



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

246

CRA-AS-92-2020 (O&M)

Date of decision: September 10th, 2024

Babita Rani

.....Appellant

Versus

Pawan and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Harkirat Singh Ghuman, Advocate
for the appellant.

MANJARI NEHRU KAUL, J.

The appellant is impugning the judgment dated 16.12.2019 passed by the learned Additional Sessions Judge, Kaithal, whereby respondent-accused has been acquitted of the charges framed against him in case FIR No.265 dated 22.08.2015 under Sections 114, 120B, 316, 323, 406, 495, 500, 506, 509 and 494 of the IPC registered at Police Station Kaithal City.

2. The case of the prosecution can be summed up as thus:

(i) Babita Rani, a lady Constable, filed a complaint on 22.08.2015, alleging harassment by her husband (respondent-accused) and her in-laws, after her marriage on 20.05.2007. On 30.06.2007, while pregnant, complainant alleged that she was beaten up by respondent-accused resulting in a miscarriage. Following this incident, she returned to her parental home. Subsequently, respondent-accused filed for divorce on 25.09.2009, in Sonipat, which was dismissed on 22.03.2011, due to false allegations including allegations casting aspersions on the character of the complainant. The complainant further alleged that in

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December, 2014, the respondent-accused, his parents, sisters and certain others conspired and got him married to another woman, Reena, without disclosing his prior marriage with the complainant and without obtaining any divorce. Allegations were also levelled by the appellant against the respondent-accused of misappropriating her dowry articles.

(ii) Respondent-accused was charged for offences under Sections 323, 316, 406, 500, 506, 509 and 494 of the IPC. Respondent-accused pleaded not guilty. In support, the prosecution examined as many as 17 witnesses including complainant. who stepped into the witness box as PW-1. The trial Court vide impugned judgment dated 16.12.2019 acquitted the respondent-accused by holding that the prosecution had failed to prove its case.

3. Learned counsel further submits that the complainant is now in possession of a divorce petition dated 22.05.2009 filed under Section 13 of the Hindu Marriage Act, 1955, by the respondent-accused before the learned District Judge, Sonapat. This petition was obtained after the impugned judgment was passed and, therefore, was not available during the trial. Learned counsel, therefore, prays that her application under Section 391 of the Cr.P.C. to adduce this additional piece of evidence be allowed and has challenged the impugned order primarily on the following grounds:-

(i) That the trial Court failed to properly consider the evidence adduced by the prosecution, which clearly proved the charges beyond a reasonable doubt

(ii) That the Court erred by evaluating the offences in isolation



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rather than as interconnected crimes, particularly regarding offences under Sections 323 and 406 of the IPC.

(iii) That the testimony of the complainant proved the commission of an offence under Section 500 of the IPC, as the respondent-accused had levelled false allegations against the character of the appellant and about her alleged illicit relations, in the divorce petition filed by him before the learned Court at Sonipat.

(iv) That the trial Court wrongly arrived at a conclusion that bigamy under Section 494 of the IPC was not proven by arguing that the mere acknowledgement of a Panchayat-mediated compromise and divorce between the respondent-accused and Reena (second wife of respondent-accused) substantiated the solemnization of a second marriage.

(v) That on 01.07.2007, respondent-accused and his family assaulted her, causing a miscarriage. The trial Court wrongly discounted the testimony of PW-11. Dr. S.N. Kuchhal and PW-16 Dr. M.S. Shah, despite a discrepancy in her name on medical records (Babita being called Meenu).

4. I have heard learned counsel for the appellant and perused the relevant material on record.

5. This Court does not find any illegality much less perversity in the conclusions drawn by the learned trial Court and hence, no interference is warranted for the reasons to follow.

6. With respect to the offences under Sections 323 and 406 of the IPC, it is undisputed that the father of the complainant had

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previously also filed a case against respondent-accused and his family on similar grounds, in which they were acquitted; an appeal preferred against their acquittal was also dismissed. Since the allegations in the present case are identical to those in the previous case, they cannot be re-litigated.

7. With respect to the allegations of bigamy under Section 494 of the IPC, as per allegations respondent-accused performed marriage with PW-14 Reena while still being marriage to the complainant. As per the testimony of PW-14 Reena, the respondent-accused solemnized marriage with her without disclosing his first marriage and the marriage was later dissolved by a Panchayat-mediated compromise. However, no evidence with respect to the alleged marriage performed by respondent-accused with Reena was brought on record; it was admitted by PW-14 that no rituals much less *saptapadi* was performed nor was the marriage registered. Hence, in the circumstances, a bigamy was rightly not proven in the present case.

8. With respect to the allegations inviting the mischief of Section 500 of the IPC as the complainant alleged that certain defamatory averments had been made in the divorce petition filed by respondent-accused against her, however, for reasons best known to the complainant, neither was a copy of the petition nor any other documentary evidence placed on record in the present case by the complainant to substantiate the allegations of defamation. Even qua allegations under Section 506 of of the IPC regarding threats being extended, it was not supported by any credible evidence and was rather



vague.

9. Lastly, regarding offence under Section 316 of the IPC, the complainant claimed that she suffered a miscarriage due to physical assault by respondent-accused and his family. However, no complaint whatsoever was made at the time by either the complainant or her brother, who as per the complainant, had taken her to the hospital after she started bleeding on account of the assault carried upon her; even there were no medical records produced to corroborate the allegations of assault or her claims of miscarriage. PW-16 Dr. M.S. Shah testified that complainant had come to him with complaint of abdominal pain due to a fall and there were no visible external signs of any injury present. All these circumstances, without doubt, create a serious dent in the case of the prosecution.

10. Regarding the application moved under Section 391 of the Cr.P.C. for admitting additional evidence in the form of a divorce petition, the appellant has failed to satisfy this Court as to how this evidence would come to her rescue. Still further, this Court cannot be a facilitator to the dilatory tactics of the appellant as she has failed to satisfy this Court as to why the said petition was not produced during trial, even though the same was well within her knowledge.

11. As a sequel to the above, finding no merit in the instant appeal, the same stands dismissed.

September 10th, 2024

Puneet

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No