

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-343-MA-2014 (O&M)

Date of order: 15.02.2024

Smt. Poonam Devi

.....Applicant(s)

Vs.

Vicky & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Shiv Kumar, Advocate
for the applicants.

Nidhi Gupta, J.

Present application under Section 378(4) of the Cr.P.C. is filed for grant of leave to appeal against the judgment of acquittal dated 24.12.2013 passed by learned Judicial Magistrate, 1st Class, Faridabad, whereby respondents herein have been acquitted in complaint filed by the applicant/complainant under Sections 498-A, 406, 323, 506 read with 34 IPC.

2. Learned counsel for the applicant inter alia submits that the learned Court below has wrongly acquitted the respondents without any cogent reasons and without appreciating the facts and evidence on record. It is submitted that it was clearly pointed out to the learned Court below that respondent No.1/husband of the applicant had brought 10-15 gunda elements from village Badoli to village Sagarpur who started beating and abusing the father and brother of the complainant/applicant; and inflicted injuries on their person and also threatened with dire consequences and a complaint in this regard was also made to the Women

Cell, Faridabad on 25.05.2007 whereafter the matter was compromised and the applicant was again taken back to her matrimonial home. It is submitted that there was sufficient evidence on behalf of the prosecution. Complainant/applicant and her father appeared as CW1 and CW2 respectively, and their versions were very much sufficient against the respondents-accused hence, the respondents were liable to be prosecuted. It is further submitted that the learned trial Court has wrongly disbelieved the evidence led by the applicant and wrongly acquitted the respondents whereas the respondents/accused were liable to be prosecuted for committing the offences alleged against them.

3. It is further submitted that there are specific allegations made against the respondents and therefore, the learned trial Court has wrongly and erroneously ignored the allegations made by the applicant. It is therefore prayed that judgment of learned trial Court be set aside as the same is based on surmises and conjectures.

4. No other argument is made on behalf of the applicant.

5. I have heard learned counsel for the applicant.

6. Perusal of the record of the case shows that applicant was married to respondent No.1 on 08.12.2004. One child was born out of their wedlock on 22.08.2005, who is in the care and custody of the applicant. The applicant and respondent No.1 are residing separately since 06.09.2007.

7. It may also be noted that in the present case that the sister of the applicant is married to the brother of respondent No.1 i.e. two sisters are married to two brothers. It is admitted fact on record that the

sister of the applicant/complainant is living happily in her matrimonial home with the brother of respondent No.1.

8. Brief sequence of events is as follows. Complaint was filed by the applicant alleging that she was beaten by the accused/respondents. In the preliminary evidence, the complainant/applicant and her father were examined as CW-1 and CW-2 respectively. Complainant's father tendered the list of Dowry Articles (as Ex.C-1 before learned trial Court). Report under Section 202 Cr.P.C. (as Ex.D1 before the learned trial Court) was also submitted. Vide order dated 22.02.2007 the learned Judicial Magistrate 1st Class, Faridabad, summoned accused No.1 and 2 under Sections 498-A, 406, 323, 506 read with Section 34 IPC. After that, in pre charge evidence, the above-mentioned two witnesses were examined again; on 28.09.2012 Ld. JMIC, Faridabad, framed charges against the accused under the above-mentioned Sections 498-A, 406, 323, 506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

9. The complainant/applicant and her father were again examined in after-charge evidence, where they reiterated the complaint version. However, in their cross-examination, they admitted that the elder sister of the complainant/applicant was married to the elder brother of the accused/respondent Vicky, and that they have two children. It was also admitted that the elder sister was happily residing with her husband since the past nine years and there was no complaint of dowry or harassment.

10. This above fact was also admitted by the accused/respondent no. 1/DW 1; as also by Vinod/DW2 who is the elder

brother of accused No.1 and stated that, he was married to the elder sister of the complainant/applicant and they are living happily. In the defence evidence, the Panchayati compromise and other documents were produced as DW-1/A, DW-2/A, DW-1/B and DW-2/B, it has also been stated that the complainant applicant has an immature behaviour and attitude and that she is short tempered.

11. After considering and examining the entire documentary and oral evidence on record, the Id. trial court gave the following findings: –

“9. After going through the evidence as well as documents, it is clear that, both the sisters are married to Vicky and Vinod. Vicky is accused in this case and he got married to Poonam, who is the complainant. The complainant and her father alleged in this case that, she was tortured by her husband and her in-laws for demanding dowry and they also used to beat her and behave inhuman. How it is possible that, when both the sisters are residing in the same house and one of them was being tortured for demand of dowry as well as misbehave but the second one is living happily in the same house. No demand of dowry is found in the case. Even, if it is true that, they demanded the dowry and they tortured her but, why the complainant not brings on record her sister as a witness who could have supported the case of the complainant, who is also living there but she has not been sighted as a witness in the complaint. It is totally impossible to believe. Another point is that neither the complainant has made any reference that she at any point of time approached her elder sister nor her elder sister has help her and protected her.

10.....Report under Section 202 Ex.D1 also reveals that this is not a case of demand of dowry.”

12. I am in complete concurrence with the abovesaid reasoning of the learned trial court. Moreover, learned counsel for the applicant is unable to controvert the above said position on record, or produce anything before this Court to dispute the same. Even otherwise, much water has flown under the bridge. Admittedly, the parties are living separately since 2007 i.e. for the past almost 16 years.
13. It also needs to be noted that the present application is of the year 2014; and notice has not yet been issued in the matter. Order sheet reveals that the matter has been repeatedly adjourned at request of learned counsel for the applicant.
14. In view of the above, I find no merit in the present application, and the same is accordingly **dismissed**.
15. Pending application(s) if any also stand(s) disposed of.

15.02.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No