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IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

CRM-A-524-MA-2014

Date of decision: 24th April, 2024

Sarabjit Kaur

...Applicant(s)

Versus

Lovedeep Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Shubham Chaudhary, Advocate for the applicant.
Mr. Rajan Bansal, Advocate for respondent No.1.

MANISHA BATRA, J (ORAL):-

The present application has been filed by the applicant for grant of leave to file appeal against the judgment of acquittal dated 20.02.2014 as pronounced in favour of the respondents in Criminal complaint No.RT-124 of 2012 titled as '*Sarabjit Kaur vs. Lovedeep Singh and others*' under Sections 406 and 498-A of Indian Penal Code, 1860.

2. Brief facts of the case relevant for the purpose of disposal of the present application are that the applicant had filed the abovementioned complaint as against the respondents alleging that she was married with respondent No.1 about eleven years back. At the time of her marriage, her parents had given dowry as per their capacity. The dowry articles which included a scooter, television, furniture, clothing, utensils, almirah and some gold ornaments, were entrusted at the time of marriage to the respondents with the understanding that they would hand over the same to the applicant as and when demanded by her. She alleged that respondent No.1 and the

remaining respondents who are his family members were not satisfied with the dowry so given and started taunting her on account of insufficiency of the same and also qua their quality. The respondents raised a demand of cash amount of Rs. 50,000/- and on showing inability by the applicant to fulfill that demand by her parents, she used to be extended beatings. She was being pressurized by the respondents and there other family members to concede their demands and otherwise threats were given to her to get the respondent No.1 married with someone else. The applicant was thrown out of her matrimonial house several times. In the year 2003, again demand of Rs.50,000/- was raised by the respondents and on expressing her inability to give so, she was again given severe beatings by the respondents. The gold jewellery worn by her was removed by her sister-in-law Harbhajan Kaur and she was thrown out of her matrimonial house along with her minor child. Her dowry articles were also refused to be returned by the respondents. It was alleged by her that she had reported the matter to the police but no action was taken and hence, she was compelled to file a complaint.

3. After presentation of the complaint in the Court, the applicant produced preliminary evidence and the learned Magistrate on finding a *prima facie* case for commission of offences punishable under Sections 406 and 498-A of IPC as against respondents, issued process against them vide order dated 23.04.2007. In pre charge evidence, the applicant examined three witnesses besides herself stepping into the witness box as CW-1 and thereafter, closed her evidence. The respondents were charge sheeted for commission of aforementioned offences in after charge evidence, the

applicant as CW-1 and her father Jarnail Singh as CW-4, were further cross-examined.

4. Statements of the respondents were recorded under Section 311 of Cr.P.C. In defence evidence, they examined two witnesses. After appraising the evidence produced on record by the applicant and hearing both sides, the learned Magistrate dismissed the complaint by observing that the applicant had failed to prove the charges as framed against the respondents beyond doubt and thereby acquitting them of the same.

5. Feeling aggrieved of the judgment of acquittal, the instant application has been filed by the applicant seeking grant of leave to file appeal against acquittal of the respondents.

6. It is argued by learned counsel for the applicant that the impugned judgment is liable to be set aside as the findings as given by learned trial Court therein are based upon conjectures and surmises and are not sustainable in the eyes of law. Overwhelming evidence had been produced on record by the applicant to prove the allegations as levelled against the respondents and the evidence so produced remained unshattered. However, the learned trial Court did not consider the same in proper perspective and passed a non-speaking order without applying judicious mind. With these broad submissions, it is urged that the application may be allowed, so that she can contest the appeal on merits.

7. I have heard learned counsel for the applicant at considerable length and have gone through the record carefully.

8. Since the applicant has sought leave to file appeal against the

judgment of acquittal, therefore, before proceeding further and considering the arguments raised by learned State counsel, it would be useful to review the approach to be adopted for granting leave to file appeal against acquittal by the trial Court. In '**Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**', the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In '**Atley v. State of U.P., AIR 1955 SC 807**', the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In '**Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217**', it was observed that for the High Court to take a different view on the evidence "there must also be substantial and compelling reasons for holding that the trial Court was wrong". In '**Ramesh Babulal Doshi v. State of Gujarat, 1996 SCC (Crl.) 972**', the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial

Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In *Chandrappa's case (Supra)* the Hon'ble Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

9. On applying the proposition of law as discussed above to the facts and circumstances of the case, I am of the considered opinion that the application does not deserve to be allowed. The allegations as levelled by the applicant against the respondents were that they had subjected her to cruelty

on account of demand of dowry and had criminally misappropriated her dowry articles. The learned trial Court had considered the evidence produced on record by the applicant and had observed that the applicant had failed to produce any evidence in the form of receipt qua purchase of the articles which were alleged to have been given/ entrusted to the respondents at the time of her marriage. Though CW-4 had claimed that the receipts of such articles were handed over to the respondents but no such receipt was demanded from them, during the course of trial. It was also observed that CW-4 Jarnail Singh i.e. father of the applicant had admitted that dowry articles were left at the place of the respondents after fifteen days of marriage and as such, the allegation that specific articles were entrusted to them at the time of marriage stood belied. Learned trial Court also found the allegations with regard to the demand of dowry and refusal to return the same to be sweeping and general in nature and on perusal of statements of the witnesses as recorded before the learned trial Court, I am also of the same opinion.

10. It is worthwhile to mention here that to prove the commission of offence punishable under Section 498-A of IPC, the following essential ingredients are required to be proved:-

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:
 - (I) any willful conduct as was likely to drive such woman:
 - a. to commit suicide;

b. cause grave injury or danger to her life, either mental or physical;

(ii) harassment of such woman, (1) with a view to coerce her to meet unlawful demand for property or valuable security, (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand,

(iii) woman was subjected to such cruelty by : (1) husband of that woman, or (2) any relative of the husband.

11. On perusal of the evidence produced on record by the applicant, it is revealed that general allegations had been levelled against not only the present respondents but also against their other family members, who had not even been summoned by the learned trial Court and no specific and direct allegations were levelled against the respondents to describe the nature of the cruelty or the harassment alleged to have been inflicted by them or any such willful act or conduct on their part which could have driven the applicant to commit suicide. Therefore, I have no hesitation to hold that the learned trial Court had rightly held that no case under Section 498-A of IPC had been made out.

12. With regard to the offence under Section 406 of IPC, this Section provides punishment for commission of offence of criminal breach of trust as defined under Section 405 of IPC. This offence may be held to have been committed when a person who had been entrusted in any manner with the property or has otherwise dominion over it, dishonestly misappropriates it and converts it to his own use, or dishonestly uses it or

disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, expressed or implied, made by him touching any discharge, or willfully suffers any other person to do so. As already discussed, admittedly the dowry articles were left at the matrimonial house of the applicant fifteen days after her wedding. Therefore, there was no question of entrustment of the same to the respondents at the time of marriage. With regard to the misappropriation of the same, the allegations levelled by the applicant in this regard were quite vague as it was not mentioned as to which particular article belonging to her was entrusted to which particular respondent and how the same was misappropriated. The learned trial Court had rightly appreciated the evidence produced on record and committed no error in acquitting the respondent. On reading of entire material, I find that there is no perversity in the findings recorded by learned trial Court and there is no compelling reason to interfere with its judgment. Accordingly, it is held that no ground has been made out to grant leave to appeal to the applicant. Finding no merit in the application, the same is dismissed.

24th April, 2024

Parveen Sharma

[MANISHA BATRA]

JUDGE

1. Whether speaking/ reasoned

2. Whether reportable

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Yes

Yes