

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRR No. 2159 of 2008 (O&M)
Date of decision: 30.01.2024

Maya Devi ...Petitioner

Versus

Shyam and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Naveen Chopra, Advocate
for the petitioner.

None for the respondent.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed against the judgment dated 24.12.2007, passed by the Court of learned Judicial Magistrate First Class, Karnal in Criminal Case No. 979 of 2006, arising out of the FIR No. 33 dated 24.09.2000, registered under Sections 406 and 498-A of the IPC at Police Station Gharaunda, District Karnal, whereby, the respondents had been acquitted of the charges as framed against them.
2. For the sake of convenience, the respondents shall be referred to as accused and the present petitioner shall be referred to as the complainant.
3. Brief facts relevant for the disposal of the present petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by the complainant before the police alleging therein that she was married with accused Tarsem on 24.04.1998. Sufficient dowry articles had been given at the time of her marriage by her father. However, the accused, who are members of her in-laws family, being brothers-in-law, sister-in-law

and husband respectively, were not satisfied with the same and they started harassing her on account of bringing insufficient dowry and she was pressurized to bring scooter and cash money. After one month of her marriage, she had returned to her parental home. A *Panchayat biradari* meeting was convened, wherein it was assured by the accused that they would not harass the complainant on account of demand of dowry, however, they did not mend their ways. On one particular day, they even tried to kill her by pouring kerosene oil upon her. The complainant also suffered a miscarriage due to the beatings extended by the accused. The demand of the accused for giving money and scooter continued. Accused Shama even tried to ravish her but the complainant did not disclose this fact to anybody in order to save the honour of the family. On the basis of these allegations and after registration of the FIR, investigation proceedings were initiated. The accused were arrested and were released on bail. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented in the Court for trial of the accused.

4. Copies of *challan* were supplied to accused free of cost. On finding a *prima facie* case for framing charges under Sections 406 and 498-A of the IPC against them, they were chargesheeted accordingly, vide order dated 27.04.2002. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined 03 witnesses besides relying upon documentary evidence and thereafter, its evidence was closed by Court order.

6. Statements of the accused were recorded under Section 313 Cr.P.C., wherein they pleaded innocence and took a plea that they had been falsely implicated. In defence evidence, they examined one witness.

7. After appraising the evidence produced on record and considering the contentions as raised by both the sides, the trial Court, vide impugned judgment dated 24.12.2007, acquitted the accused of the charges as framed against them by observing that the prosecution had not succeeded in proving its case beyond doubt. Feeling aggrieved, the complainant has filed the instant revision petition.

8. It is submitted in the petition and learned counsel for the petitioner-complainant has vehemently argued that the impugned judgment is not sustainable in the eyes of law and is liable to be set as the same suffers from several material infirmities. He has argued that there was overwhelming evidence in the shape of testimony of PW1 i.e. the complainant herself corroborated by the testimony of PW2 to prove that she was subjected to cruelty on account of demand of dowry by the accused persons and that her *Istridhan* had been misappropriated. However, the said evidence had not been properly appreciated by the trial Court and it was wrongly held that the charges so framed were not proved. Hence, it is argued that the impugned judgment is liable to be set aside, the revision petition deserves to be accepted and further that the respondents/accused are liable to be held guilty and convicted for the charges, which were framed against them.

9. I have heard learned counsel for the petitioner-complainant at considerable length and have gone through the material placed on record carefully.

10. Before advertng to the merits of the case and the contentions raised by the petitioner, it would be appropriate to review the approach to be adopted while deciding the revision 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. The Hon'ble Apex Court further 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, re-appreciate 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.

11. Reference can also be made to *Atley v. State of U.P.*, AIR 1955 SC 807; *Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217; *Ramesh Babulal Doshi v. State of Gujarat*, 1996 SCC(Crl.) 972; *Sadhu Saran Singh v. State of U.P. and others*, 2016 (2) RCR (Criminal) 319 & *State of Maharashtra v. Fazal Rehman Abdul*, 2014 (7) SCC (Criminal) 01, wherein similar proposition of law had been laid down and it was observed that while entertaining appeal against judgment of acquittal, the Appellate Court was required to seek an answer to the question whether the findings of the trial Court were culpably wrong, manifestly erroneous and demonstrably unsustainable. It was held that the Appellate Court should not ordinarily set aside the judgment of acquittal in a case where two views are possible, though the view of the Appellate Court may be the more probable one and further that in an appeal against acquittal, the Appellate Court would interfere only when there exists perversity of facts and law. On applying the above enunciated principles of law to the peculiar facts and circumstances of the present case, on hearing learned counsel for the petitioner at length and on having perused the material placed on record of learned trial Court, I am of the considered opinion that the present revision does not deserve to be allowed and no case has been made out to interfere with the well reasoned judgment passed by the trial, thereby acquitting the accused persons.

