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

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Date of decision: 11.12.2024

MADHU SHARMA

... PETITIONER

V/s

YASHPAL AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Arnav Sood, Advocate
for the petitioner.

Mr. Vipin Mahajan, Advocate for respondents No.1 to 4.

None for respondent No.5

Mr. Yuvraj Singh Tiwana, AAG Punjab.

SUMEET GOEL, J.

1. The present criminal revision has been filed by the complainant (petitioner-herein) in the police case arising out of FIR No. 200 dated 26.10.1999, registered under Sections 498-A, 406, 323, 148, and 149 of the IPC, at Police Station Division No.1, Pathankot, District Pathankot, Punjab.

2. Trial in the above-mentioned case was conducted in the Court of Judicial Magistrate, Ist Class, Pathankot. Initially, the challan in the case was filed against accused Yash Pal, Chander Mohan (Respondent No.3-herein), Sneh Lata, and Arvind Kumar.

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However, later on, accused Rajinder Kumar and Pt. Ram Lubhaya were also summoned as additional accused under Section 319 of the Code of Criminal Procedure. The trial Court framed charges under Sections 406, 498-A, 323, read with Section 34 of the Indian Penal Code against all the accused.

3. The trial Court, vide judgment dated 13.08.2007, acquitted all the accused of the charges framed against them under Sections 498-A, 323, read with Section 34 of the IPC. However, the trial Court convicted accused Chander Mohan (Respondent No.3-herein) under Section 406 of the IPC, while all other accused were acquitted of the charge under Section 406 of the IPC as well. Accused Chander Mohan (Respondent No.3-herein) was sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 2000/-; in default of payment of fine, he was to undergo further rigorous imprisonment for 3 months for the offence committed under Section 406 of the IPC.

4. Feeling aggrieved by the judgment dated 13.08.2007, two appeals were filed against the said judgment before the Additional Sessions Judge, Gurdaspur. Appeal No. 4 of 2007 was filed by the accused, Chander Mohan (Respondent No.3-herein), against his conviction by the trial Court under Section 406 of the IPC. Another appeal, No. 13 of 2007, was filed by the State challenging the acquittal of the accused persons by the trial Court.

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5. The Additional Sessions Judge, Gurdaspur, vide common judgment dated 12.11.2010, decided both the appeals together. While the appeal filed by the State against the acquittal of the accused persons was dismissed as time-barred, the appeal filed by Chander Mohan (Respondent No.3-herein) against his conviction by the trial Court was accepted. The Additional Sessions Judge acquitted Chander Mohan (Respondent No.3-herein) of the charge framed against him under Section 406 of the IPC.

6. The State has not sought to challenge the judgment dated 12.11.2010 passed by the Additional Sessions Judge. However, the complainant, by filing the present criminal revision petition, has challenged the acquittal of all the accused in the present case.

7. I have heard the learned counsel for the parties and have carefully gone through the entire case record.

8. It is argued on behalf of the petitioner that the judgments passed by both the learned Courts below are erroneous and based upon a misappreciation of evidence on record. It is argued that the complainant married respondent Chander Mohan (Respondent No.3-herein) on 23.01.1999, stayed for 1 month at her matrimonial house after the marriage, and was maltreated for not bringing adequate dowry. As a result, the FIR was lodged with the police by the complainant. It is argued that the Additional Sessions Judge has fallen into an error of law by dismissing the appeal filed by the State on the ground of being filed ten days after expiry of prescribed

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period. It is submitted that the appeal was filed on 23.10.2007 and was decided on 12.11.2010. It is argued that, in view of this, either the Additional Sessions Judge should not have entertained the appeal, or, once the appeal was entertained, its dismissal after 3-½ years on the ground of limitation is a result of non-application of judicious mind.

