

**228 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-936-2020

Date of decision: 30.07.2024

Rajbir Kaur

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Veneet Sharma, Advocate
for the petitioner.**HARPREET SINGH BRAR, J.**

1. The present revision petition is preferred against judgment dated 11.12.2019 passed by learned Additional Sessions Judge, Tarn Taran whereby appeal against judgment of acquittal dated 16.11.2017 passed by learned Chief Judicial Magistrate, Tarn Taran in FIR no. 147 dated 13.05.2012 registered under Sections 406, 498-A of the IPC, at Police Station City, Tarn Taran, was dismissed.

2. Briefly, the facts are that the petitioner got the present FIR registered against respondents No.2 to 5-accused on the allegations that her marriage with respondent no.2-accused was solemnised on 10.04.2011. Ample dowry articles were given to respondents No.2 to 5-accused and their relatives. Soon after the wedding, it is alleged that the petitioner-complainant was subjected to physical and mental harassment at the hands of respondents No.2 to 5-accused for bringing less dowry and also account of the fact that they thought that the petitioner has a bad character. The petitioner was turned out of the matrimonial house which constrained her to move an application before the

Women Cell, Goindwal Sahib. The in-charge of the cell convened a *panchayat*,

however, respondents No.2 to 5 -accused refused to take back the petitioner and even alleged that the child born to the petitioner was not from respondent No.2-husband. Hence, the complaint before the police. On the basis of the complaint, the present FIR was registered against the respondents-accused.

3. After assessing all material on record, the learned trial Court acquitted respondents No.2 to 5-accused vide judgment dated 16.11.2017. Aggrieved by the same, State of Haryana preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 11.12.2019.

4. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it appears that there is nothing in the judgements of the learned courts below 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, the petitioner has nowhere stated that respondents No.2 to 5-accused were entrusted with the property and that they have misappropriated the same or have dishonestly converted it to their own use. There is no mention as to which article was specifically entrusted to which of the accused. Specific entrustment and misappropriation of the property needs to be decisively proved. Further, a perusal of the trial record depicts that the dowry articles were neither demanded back by the petitioner nor the accused refused to handover the same to her or her family members. As a result, the factum of the dowry articles being specifically entrusted to respondents No.2 to 5-accused, who misappropriated them, cannot be conclusively established.

Specific entrustment is *sine qua non* for establishing the offence under section

406 IPC which is conspicuously missing in the present case. Moreover, nothing has been brought on record to prove the purchase of the items entrusted by way of bills or invoices.

5. 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. No specific date or time has been mentioned with regard to the incidents of cruelty and harassment that the petitioner was subjected to at the hands of respondents No.2 to 5-accused. Additionally, there is no medical evidence to prove the allegations of physical assault. Lastly, the petitioner left the matrimonial within one month of marriage which further renders the prosecution case feeble.

6. 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.

7. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or



illegality in findings recorded by the learned lower Appellate Court or the learned Trial Court which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is dismissed.

8. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

30.07.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No