12. Now coming to the case in hand, the accused had been chargesheeted for commission of offences punishable under Sections 406 and 498-A of the IPC on the allegations that the accused subjected the victim to harassment on account of demand of dowry and also extended beatings to her even tried to kill her by pouring kerosene oil on her but she was rescued by

her neighbours. The complainant had stated that she had narrated the entire story of her being subjected to harassment and cruelty to her parents but none of his family members had been cited as witness to prove the allegations. Even two witnesses, i.e. Pws Pala Ram and PW Shamsher Singh, had been given up by the learned public prosecutor without examination. Apart from the complainant, two other witnesses were examined in support of her case, out of whom, one was PW-2 Suresh Kumar, but it was not proved on record as to how this witness was related to complainant and how had he come to know that the complainant was subjected to harassment on account of demand of dowry. Although, this witness had stated that an amount of Rs. 19,000/- was given to accused in his presence but a perusal of his statement recorded under Section 161 Cr.P.C. shows that he never disclosed this fact to the police. During cross-examination, this witness was found ignorant about some facts, which he should have been known to, had he been the close relative of the complainant. Even the allegations with regard to physical assault and an attempt to set the complainant ablaze had not been proved by producing any cogent and reliable evidence. If any of such incidents had happened with the complainant, it must have been reported to police authorities and there must have been any witness to the occurrence but the prosecution had failed to produce any witness to prove these allegations. Even the complainant had not given any specific date, month or year when she was harassed or was subjected to cruelty. On the other hand, the defence witness i.e. DW1 Randeep Singh had categorically stated that no dowry demand was ever raised by the accused and they never extended any beating to the complainant for dowry.

13. The settled proposition of law is that in order to prove a case punishable under Section 498A, it must be satisfied that the husband or his relatives subjected the woman, the wife, with cruelty. For the purpose of cruelty, an explanation is attached to Section 498-A IPC, which reads as under:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

14. The requirement to be established to bring home the guilt of accused under Section 498-A IPC has been laid down by the Apex Court in a catena of judgments such as ***Satish Kumar Batra and Others v. State of Haryana (AIR 2009 SC 2180)***, ***Rajendran and Another v. State Assistant Commissioner of Police (Law and Order) (AIR 2004 SC 855)***, ***Onkar Nath Mishra and Others v. State (NCT of Delhi and Another) (AIR 2008 SC (Supp) 204)*** and ***M. Srinivasulu v. State of A.P. (AIR 2007 SC 3146)***,

wherein it is settled that consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498 A IPC.

15. It is also well settled proposition of law that the revisional jurisdiction conferred on the High Court under is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the State has a right to appeal. It could be exercised only in exceptional cases, where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or mis-appreciated the evidence on record. Reliance in this regard can be placed upon ***D. Stephen vs. Nosibolla : 1951 SCC 184***. A three judge Bench of Hon'ble Supreme Court in ***K. Chinnaswamy Reddy vs. State of Andhra Pradesh : (1963) 3 SCR 412*** has held that it is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have appealed against it but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. The High Court is prohibited from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a

finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. Such as, where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law.

16. On applying the ratio of law as laid down in the aforesaid judgments to the facts of the present case, this Court finds that the petitioner has failed to establish any convincing reason for this Court to form an opinion that there was any manifest illegality, perversity or the gross miscarriage of justice in the order of acquittal passed by the trial Court warranting interference by this Court. Admittedly, the respondent-State has not laid any challenge to the impugned judgment of acquittal. The Hon'ble Supreme Court has cautioned against the practice of implicating the husband and his near relatives, which would lead to immense sufferings either to the husband or his relatives and sometimes it may go to the extent of breaking the very relation of married couple. In *Preeti Gupta v. State of Jharkhand (2010) 7 SCC 667*, Hon'ble Supreme Court has cautioned against the tendency of over implication reflected in large number of cases and found that it ultimately creates enormous social unrest affecting peace, harmony and happiness of the society after observing that even ultimate acquittal may not be able to wipe

out the deep scars of suffering of ignominy and it is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in existing law. The practice of registering FIR with the allegations attracting offence under Section 498-A IPC and setting the criminal law in motion on the basis of trivial disputes or differences between the spouses or the relatives may not reflect the legislative intent or the mischief to be suppressed under that provision, hence, the authorities should be more vigilant and cautious while setting the criminal law in motion and should not unnecessarily drag such mundane disputes or differences between the spouses or their relatives in a criminal prosecution for the offence under Section 498 A IPC.

17. In view of the discussion made above, this Court finds no infirmity or irregularity in the impugned order, which is well reasoned, based upon correct appreciation of facts, applicable law and judicial precedents and needs no interference of this Court. Accordingly, the present revision petition stands dismissed.

30.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>