



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

205

CRR-1587-2013

Date of decision: 10.05.2024

Shweta

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. U.K. Agnihotri, Advocate and
Mr. A.K. Agnihotri, Advocate for the petitioner.

Mr. Dinesh Arora, Advocate
for respondents No.2 to 6.

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred against judgment dated 27.02.2013 passed by learned Additional Sessions Judge, Rohtak whereby appeal against judgment of acquittal dated 13.11.2010, passed by learned Judicial Magistrate 1st Class, Rohtak in FIR No.565 dated 03.10.2004 registered under Sections 406, 498-A of the IPC, at Police Station City, Rohtak, was dismissed.

2. Briefly, the facts are that the petitioner-complainant moved a written complaint dated 16.09.2004 to SP, Rohtak, wherein she alleged that her marriage with respondent No.2-accused was solemnised on 29.04.2004. Ample dowry articles were given to respondent Nos.2 to 6-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 respondent Nos.2 to 6-accused for the purpose of bringing more dowry. Respondent Nos.2 to 6-



accused demanded a car and jewellery from the petitioner-complainant. The father of the petitioner paid Rs. 50,000/- in order to pacify respondent Nos.2 to 6-accused. However, respondent Nos.2 to 6-accused started maltreating the petitioner again. Further, mother-in-law and sister-in-law of the petitioner misappropriated her jewellery while father-in-law used to pocket her salary. Moreover, it was alleged that father in-law of the petitioner was employed at a medical college and he allegedly used to browbeat the petitioner, by stating that if she does not bring sufficient dowry, he would get her declared as physically unfit from the college, in order to secure a decree of divorce. On 4th July, 2004, respondent Nos.2 to 6-accused demanded Rs.2,00,000/- from the petitioner and her family members and since the petitioner was not in a position to pay such an exorbitant amount, she returned to her paternal home. Hence, the complaint before the SP, Rohtak. 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 respondent Nos.2 to 6-accused vide judgment dated 13.11.2010. Aggrieved by the same, State of Haryana preferred an appeal before the learned lower Appellate Court which was also dismissed vide judgment dated 27.02.2013.

4. Learned counsel for the petitioner assails the judgments of the learned Courts below on the grounds that they wrongly, erroneously and without considering and appreciating the evidence on record, acquitted respondent Nos.2 to 6-accused. The finding of the Courts that no allegation of specific entrustment of dowry articles/*stridhan* to respondent Nos.2 to 6-accused has been made is perverse and against the evidence available on record. The petitioner had adduced a detailed list of dowry articles with the



avermment of specific entrustment which was not rebutted in any manner by respondent Nos.2 to 6-accused. Further, the lower Appellate Court merely affirmed the findings of the trial Court on the same footing without considering and appreciating the evidence on record and the provisions of law. It is established that the dowry articles are property of the petitioner, which cannot be retained by respondent Nos.2 to 6-accused in any eventuality and since the said articles have not been handed over by respondent Nos.2 to 6-accused, offence under Section 406 of IPC is clearly made out. Lastly, learned counsel contends that the learned lower Appellate Court has wrongly observed that the petitioner left the matrimonial home of her own volition. In fact, the petitioner was turned out of her matrimonial home after she was physically assaulted. Following this, several *Panchayats* were also convened to settle the matrimonial disputes, however, nothing fructified.

5. Per contra, learned counsel for respondent Nos.2 to 6 opposes the prayer of the petitioner as the learned trial Court has passed a well- reasoned judgment based on correct appreciation of evidence available on record which has also been upheld by the learned lower Appellant Court and as such, it does not warrant interference by this Court.

6. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that there is nothing in the judgments of the learned courts below to indicate perversity or misreading of evidence in their judgments. 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 prosecution adduced a list of articles allegedly given by the parents of the complainant to



her in-laws, at the time of marriage. However, 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 Court 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 respondent Nos.2 to 6-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. Also, although recovery of the dowry articles as per the list has been made yet, there is no evidence that these articles were taken on *superdari* by the petitioner. Moreover, nothing has been brought on record to prove the purchase of the items by way of bills or invoices, allegedly entrusted to respondent Nos.2 to 6.

7. 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 respondent Nos.2 to 6-accused. Additionally, there is no medical evidence to prove the allegations of physical assault. The brother of the petitioner, who was examined as PW-4, in his examination-in-chief, deposed that his sister was not ready to get herself medically examined even when her parents-in-law insisted on it. He further stated that the petitioner would not have filed the present complaint if the parents-in-law had not forced her to get herself medically examined. It is important to mention that the husband-respondent No.2 filed a divorce petition



on the ground of cruelty and he was granted the same on this ground. No appeal was filed by the petitioner challenging the decree of divorce. Lastly, the petitioner left the matrimonial home on 04.07.2004, however, the complaint was filed on 16.09.2004 i.e. after more than two months of leaving the matrimonial home. No reason has been stated by the prosecution to justify the delay.

8. 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.

9. 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 hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

May 10, 2024
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No