

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

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CRR No. 4529 of 2015 (O&M)
Date of decision: 30.01.2024

Renu ...Petitioner

Versus

Devi Dayal and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Virender Soni, Advocate
for the petitioner.

None for the respondent.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed against the judgment dated 18.02.2015, passed by the learned Sub Divisional Judicial Magistrate, Meham in Criminal Case No. 97-1 of 2010, titled as *State vs. Devi Dayal & others*, whereby the accused/respondents were acquitted of the charges as framed against them under Sections 498-A, 406, 323 read with Section 34 of the IPC as well as against the judgment dated 09.09.2015, passed by the learned Sessions Judge, Rohtak in Appeal No. 28 of 2015, titled as *Renu vs. Devi Dayal and others*, whereby the appeal filed by the petitioner against the aforesaid judgment of the trial Court was dismissed.
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 Devi Dayal (petitioner No.1) on 18.05.2003. Huge amount of money was spent on the marriage. However, just after marriage, the complainant was taunted on the pretext of bringing insufficient dowry. The husband of the complainant also taunted her that she was an illiterate person. She alleged that when her brother came to her matrimonial house to bring her after the marriage, at that time, her father-in-law and mother-in-law (petitioner Nos. 4 and 5 respectively) demanded a motorcycle and gold chain and had beaten her in front of her brother. Thereafter, her brother had returned to his house and after 2/3 days, he again came to take her to parental house but then also, accused Meena and Roshni (petitioner Nos. 2 and 3 respectively) misbehaved with her and raised demand of Rs. 50,000/- for motorcycle and gold chain and threatened that otherwise, there was no space for the complainant in her matrimonial house. In the month of January, 2006, the father of the complainant gave an amount of Rs.50,000/- to accused Devi Dayal. Thereafter, the complainant was residing in her matrimonial house peacefully. In the meanwhile, accused Devi Dayal was selected as a JBT Teacher and he ousted the complainant from his house. A panchayat was convened, in which, the accused persons said that the tone of talking of the complainant was not good, to which, her father accepted their allegations for her happy matrimonial life, though the allegations were baseless. On 31.08.2007, she was blessed with a male child and in celebration of the same, her father had spent huge money but within a period of one month, accused Nos. 4 to 6 assaulted the complainant and she was again ousted from her matrimonial house. Thereafter, for about one year, she resided in her parental house but the accused persons tendered apology for their act and took her

back to matrimonial house. However, on the occasion of Diwali, she was again beaten up by the accused persons and the incident was witnessed by her brother, who was present there. Accused Meena even poured kerosene oil upon her and accused Mita and Roshni, armed with danda, were pulling her hair. They all wanted to kill her. However, her brother rescued her and she returned to her parental house on the same day i.e. 15.10.2009. The complainant was medico-legally examined at General Hospital, Meham. The matter was reported to the police but no action was taken by them. Consequently, the complainant filed a complaint under Section 156(3) Cr.P.C. before the Court of Sub Divisional Judicial Magistrate, Meham, which was sent for lodging of FIR. As a result thereof, the present FIR was registered and 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 498-A, 406, 323 read with Section 34 of the IPC against them, they were chargesheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined as many as 11 witnesses besides relying upon documentary evidence and thereafter, its evidence was closed by Court order.

6. Statements of all 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 two witnesses.

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 18.02.2015, acquitted the accused of the charges as framed against them by observing that there was no evidence to connect the accused with commission of offences punishable under Sections 498-A, 406, 323 read with Section 34 of the IPC. Feeling aggrieved, the complainant had filed an appeal before the learned Sessions Judge, Rohtak assailing the judgment of acquittal passed by the trial Court but the same was dismissed, vide impugned judgment 09.09.2015. Hence, the present revision petition.

8. 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 they suffer from several material infirmities. He has argued that there was overwhelming evidence in the shape of testimony of PW-1 i.e. the complainant herself corroborated by the testimony of other witnesses to prove that she was subjected to cruelty on account of demand of dowry; was caused hurt by the accused persons and that her *Istridhan* had been misappropriated. However, the said evidence had not been properly appreciated by the Courts below and it was wrongly held that the charges so framed were not proved. Hence, it is argued that the impugned judgments are 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 before the trial Court.

