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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3976-2014 (O&M)

Date of decision: 08.08.2023

Smt. Mukesh Devi

...Petitioner

Vs.

State of Haryana and others

...Respondents

CRR-4055-2014 (O&M)

Date of decision: 08.08.2023

Smt. Mukesh Devi

...Petitioner

Vs.

Shamsher and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Munish Kumar Garg, Advocate,
For the petitioner.

Mr. Vikas Bhardwaj, A. A.G., Haryana.

Mr. Ashok Sharma, Advocate,
For respondents No.2 to 4.

ARUN MONGA, J. (ORAL)

Both these petitions have been filed by the complainant against the judgment/order dated 26.08.2014 passed by the learned Sessions Judge, Jind, allowing the private respondents' appeal against their conviction and sentence for offences u/s 406/506 IPC and dismissing the complainant's appeal against acquittal of the accused for offence u/s 498-A of IPC recorded vide judgment/order dated 9/10.02.2012 passed by the learned Additional Chief Judicial Magistrate, Jind.

2. The petitioner/complainant filed a private complaint against seven persons including the private respondents herein for offences under sections 498-A/406/506/34 IPC. At the time of framing the charge, the learned trial Court discharged the other four accused and framed charges for offences under sections 498-A/406/506/34 IPC against the three private respondents, who are the husband and parents-in-law of the complainant. Vide judgment/order dated

9/10.02.2012 passed by the learned trial Court,, the latter were acquitted of the charge u/s 498-A of IPC but convicted and sentenced for the offences under sections 406/506 as under:

- i) *Under section 406 IPC – Rigorous imprisonment for one year and to pay a fine of Rs. 3000/- each, in default of payment of fine to undergo further rigorous imprisonment for 15 days each;*
- ii) *Under section 506 IPC – Rigorous imprisonment for six months and to pay a fine of Rs. 500/- each, in default of payment of fine to undergo further rigorous imprisonment for 15 days each.*
- iii) *It was directed that out of the amount of fine, a sum of Rs. 10,000/- shall be paid to the complainant a compensation under section 357 Cr.P.C.*

3. The complainant filed appeal challenging the acquittal of the accused of the charge u/s 498-A of IPC while the accused/private respondents filed appeal against their conviction and sentence.

4. Vide common impugned judgment 26.08.2014 passed by the learned Sessions Judge , both these appeals were disposed of in the manner indicated in the opening para of this order.

5. Learned counsel for petitioner submits that prosecution has duly proved the chain of events and circumstances for the commission of offence as alleged by petitioner/complainant. Learned Sessions Judge erred while acquitting respondents No.2 to 4 by giving them benefit of doubt.

6. Per contra, learned respondents No.2 to 4 supports the judgment passed by learned first Appellate Court.

7. I have heard the learned counsel for the petitioner and gone through the case file.

8. Relevant part of the order dated 26.08.2014, passed by learned Sessions Judge, Jind assailed herein containing the discussion is premised, *inter alia*, on the following reasoning:

“21. *The allegations of the complainant are that the FDR of Rs25,000/-was given to her by her parents at the time of the marriage as security and the same FDR was got encashed by the accused and was misused. Alongwith that it has been alleged that the disability pension was also mis-utilized by the accused.*

22. *Section 406 IPC prescribes the punishment for committing criminal breach of trust which has been defined under section 405 of the IPC. According to which whoever being in an manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or a of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "Criminal breach of trust".*

23. *If the entire evidence led by the complainant is scrutinized minutely, it would transpire that the ingredients of section 405 of the IPC were not attracted. There is not even an iota of evidence that any of the accused was entrusted with FDR of Rs. 25000/-. Tough the factum of giving the FDR at the time of marriage is not disputed but for invoking the provisions of section 406 of IPC entrustment was necessary to be proved which completely lacks. Now coming to the question of dishonestly misappropriating the amount of the FDR or converting the same for own use by the accused again there is no evidence. The FDR must be in the name of the complainant herself and it was only she who could withdraw the amount of the FDR. When she alone was competent to withdraw the amount now the accused could be handed up for encashment of the FDR amount and its misappropriation. No official of the bank has been examined for the reasons best known to the complainant and the official from the bank would have thrown the light regarding the factum of the encashment of the FDR by the accused or by the complainant herself. Mere oral assertions that the amount of the FDR was misappropriated by the accused are not sufficient to satisfy the conscience of the provision of law.*

24. *Nextly, it is the plea of the complainant that her disability pension was also misused by the accused. This fact cannot be believed at all because the accused was also recipient of the disability pension and if the complainant was living in the matrimonial home as legally wedded wife of the accused Shamsher, she was supposed to contribute her disability pension towards the family expenses and this fact, cannot by any stretch of imagination be said to be a case of misappropriation of the disability pension.*

25. *With regard to the offence punishable under section 506 of the IPC, I am of the considered opinion that the learned lower court again committed a grave error while sentencing the accused for that offence. Under section 506 of the IPC punishment for criminal intimidation has been prescribed. . The entire evidence coming on the file would reflect that the allegations against the accused qua the offence under section 506 of the IPC are again general in nature. Though, the complainant has alleged in the complaint that the accused threatened to kill her but while appearing in the witness box she did not utter even a single word to that effect and merely proved the complaint as Ex.C1 In my definite view it would not be just and proper to convict*

the accused for that offence also in the lack of any cogent and reliable evidence.

26. *No other point was urged before me.*

27. *In view of the discussion above finding no merit in the appeal filed by complainant Mukesh, the same is dismissed. However, the appeal filed by accused Shamsher Rajpal and Om Pati having merit is allowed. The impugned judgment and order of sentence of the learned trial Court are set aside and the accused are acquitted of the charges framed against them. Their bonds stand discharged. It will be unfair if the complainant is directed to refund the amount of compensation i.e. Rs.10,000/- if received as per direction of learned Trial Court out of fine so recovered keeping in view the peculiar facts of present case. However, remaining amount of fine i.e. Rs.500/- will be refunded to them, after expiry of period of appeal or revision against the present judgment. Trial court record be sent back with a copy of this judgment.”*

9. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law. The impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

10. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

11. In **Anil Kumar Gupta vs. State of U.P.**², it was held as under:

“This Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an

¹2002(4) RCR (Criminal) 750 SC

²2001(2) RCR(Criminal) 292 SC

answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.'

12. In the instant case, findings recorded by learned Appellate Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.
13. Instant revision petitions are hereby dismissed.
14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

08.08.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No