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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-1962-2019 (O&M)  
Date of decision: 30.04.2024

Palwinder Kaur

...Petitioner

Vs.

Rupinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. M.L. Saini, Advocate  
for the petitioner.

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HARPREET SINGH BRAR, J. (ORAL)

CRM-23919-2019

1. Present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 247 days in filing the present revision.
2. For the reasons mentioned in the application, same is allowed and the delay of 247 days in filing the revision petition is condoned.

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3. The present revision petition is preferred against judgment dated 03.08.2018 passed by learned Additional Sessions Judge, SAS Nagar, Mohali, whereby appeal filed against judgment of acquittal dated 23.02.2017 passed by learned Judicial Magistrate 1<sup>st</sup> Class, SAS Nagar, Mohali in FIR No.88 dated

13.08.2011 registered under Sections 498-A, 406 of IPC at Police Station Phase 8, Mohali, was dismissed.

4. Briefly, the facts are that the petitioner-complainant moved an application dated 13.12.2010 to SSP Mohali, wherein she alleged that she had earlier moved another application dated 01.11.2010 before the SSP, Mohali for registration of a criminal case against her husband and parents-in-law, but the police took no action and subsequently a false report was prepared, according to which, no offence was made out against the accused. In the application, the petitioner alleged that after her wedding, she was physically and mentally harassed by the accused for the purpose of bringing more dowry. She was turned out of her matrimonial house. The accused neither allowed her to reside in the matrimonial house nor allowed her to meet her six year old daughter; rather they demanded more dowry articles from her. She had made all efforts to convince the accused persons to allow her to stay in the matrimonial house, but they were not ready to accept her, due to which she filed the present complaint. On the basis of her second complaint, the present FIR was registered only against respondent No.1-accused, namely, Rupinder Singh (husband) and the investigation was initiated. After completion of investigation and other formalities, the final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented against the accused under Sections 406 & 498-A of IPC.

5. After assessing all the material on record, learned trial Court acquitted the respondents-accused vide judgment dated 23.02.2017. Aggrieved by the same, the petitioner preferred an appeal before learned lower Appellate

Court, which was dismissed vide judgment dated 03.08.2018.

6. Learned counsel for the petitioner assails the judgment of the lower Appellate Court on the ground that it has mechanically decided the appeal of the petitioner and has upheld the observations of learned trial Court without due application of mind and not recording any reasoned and concrete observations. The Courts below completely disregarded the fact that the charges of offences punishable under Sections 498-A & 406 of IPC have been clearly and unimpeachably proved, thus, leading to material irregularity and perversity.

7. Learned counsel further submits that the prosecution led ample evidence to prove the guilt of the respondents-accused. The testimonies of the complainant (PW-1), ASI Parmod Kumar (PW-2) and Surjit Kaur (PW-3) were sufficient to establish the prosecution case against the respondents-accused. Moreover, the FIR was registered against the respondents, after obtaining the opinion of the DA, yet cogent and convincing evidence produced on record before learned trial Court has been patently overlooked.

8. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, it appears that there is nothing in the judgements of the learned Courts below to indicate perversity or misreading of evidence in their judgements. A review of both the complaints reveals that no particular date or time of the said alleged acts of cruelty has been mentioned. Mere vague and omnibus allegations against all the members of her in-law's family cannot be the sole basis for convicting the accused under Section 498-A of IPC. There is no concrete evidence to establish that the complainant was

harassed, maltreated or physically assaulted for dowry. No medical record/MLR has been placed on record. No photographs exhibiting injuries sustained by the complainant have been brought on record to affirm the claim of the complainant. No overt act or specific role has been attributed to the respondent. Lastly, the two witnesses examined by the prosecution are interested witnesses as they are the family members of the petitioner-complainant. Notwithstanding this, they still do not claim themselves to be the eyewitnesses of the alleged instances of cruelty meted out by the respondent no.1-accused.

9. Furthermore, with regard to the offence punishable under Section 406 of IPC, it is incumbent upon the part of the prosecution to prove the factum of entrustment of the articles and their misappropriation with dishonest intention. As per the testimony of Surjit Kaur (PW-3), the father of the petitioner-complainant passed away six years prior to her marriage and at the time of the wedding, her younger brother and her mother were not earning. As such, the wedding ceremony was a simple affair. Moreover, the complainant in the present case has miserably failed to prove whether any specific item was entrusted to the accused. Nothing has been brought on record to either provide the details of the dowry articles or prove the purchase of the items entrusted by way of bills or invoices. Entrustment is *sine qua non* for establishing the offence under section 406 IPC which is conspicuously missing in the present case. Resultantly, the prosecution failed to prove the guilt of the respondent no.1-accused beyond the shadow of reasonable doubt.

10. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. (*See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415*). A Division bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others* passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

11. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in the findings recorded by learned Courts below, which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is dismissed.

30.04.2024  
*vishnu*

[ HARPREET SINGH BRAR ]  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No