



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

229**CRR-2734-2013****Reserved on: 22.07.2024****Pronounced on: 23.07.2024**Pooja *alias* Parveen Kumari

...Petitioner

Versus

Manoj Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRARPresent: Mr. Sharad Mehra, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred against judgment dated 04.06.2013 passed by learned Sessions Judge, Amritsar whereby appeal against judgment of acquittal dated 10.03.2012 passed by learned Judicial Magistrate 1st Class, Amritsar in criminal complaint registered under Sections 406, 498-A of the IPC, was dismissed.

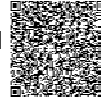
2. Briefly, the facts are that the petitioner-complainant a criminal complaint before the learned Magistrate wherein she alleged that her marriage with respondent no.1-accused was solemnised on 17.04.1998 as per Hindu rites and rituals. Ample dowry articles were given to the respondents-accused and their relatives. Soon after the wedding, it is alleged that the petitioner-complainant was subjected to physical and mental harassment at the hands of the respondents-accused for the purpose of bringing more dowry. Respondent No.1-husband under the influence of liquor used to physically assault the petitioner. Further, respondent No.1 demanded Rs. 50,000/- as well as her share in her family property. Upon her inability to fulfil these demands the

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petitioner was turned out of the matrimonial home. Subsequently, the respondents-accused apologized and assured the petitioner that they would mend their ways. However, the respondents-accused started maltreating the petitioner again. The petitioner was given severe beatings and as a result she left the matrimonial home to reside with her sister in Tarn Taran, where she was also admitted in the Civil Hospital. The respondents-accused refused to take the petitioner back till their demands were met. The matter was reported to the police but no action was taken. Hence the complaint before the Magistrate.

3. After assessing all material on record, the learned Trial Court acquitted the respondent-accused vide judgment dated 10.03.2012. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 04.06.2013.

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. The relationship between the petitioner and respondent No.1-husband, it seems, soured due to concealment on the part of the petitioner that this was her second marriage. In fact, the petitioner neither mentioned this fact in the complaint nor in her statement which was recorded at the stage of preliminary 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 adduced a list of articles allegedly given by the parents of the complainant to her in-laws. However,

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there is no mention as to which article was specifically entrusted to which of the accused. Moreover, it is a list merely attested by the petitioner herself and her counsel, who prepared the same and does not bear the signature of any of the respondents-accused. Furthermore, the list is undated. Therefore no reliance can be place upon the said list. Specific entrustment and misappropriation of the property needs to be decisively proved. Further, a perusal of the trial record depicts that the factum of the dowry articles being specifically entrusted to the respondents-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.

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 the respondents-accused. Additionally, there is no medical evidence to prove the allegations of physical assault. No MLR has been adduced by the petitioner. As per the testimony of CW-6, namely, Jaswinder Singh, who is the Pharmacist-cum-Record Keeper, Civil Hospital, Tarn Taran as well as the original record of the petitioner's admission file, she was admitted on 10.09.2004 and discharged on 15.09.2004. The doctor who examined the petitioner, however, was not summoned as a witness. Additionally, CW6-Jaswinder Singh in his cross-examination stated that the intimation of admission of the petitioner was not given to the police since it was not a case of cruelty or severe physical assault. In fact, it is routine

practice to give intimation to the police in cases of quarrel. As such, the prosecution failed to prove the guilt of the respondents-accused beyond the shadow of reasonable doubt.

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.

Reserved on : 22.07.2024

Pronounced on : 23.07.2024

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(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No