

216

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

CRM-A-288-MA-2015

Date of Decision: 06.02.2024

SURVJIT GILL**....Applicant-Appellant****Versus****AMARJIT SINGH AND OTHERS****.....Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: - Mr Sanjay Gupta, Advocate
for the applicant-appellant

Mr. Manoj K. Sharma, Ms. Ritu Sharma
Mr. Parvinder Singh, Advocates for the respondents

Mr. Sandeep Kumar, DAG Punjab

Harpreet Singh Brar, J. (Oral)**CRM-A-288-MA-2015**

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 23.09.2014 passed by learned Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur whereby the judgement of conviction dated 30.08.2011 passed by the learned trial Court i.e., Judicial Magistrate 1st Class, Hoshiarpur in criminal complaint case No. 195/14.08.2000 filed under Sections 494, 109 of the Indian Penal Code (hereinafter 'IPC') has been set aside.

2. Briefly, the facts are that the marriage of the applicant-appellant with the respondent no. 1 took place on 30.10.1991 according to Sikh rites and rituals. The allegations with regard to offences under Sections 494, 109 IPC have been levelled by stating that the applicant and her father discovered that respondent No. 1 had contracted another marriage with Harbans Kaur @ Baby in the presence of

accused persons. It is further alleged that the applicant was sent to her maternal

home and the respondent no.1 refused to take her back. Harbans Kaur @ Baby is residing with respondent No. 1 as his legally wedded wife at village Burg Tehsil Dass.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that there are considerable lacuna in the prosecution case. While the factum of first marriage between the applicant and respondent no.1 has been established, there is no conclusive and cogent evidence to confirm the second marriage of respondent no. 1 with Harbans Kaur @ Baby. In the original complaint, the applicant alleged that she was neither allowed to come back to her matrimonial home nor she was paid maintenance by respondent no. 1. However, during her cross examination she admitted that respondent no. 1 along with his parents and relatives did come to her maternal home but she refused to accompany them. It appears that the applicant chose to stay back in her maternal house.

4. With regard to respondent no. 1's second marriage, there are no eyewitnesses of the same. While there is a video cassette and pictures of the alleged second marriage, no negatives of these pictures and video have been produced. The only witness who has alleged to have attended the second marriage and has produced the said pictures and video has litigation pending against respondent no. 1. Further, the alleged middleman who arranged the second marriage of respondent no. 1 has neither been cited as a witness nor arraigned as one of the accused persons.

5. 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. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (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.

6. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

06.02.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No