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 judgments passed by the Courts below, thereby acquitting the accused persons.

12. The settled proposition of law is that in order to prove a case punishable under Section 498-A IPC, 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.”

13. 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.

14. It is also well settled proposition of law that the revisional jurisdiction conferred on the High Court 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.

15. Now coming to the case in hand, the accused had been chargesheeted for commission of offences punishable under Sections 498-A, 406, 323 read with Section 34 of the IPC. However, on applying the aforementioned ratio of law as laid down in the aforecited judgments to the peculiar facts and circumstances of the present case and on a careful appreciation of the evidence produced on record, I am of the considered opinion that the Courts of learned Sub Divisional Judicial Magistrate, Meham as well as learned Additional Sessions Judge, Rohtak committed no error in recording/affirming the findings of acquittal of the respondents/accused. The criminal law had swung into action in this case on the basis of complaint filed by the petitioner/complainant, who had admittedly got married with the respondent/accused Devi Dayal as on 18.05.2003. The allegations as levelled by her in the complaint were that shortly after the marriage, she was being taunted by the respondents for bringing insufficient dowry and when her brother had come to bring her after her marriage, at that time, demand of motorcycle and gold chain was made and the complainant was even assaulted and extended beatings in the presence of her brother. However, in her sworn

deposition, the complainant is shown to have stated that her brother had come to her matrimonial house six months after her marriage and at that time, the respondents had raised demand of Rs. 50,000/- for motorcycle and gold chain. Further, there are several other discrepancies in the version as given by the witnesses of the prosecution as well as in the prosecution, which raised a reasonable doubt that the respondents had actually made any demand of dowry or not. These discrepancies have been discussed in detail by the learned trial Court as well as learned lower appellate Court. PW-1, i.e. the complainant, had nowhere alleged that any demand of car was raised by the respondents but in her sworn statement, she stated so. Then, the version as to when the demand of Rs. 50,000/- had been made by whom and to whom, the said amount was given, is also contradictory because as per the complainant, the respondents had demanded that amount from her brother and the said amount of Rs.50,000/- was given on 24.01.2006 by her mother to the father of her husband, i.e. her father-in-law, but PW-3/father of complainant deposed that he had sent her daughter and son along with an amount of Rs. 50,000/-, whereas PW-4/brother of the complainant stated that he had given this amount to respondent/Devi Dayal. That apart, no specific date, month and year, when such demand had been raised, had been disclosed in the sworn deposition of the complainant. As such, it emerges that the evidence produced on record was not of such nature which could be acted and relied upon beyond reasonable doubt to prove that the complainant had in fact been harassed and subjected to cruelty on account of any demand of dowry or there was any willful conduct which is of such a nature as was likely to drive the

complainant to commit suicide or to cause grave injury or danger to her life, limb or health.

16. With regard to offence punishable under Section 406 of IPC, neither there was any specific allegation in the complaint as to what was entrusted to either of the respondents/accused at the time of her marriage or thereafter, which was *Istridhan* of the complainant and how and what manner, the said amount had been converted by the respondents to their own use and how they had misappropriated the same. Therefore, in the considered opinion of this Court, no error had been committed by learned Courts below while recording findings/affirming the acquittal of the respondents/accused for commission of offence punishable under Section 406 of IPC as well. So far as the charge under Section 323 of IPC is concerned, there was simple allegation in the FIR that the petitioner/complainant was extended beatings. However, no specific instance of any such beating or date, month or year of such incidents had been given. Therefore, it is held that the respondents were rightly acquitted of charge framed under Section 323 of IPC as well.

17. In view of the discussion 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 order of acquittal passed by the Courts below warranting interference by this Court. Admittedly, the respondent-State has not laid any challenge to the impugned judgments 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.

18. 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.

30.01.2024

(MANISHA BATRA)
JUDGE

Waseem Ansari

Whether speaking/reasoned	Yes
Whether reportable	Yes