

CRM-A-746-MA-2014
Date of decision: 05.03.2024

...APPLICANT

V/S

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sapna Khurana, Advocate
for the applicant.

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Vineet Sharma, Advocate
for respondent Nos.2 to 4.

HARPREET SINGH BRAR J. (ORAL)

The present application under Section 378(4) of the Cr.P.C. is preferred against the judgment dated 13.03.2014 passed by learned Judicial Magistrate Ist Class, Amritsar in Complaint bearing case No. COMI/1101694/2008 dated 28.11.2008 filed under Sections 494, 109 and 506 of the Indian Penal Code (hereinafter referred to as 'IPC') has been set aside.

2. Briefly, the facts are that the applicant and respondent no. 2 have been married since 10.06.1983 and have a daughter together. However, on 15.08.1998, due to ongoing marital discord, respondent nos. 2 and 4, along with Dasondha Singh, misappropriated the dowry articles of the applicant and turned her out of her matrimonial home. Thereafter, the applicant filed a petition under Section 125 Cr.P.C., before the competent Court. However, during the pendency of the same, respondent no. 2 solemnised marriage with respondent no. 3. Three children were born out of the second marriage of respondent no. 2 with respondent no. 3. In connivance with each other, the

accused forged and fabricated the birth certificates of these children to reflect respondent no. 4, as the father instead of respondent no. 2.

3. The complainant examined 03 witnesses in the pre-charge evidence. Thereafter, charges were framed against the accused under Sections 494, 506, 109 IPC, to which, they pleaded not guilty and claimed trial. All the incriminating evidence was put to the respondents-accused, in their statements recorded under Section 313 Cr.P.C., wherein they pleaded false implication and examined 01 witness, in their defence. On the basis of material available on record, the learned trial Court acquitted the respondents-accused vide judgment dated 13.03.2014. The divorce petition filed by the applicant was dismissed by the learned Additional District Judge, Amritsar, however, it was observed that the three children were in fact born out to respondent no. 2 and 3. Aggrieved by the same, respondent no. 2 approached this Court by way of FAO-80-M-2001, however the same was dismissed vide judgment dated 19.08.2008. (Annexure A-1)

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that no eye witnesses were examined to prove the second marriage of respondent no. 2 with respondent no. 3. In fact, the petitioner-complainant has not claimed to have witnessed the solemnisation of their marriage anywhere. To attract the offence under Section 494 of the IPC, it is of the utmost importance that the second marriage in accordance with essential ceremonies is proved. Consequently, offence under 494 and 109 of the IPC are not made out against the respondents-accused. As far as the charge under Section 506 of the IPC is concerned, neither has the complainant mentioned anything regarding being threatened nor any witnesses have been examined to make out a case. As such, the learned trial Court has correctly appreciated the facts in accordance with

law to acquit the respondents-accused.

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. (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 lower Appellate Court which warrants interference by this Court. As such, there is no merit in the present petition and leave to appeal is denied.

March 05, 2024
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No