

2024:PHHC:076777



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

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CRR No. 3993 of 2015 (O&M)
Date of decision: 29.05.2024

Manjit Kaur ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

None for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. CRM-34599-2015

Prayer in this application is for condoning the delay of 43 days in
filing the accompanying revision petition.

For the reasons stated in the application, the same is allowed. The
delay of 43 days in filing the revision petition is hereby condone.

2. CRR-3993-2015

The present petition has been filed against the judgment dated
23.09.2013, passed by the Court of learned Judicial Magistrate First Class,
Gurgaon (now Gurugram) in case titled as *State vs. Bhagat Singh*, arising out
of FIR No. 289 dated 17.04.2007, registered under Sections 498-A, 406, 323,
506 of IPC at Police Station City Gurgram whereby, the respondent No. 2

Bhagat Singh had been acquitted of charges as framed against him under Sections 498-A, 406 and 506 of IPC but was convicted for commission of offence punishable under Section 323 of IPC and was ordered to be released on probation on furnishing of bonds in a sum of Rs. 20,000/- for a period of one year; as well as against the judgment dated 08.05.2015, passed by the Court of learned Additional Sessions Judge, Gurugram, whereby the appeal filed by the petitioner against the judgment and order of the trial Court had been dismissed.

3. For the sake of convenience, the respondent No. 2 shall be referred to as accused and the present petitioner shall be referred to as the complainant.

4. 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 Bhagat Singh on 27.06.1993. Sufficient dowry articles had been given at the time of her marriage by her family. Two children were born out of the wedlock. However, the accused and his family members used to mistreat and harass her on account of demand of dowry. She was even extended beatings by the accused and his father. In the month of December, 2022, she along with her children were thrown out of her matrimonial house. However, a compromise was effected between the parties. Thereafter, on 24.03.2007 at about 07:00 AM, she was again extended beatings by the accused and his father. She prayed for taking legal action against the culprits. 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. However, the proceedings against co-accused Arjun, Harjeet, Gurdeep and Jasbir were quashed by this Court.

5. Copies of *challan* were supplied to accused free of cost. On finding a *prima facie* case for framing charges under Sections 498-A, 406, 323, 506 of IPC against him, he was chargesheeted accordingly. He pleaded not guilty to the charges and claimed trial.

6. To substantiate its case, the prosecution examined 05 witnesses besides relying upon documentary evidence and thereafter, its evidence was closed by Court order.

7. Statement of the accused was recorded under Section 313 Cr.P.C., wherein he pleaded innocence and took a plea that he had been falsely implicated. In defence evidence, he examined three witnesses.

8. After appraising the evidence produced on record and considering the contentions as raised by both the sides, the trial Court, vide impugned judgment dated 23.09.2013, acquitted the accused from charges as framed against him under Sections 498-A, 406 and 506 of IPC but convicted him for commission of offence punishable under Section 323 of IPC and ordered him to be released on probation on furnishing of bonds in a sum of Rs. 20,000/- for a period of one year. Feeling aggrieved, the complainant has had preferred an appeal before the appellate Court but it had been dismissed, vide impugned judgment dated 08.05.2015.

9. It is submitted in the petition and learned counsel for the petitioner-complainant has vehemently argued that the impugned judgments

are not sustainable in the eyes of law and are 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 and his family members 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 under Sections 498-A, 406 and 506 of IPC were not proved. Hence, it is argued that the impugned judgment is liable to be set aside. It is further argued that even the appellate Court erred in appreciating the evidence produced on record and erroneously dismissed the appeal of the petitioner. Hence, it is argued that the revision petition deserves to be accepted and further that the respondent/accused is liable to be held guilty and convicted for the charges, which were framed against him.

10. There is no representation on behalf of respondent No. 2/accused.

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

12. 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.

13. 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.

