



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-A-462-MA-2017 (O & M)
Date of Decision: 31.07.2024

Monica Sappal

...Applicant

Versus

Ajay Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Sulvester, Advocate for
Mr. S.S. Majithia, Advocate
for the applicant.

Mr. Rajiv Joshi, Advocate
for the respondents.

Mr. Vikas Bhardwaj, AAG Haryana.

Harpreet Singh Brar, J. (Oral)**CRM-7432-2017**

The present application is filed under Section 5 of the Limitation Act, 1963, (which the learned counsel for the applicant has inadvertently mentioned as "CPC") seeking condonation of delay of 33 days in filing the application under Section 378(4) Cr.P.C. For the reasons mentioned in the application, the same is allowed and the delay of 33 days in filing the said application is condoned.

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1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 05.10.2016 passed by learned Judicial Magistrate 1st Class, Phillaur, in the case stemming from criminal complaint, bearing No. COMI-1383-2012, filed under Sections 406 and 498-A

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of IPC.

2. Briefly, the facts are that the marriage of the applicant-complainant with respondent No.1-husband was solemnized on 24.11.2008 with great pomp and show. Ample dowry articles were given to the respondents-accused and their relatives. Soon after the wedding, it is alleged that the applicant-complainant was subjected to harassment at the hands of the respondents-accused for bringing less dowry and for the wedding ceremony not being up to their standard. The applicant was taunted for not being as educated as respondent No.1. On 01.11.2009, the in-laws called the brother of the applicant and demanded Rs.5 lakhs from him. Since the said amount was not given to the respondents-accused, the applicant was turned out of the matrimonial house. The matter was resolved and the applicant went back to the matrimonial home. However, the respondents-accused started maltreating her again. On 31.10.2011, she along with her infant child were again turned out of the matrimonial house. The respondents refused to take her back. Hence, the complaint before the Magistrate.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that there is nothing in the judgments of the learned trial Court to indicate perversity or misreading of evidence. 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. In the present case, there is neither any averment in the complaint nor any evidence adduced which shows that the respondents-accused ever raised a demand for dowry, at the time of marriage. There are no allegations by

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the applicant that before the solemnisation of marriage, the respondents-accused compelled her and her family members to give dowry articles. The prosecution placed on record certain photographs where some articles can be seen to be given to the respondents. However, neither any negatives of the said photographs were adduced nor the person who clicked these photographs was examined in order to prove the authenticity of the same. Moreover, nothing has been brought on record to prove the purchase of the items, if entrusted, by way of bills or invoices. Furthermore, 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 were also allegations of maltreatment of the child of the applicant at the hands of the respondents-accused, however, the prosecution failed to bring forth any document or medical record to substantiate this claim.

4 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 has failed to point out any perversity or illegality in findings recorded by the learned trial 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.

31.07.2024

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(HARPREET SINGH BRAR)

JUDGE

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