9. It is further argued on behalf of the petitioner that the judgment passed by the Additional Sessions Judge, insofar as it has accepted the appeal filed by the accused Chander Mohan (Respondent No.3-herein) and acquitted him of the charge under Section 406 of the IPC, is also not sustainable as it is contrary to the evidence presented. It is submitted that there are specific allegations against the respondents regarding the demand for dowry. It is submitted that the evidence led by the prosecution proves that the petitioner was maltreated on account of the demand for dowry. It is argued that the accused, in their statements under Section 313 of the Cr.P.C., admitted that certain gift items brought by the petitioner were accepted by them in the marriage. It is further argued that there was no suggestion to the petitioner in her cross-examination that no dowry was given to the respondents. It is argued that, in view of the perversity of the findings returned by both the learned Courts below by not appreciating the evidence in the correct perspective, the judgments passed by both the Courts below are liable to be set aside, and the revision petition is entitled to be allowed.

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10. To the contrary, on behalf of the respondents, it is contended that the judgments passed by both the learned Courts below are based on sound reasoning and due appreciation of the evidence on record, and are therefore liable to be maintained. It is submitted that there is no illegality or perversity in the findings returned by both the learned Courts below, and as such, the revision petition is liable to be dismissed.

11. Perusal of the judgment passed by the learned trial Court shows that the trial Court, after elaborately discussing the evidence on record, concluded that the incident alleged by the complainant took place on 18.10.1999, whereas the FIR was lodged on 25.10.1999. Upon appreciating the evidence, the trial Court concluded that the complainant, having been medically examined on 19.10.1999, took time to concoct the story against the respondents, and the date of the alleged occurrence, where the complainant was given injuries by the respondents, is doubtful. The trial Court further held that besides this solitary instance, the complainant failed to provide any other instance, date, and place where she was subjected to cruelty in connection with the demand for dowry. The trial Court also noted that the mother of the complainant admitted that the complainant never made any complaint to her about being treated with cruelty by the accused. The trial Court held that if the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was held that the accused are

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entitled to the benefit of doubt in the evidence led by the prosecution. It was also held that no evidence was presented by the prosecution to show that the dowry articles were entrusted to any of the family members of the husband, Chander Mohan (Respondent No.3-herein), and as such, they have not committed any offence under Section 406 of the IPC. The bills and list of dowry articles remained unproved.

12. The Additional Sessions Judge, while dealing with the appeal filed on behalf of the State, held that the appeal filed by the State against the acquittal was barred by 10 days of limitation. Despite this, the State did not file any application seeking condonation of the delay that had occurred in filing the appeal.

13. The argument advanced on behalf of the petitioner that there is an error in the judgment passed by the Additional Sessions Judge, as the appeal was dismissed on account of a mere 10-days delay, despite the appeal remaining pending for about 3-½ years, is without substance. I am unable to subscribe to the ground put forth by the petitioner. The provisions of the law of limitation are meant to be adhered to and cannot be disregarded merely because the disposal of the appeal filed by the prosecution took time. The time taken in the disposal of the appeal is a natural outcome of the fact that Courts in general are overburdened with pending cases for various reasons. Moreover, the mere issuance of notice in the appeal filed by the prosecution cannot be construed as a circumstance condoning the delay in the filing of the appeal. Once the appeal filed by the State

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was barred by time, it was the bounden duty of the State, as the appellant, to plead the cause of the delay with proper reasons explaining it. The findings returned by the Additional Sessions Judge highlight the callousness on part of the State in filing the appeal, evident from the fact that no application seeking condonation of the delay was filed with the appeal or at any time thereafter. The perusal of the judgment passed by the Additional Sessions Judge shows that no oral submissions were advanced on behalf of the State explaining the delay and seeking condonation thereof. It is trite law that matters regarding the condonation of delay should be construed by the Court liberally and not with a pedantic approach. However, it is equally a settled proposition of law that it is not the period of delay but the explanation furnished that is the relevant factor for condonation of delay. In the present case, the State neither bothered to file any written application seeking condonation of delay in filing the appeal before the Additional Sessions Judge, nor were any reasons furnished orally seeking the condonation of delay. The law of limitation cannot be simply ignored on the ground that the appeal is filed by the State and the delay period is not substantial. A delay of even a single day must be explained with plausible reasoning. The circumstances of the case depict a clear lackadaisical and indifferent approach on the part of the State in prosecuting the appeal filed by it. The State has not even raised any grievance regarding the dismissal of its appeal filed before the Additional Sessions Judge. As such, no illegality or

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infirmity can be found in the dismissal of the appeal filed by the State against acquittal by the Additional Sessions Judge, as it was time-barred.

