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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-653-2016 (O&M)
Date of decision: 24.07.2024

Balvinderjeet Kaur

...Petitioner

Versus

Varinderjeet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kartikey Chopra, Advocate for
Mr. Abhinav Gupta, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred against judgment dated 30.10.2015 passed by learned Additional Sessions Judge, Jalandhar, whereby the appeal filed against judgment of acquittal dated 21.01.2013 passed by learned Chief Judicial Magistrate, Jalandhar, in FIR No.388 dated 06.12.2007 under Sections 406, 498-A, 323, 506 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Division No.4, Jalandhar, was dismissed.
2. Briefly, the facts are that the petitioner-complainant moved a complaint before the police, wherein she alleged that her marriage with

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respondent No.1-accused was solemnised on 19.03.2006. Ample dowry articles were given to the respondents-accused and their relatives. Soon after the wedding, she was subjected to physical and mental harassment at the hands of the respondents-accused for the purpose of bringing more dowry. Respondent No.1 falsely led the petitioner to believe that he was Principal in a school and in fact, he was a teacher in a private school. Further, respondent No.1 also claimed that his family owned a house, but in reality, they were living in a rented accommodation. The respondents-accused demanded a plot and a car from the petitioner-complainant. The matter was compromised once but since the petitioner did not fulfil the demands of the respondents-accused, she was beaten and turned out of the matrimonial house. On the basis of the complaint, FIR (*supra*) was registered against the respondents-accused.

3. After assessing all material on record, learned trial Court acquitted the respondents-accused vide judgment dated 21.01.2013 Aggrieved by the same, the petitioner preferred an appeal before learned lower appellate Court, which was dismissed vide judgment dated 30.10.2015.

4. Having heard 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 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

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factum of entrustment of the articles and their misappropriation with dishonest intention. In the present case, 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 the respondents-accused, who misappropriated them, cannot be conclusively established. Specific entrustment is *sine qua non* for establishing the offence under Section 406 of IPC, which is conspicuously missing in the present case. Moreover, nothing has been brought on record to prove the purchase of the items entrusted by way of bills or invoices.

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 demand of a plot and a car. The allegation regarding the alleged beatings given by the accused on 28.11.2007 also does not inspire confidence. After the incident, the petitioner stated that she left the matrimonial house, whereas she was arrested with respect to another case and it was only on 01.12.2007 that she was medico legally examined. However, as per DW4, who had presented the record pertaining to the medical examination of the petitioner

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on 29.11.2007 as Ex-DW4/2, there were no external injury marks on her body as on 29.11.2007. Subsequently, she has got herself examined on 01.12.2007 and curiously, the doctor found injuries on her person. Moreover, the doctor has also stated that the probable duration of said injuries is 12 hours, whereas as per the case of complainant, the said injuries were caused more than 50 hours earlier. Therefore, the possibility of the said injuries being self-inflicted cannot be ruled out. As such, the prosecution failed to prove its case 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 Vs. State of H.P., 1973 (2) SCC 808* and *Chandrappa and others Vs. 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

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illegality in findings recorded by learned lower appellate Court or 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.

8. All the pending miscellaneous application(s), if any, shall stand disposed of.

24.07.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No