14. Now coming to the case in hand, the accused had been chargesheeted for commission of offences punishable under Sections 498-A, 406, 323, 506 of IPC on the allegations that the accused subjected the complainant to harassment on account of demand of dowry and also extended beatings to her and had criminally misappropriate her *istridhan* and converted the same to his own use. While passing the impugned judgment, the trial Court had observed that the complainant had given two instances of her being subjected to harassment on account of demand of dowry. The first incident took place in December, 2002, when the accused/husband and his father asked the complainant to seek monetary help from her parents to enable them to buy a shop at Gurugram and the second incident is alleged to have taken place on 26.06.2006, when her in-laws allegedly took away her gold ornaments. Except this, there was nothing on record to show that any demand of dowry was

raised by the accused or his family members or she was ill treated or beaten up for demand of dowry. The trial Court observed that there was nothing on record to suggest that the alleged harassment or cruelty caused to the complainant was of such nature that could have driven her to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical. 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 cited 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. The allegations of criminal misappropriation of *istridhan* of the victim was also not proved as she had simply stated that her gold articles were taken away by her in-laws. She had not stated as to which particular accused had taken and misappropriate which particular article/ornament. Hence, the trial Court had rightly observed that no case under Section 406 of IPC was made out against the accused. Similar is the position with the allegations of criminally intimidating the complainant as she had not specified the allegations by giving date, month and time when she was intimidated by the accused. Hence, a perusal of the judgment passed by the trial Court would show that the same is

based on cogent reasoning after appreciating the evidence on record in right perspective. The trial Court's findings are based on a correct evaluation of the evidence and do not suffer from any flaws or illegality, thereby acquitting the accused from charges under Sections 498-A, 406, 506 of IPC.

15. So far as the conviction of the accused under Section 323 of IPC is concerned, the same has not been challenged by the accused. The next grievance of the petitioner is that the accused has been wrongly given the benefit of release on probation, whereas he should have been sentenced to undergo imprisonment and pay fine.

16. Before delving into the aforesaid argument of learned counsel for the petitioner, let us first have a look on the Act relating to the provisions of releasing a convict on probation, which is Probation of Offenders Act, 1958. This Act was enacted in order to save offenders in appropriate cases from being habitual offenders by providing them with a chance to reform rather than dumping into jails. For ready reference, Section 4 of Act is reproduced herein below:

Section 4 in The Probation of Offenders Act, 1958

4. Power of court to release certain offenders on probation of good conduct.—

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the

offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without

sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under subsection (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

17. The objectives and principles of criminal law as envisioned in the aforesaid provisions, apart from deterrence against committing crime against society, are *inter-alia* focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime. The goal of criminal law extends beyond mere punishment. While punishment serves to deter and hold individuals accountable for their actions, there is a growing recognition of the importance of addressing the underlying factors that contribute to criminal behaviour. This perspective emphasizes the potentials of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective. In certain cases, certain offenders may be asked to remain under community supervision rather than being incarcerated. During such probation period, the offender can be put to follow certain conditions, such as regular reporting to a probation officer,

participating in counselling or treatment programs and maintaining employment or education. The aim is to provide support, guidance and opportunities for the offender and to address the root causes of their criminal behaviour and develop positive life skills. Close monitoring and guidance provided during probation can help the offender make positive changes in their life and reduce the likelihood of re-offending. Overall, the concept of focusing on reformation and using alternatives to imprisonment, such as release on probation, reflects a more holistic approach of criminal justice that takes into account the potential for positive change and the overall betterment of both the individual and society. Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system. Hence, it cannot be held that the trial Court had wrongly released the accused on probation for one year as admittedly, he was first offender and the maximum punishment provided for commission of offence punishable under Section 323 of IPC was imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. Hence, the conviction of the accused under Section 323 of IPC and his release on probation of one year by the trial Court stands upheld. A perusal of the impugned judgment dated 08.05.2015 would also show that it is based on true appreciation of evidence and material placed on record during trial and there is no infirmity or perversity in the same warranting any interference by this Court.

18. 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.

19. In view of the discussion as made above, 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 impugned judgments passed by the trial Court as well as by the appellate Court warranting interference by this Court. Admittedly, the respondent-State has not laid any challenge to the impugned judgments. 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.

20. In view of the discussion made above, this Court finds no infirmity or irregularity in the impugned judgments, which are 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.

29.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>