14. The facts of the case indicate that no serious prejudice has been suffered by the State due to the dismissal of its appeal by the Additional Sessions Judge on the ground of limitation. In the connected appeal filed on behalf of the convict, Chander Mohan (Respondent No.3-herein), against his conviction under Section 406 of the IPC, the Additional Sessions Judge has already dealt with the merits of the case in detail. After elaborately discussing the entire evidence led on record, the Additional Sessions Judge concluded that the evidence presented by the prosecution failed to prove the charges against the accused persons. Appellant Chander Mohan (Respondent No.3-herein), who was convicted by the trial Court under Section 406 of the IPC, was acquitted by the Additional Sessions Judge of the said charge. The Additional Sessions Judge held that not all the articles given at the time of marriage were dowry articles, and that these articles were given voluntarily and out of affection. The prosecution failed to prove that the dowry articles were given to a particular accused or that there was misappropriation or a demand for their return. The statements of the complainant and her mother regarding the giving of dowry articles were vague. Furthermore, no bills of purchase for the alleged dowry articles were presented on record, nor was any independent witness examined to prove the same.

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15. The argument advanced on behalf of the petitioner that the accused, in their statements under Section 313 of the Cr.P.C., admitted that certain gift items brought by the petitioner were accepted by them in the marriage, is of no help to the prosecution case. It is trite law that ceremonial gifts given in marriage to relatives cannot be construed as dowry articles. The Hon'ble Supreme Court, in the case of ***Bhaskar Lal Sharma & Anr. Vs Monica, 2009 (3) RCR (Criminal) 866***, held as follows:

“69. Any gift made to the bridegroom or his parents - whether in accordance with any custom or otherwise also would not constitute any offence under Section 406 of the Code.”

16. The argument advanced on behalf of the petitioner, that there was no suggestion in the cross-examination of the petitioner that no dowry was given to the respondents, is again of no help to the prosecution case. It is settled law that in a criminal trial, the prosecution must stand on its own legs. It is the responsibility of the prosecution to prove its case against the accused beyond a reasonable doubt. In the case of ***Paramjeet Singh @ Pamma vs. State of Uttarakhand, 2010 (4) RCR (Criminal) 548***, the Hon'ble Supreme Court observed that:

“11. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the Court

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has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The Court must bear in mind that “human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions.” Though an offence may be gruesome and revold the human conscience, an accused can be convicted only on legal evidence and not surmises and conjecture. The law does not permit the Court to punish the accused on the basis of a moral or suspicion alone. “The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence.”

17. In the present criminal revision petition, the prayer made by the petitioner is solely for setting aside of the judgments passed by the learned Courts below and the acceptance of the revision petition. No specific relief beyond the said prayer has been sought by the petitioner. The provisions of Section 401(3) of the Cr.P.C. prohibit the High Court from converting a finding of acquittal into a finding of conviction. It is settled law that the revisional power, having limited scope in a case against acquittal, is to be exercised sparingly and only in exceptional cases involving great illegality or perversity in the findings of judgments of acquittal. In such cases, the High Court may remand the case back to the appellate or trial Court for fresh adjudication. The Hon’ble Supreme Court, in the case of ***Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (now Jharkhand) and another, 2002 (4) RCR (Criminal) 61,***

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while dealing with the revisional powers of the High Court in a case against acquittal, held as follows:

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. Therefore said sub-section, which places a limitation on the powers of the revisional Court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial Court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party.”

18. Therefore, in view of the above-mentioned limited scope of the revisional jurisdiction in the present case, and in light of the merits of the prosecution case discussed above, I do not find any illegality or perversity in the findings returned by both the learned Courts below. The petitioner has not been able to demonstrate any

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circumstance of misreading or non-reading of evidence on the part of the Courts below while passing the judgments of acquittal, thereby causing manifest injustice to the petitioner. The evidence led by the prosecution has fallen short of the standard of proof required for the conviction of the accused respondents; therefore, a retrial cannot be ordered in the present case.

19. Resultantly, the present criminal revision petition is dismissed as being devoid of merit.

20. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

December 11, 2024
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No