that no specific date and time regarding allegations are specified, however, in matrimonial cases the offence is continuing in nature and ingredients of Section 498-A of Indian Penal Code, 1860 (for short 'IPC') were fully

proved, thus Trial Court and Appellate Court has erred in acquitting the respondents. It is further submitted that all the prosecution witness have supported case of the petitioner.

5. I have heard the arguments of learned counsel for the petitioner and perused the record.

6. 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.

6.1 While adverting 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.”

6.2 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”.

6.3 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.”

6.4 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 Jhav. 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. Chinnaaswamy 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”.

7. The 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, reappreciate 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.

8. In the present case, the respondent filed divorce petition under Section 13 of Hindu Marriage Act, 1955 which came to be allowed by the Family Court. The petitioner and her father appeared before the Family Court deposed that petitioner is not ready to stay in village with respondent herein and he should shift to Gurgaon or Dharuhera. The petitioner is alleging that respondent is demanding car and flat in Gurgaon whereas statements of petitioner and her father are indicating that they were compelling respondent to shift to Gurgaon. The petitioner has further alleged that respondent was demanding a car as well as plot in Gurugram. It has come on record that there was no demand of car and plot prior to and at the time of marriage. As per petitioner, demand of car was raised within 10 days from marriage. It is highly unbelievable that a person did not raise demand before or at the time of marriage but he raised demand within 10 days of marriage especially when in Indian culture first month is almost spent in enjoying the ceremonies. The findings recorded by the Trial Court as well as Appellate Court qua demand of Rs.33,000/- are also convincing. It seems

even otherwise intriguing that a man on the one hand is demanding Rs.33,000/- and on the other, he is demanding car plus plot in Gurgaon.

The findings recorded by the Trial Court as well as Appellate Court qua allegations of petitioner seem to be reasonable as well as convincing. There seems no reason to form an opinion contrary to opinion formed by both the Courts below.

9. In view of the above narrated facts, having regard to the findings recorded by Trial Court as well as 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 whereby Trial Court has acquitted the respondent and order of the Appellate Court whereby appeal of the petitioner has been dismissed. Accordingly, this Court fully agrees with the finding recorded by Trial Court and 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

08.05.2023
Mohit Kumar

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