

**CRR-4117-2016 (O&M)****1****219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-4117-2016 (O&M)
Date of decision: 15.07.2024****Manisha****...Petitioner****Versus****Sandeep and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. Sumit Sangwan, Advocate
for the petitioner.****Ms. Geeta Sharma, DAG Haryana************HARPREET SINGH BRAR, J. (ORAL)**

1. The present revision petition is preferred against judgment dated 05.08.2016 passed by learned Additional Sessions Judge (Exclusive Court), Bhiwani whereby appeal against judgment of acquittal dated 16.03.2015 passed by learned Judicial Magistrate 1st Class, Charkhi-Dadri in FIR No. 185 dated 15.06.2011 registered under Sections 406, 498-A, 323 and 34 of IPC, at Police Station Sadar Dadri, Bhiwani, was dismissed.

2. Briefly, the facts are that the petitioner-complainant moved a written complaint wherein she alleged that her marriage with respondent no.1-accused was solemnised on 27.04.2008 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 taunted on account of bringing insufficient dowry and gifting a cheap motorcycle to respondent No.1. The respondents-accused demanded more dowry and a better motorcycle from her. This conflict was settled by the respective families of the parties to the dispute. However, the respondents-accused started maltreating the petitioner

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again. Respondent No.1 pressurized the petitioner to withdraw a fixed deposit amounting to Rs. 1 lakh prior to its maturity. Upon refusing to cave to the demands of the respondents-accused, the petitioner was subjected to physical and mental harassment at the hands of the respondents-accused. The matrimonial dispute was again settled with the intervention of the elders of the respective families. In spite of this, the peace didn't last long and two weeks before the filing of the complaint, the petitioner was turned out of her matrimonial home. Further, the respondents-accused misappropriated her jewellery and *stridhan*. 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 the respondent-accused vide judgment dated 16.03.2015. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was also dismissed vide judgment dated 05.08.2016.

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 all the respondents-accused. The finding of the Courts that no allegation of specific entrustment of dowry articles/stridhan to the respondents-accused has been made is perverse and against the evidence available on record. 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 the respondents-accused in any eventuality and since the said articles have not been returned by the respondents-accused, offence under Section 406 of IPC is clearly made out. Furthermore, it is well

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established principle of criminal jurisprudence that small discrepancies and improvements should be ignored by the trial Court. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in **Thoti Manohar vs. State of Andhra Pradesh (2012) 7 SCC 723**. In the instant case, the prosecution has proved the case beyond reasonable doubt. In cross-examination, the veracity of the depositions of the prosecution witnesses could not be shaken. The eye witnesses proved the allegations in toto, as made in the FIR and the factum of dowry demand, harassment, cruelty, and retaining the dowry articles have been clearly proved.

6. 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 in their judgements. 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 failed to bring on record a list of articles, detailing which articles were allegedly given by the parents of the complainant to her in-laws, at the time of marriage. 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 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. No details regarding the date and time have been mentioned with respect to the entrustment of dowry articles either in the complaint or the recovery memorandum (Ex. PW5/A). As a result,

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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.

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. As per the version of the complainant, she was turned out of the matrimonial house after being severely beaten twice, however, no specific allegation is attributed to any of the respondents-accused. 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 was produced by the prosecution as the petitioner refused to get herself medically examined. The petitioner also admitted that neither she nor her family members ever lodged a complaint with regard to harassment and cruelty meted out by the respondents-accused. Also, as per the prosecution story, relatives were called several times to patch up the differences between both the sides, yet, no such relative has been examined by the prosecution in order to prove the factum of matrimonial discord stemming from the demand for dowry.

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

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 dismissed.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)

JUDGE

15.07.2024

Ajay Goswami

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