

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CRR-419-2017 (O&M)
Reserved On: 25.04.2024
Pronounced On: 07.05.2024

HARWINDER KAUR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Saurabh Singla, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR, J. (ORAL)

CRM-3944-2017

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 64 days in filing the accompanying criminal revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 64 days in filing the present revision petition is condoned.

CRM-3946-2017

This is an application moved before this Court under Section 391 of Cr.P.C. for taking additional evidence, i.e., a compact disc regarding videography evidence of the marriage, copy of the photographs of marriage as well as the copy of the order dated 14.11.2011 passed in application under

CRR-419-2017

Section 125 Cr.P.C. filed by the petitioner and her minor son, on record for proper adjudication of the matter.

As prayed for in the said application, the same is read as a part of the accompanying revision petition for proper adjudication of the matter at hand and the same is being disposed of along with the main revision petition.

CRR-419-2017

1. This instant revision petition has been preferred against the impugned judgement dated 30.09.2016 passed by learned Additional Sessions Judge, Ferozepur vide which the appeal filed by the petitioner against judgement of acquittal dated 04.08.2014 passed by learned Judicial Magistrate Ist Class, Zira, was dismissed and the acquittal qua respondents no. 2 to 9 (private respondents) was upheld in FIR No.52 dated 13.04.2010 registered under Sections 498-A, 406, 494 and 120-B IPC at Police Station-Zira.

2. The facts, in brief, are that petitioner Harwinder Kaur moved an application before the concerned police upon which the FIR (supra) was registered, wherein, it was alleged that after the death of her husband Balwinder Singh in November 2002, she was forcefully remarried to the brother of the deceased husband respondent no.2-Jaswant Singh for grabbing the dowry articles and share of her husband. It was further alleged that at the time of the marriage of the petitioner with her first husband, sufficient dowry including one television, refrigerator, motorcycle and gold ornaments were given by her parents. Two male children namely Jaskaran Singh and Mankaran Singh were born out of the first wedlock. It was further alleged that more dowry articles including a motorcycle and some gold ornaments were given by the parents of the petitioner at the time of her second marriage. Then in-laws of the petitioner started demanding a car from her parents and when they refused,

the in-laws started maltreating her. It was also alleged that the in-laws of the

petitioner retained the dowry articles given to them during the first marriage as well as during the second marriage. Thereafter, Jaswinder Singh, i.e., the husband of the petitioner solemnized second marriage with Surjit Kaur without giving divorce to the petitioner. The said marriage was performed with active participation of the private respondents despite them being aware of the first marriage with the petitioner. When the parents of the petitioner became aware of the said marriage, they went to the private respondents to talk but were insulted by the private respondents. Thereafter, the petitioner was turned out of her matrimonial house by the private respondents in the year 2008. Upon this application, the FIR (supra) was registered. After due procedure, charge was framed against the private respondents-accused for commission of offences punishable under Sections 498-A, 406, 494 and 120-B of IPC but were ultimately acquitted of the said charges by the learned trial Court. Thereafter, the petitioner preferred an appeal before the learned Additional Sessions Judge, Ferozepur against the said judgment of acquittal which was dismissed and the acquittal was upheld. Aggrieved, the petitioner has approached this Court by way of the present revision petition.

3. Learned counsel for the petitioner *inter alia* contends that the both the learned Courts below acquitted the private respondents mainly on account of the marriage of the petitioner and respondent no.2 remaining unproven on record which is why he wishes to place on record the CD containing video graphic evidence (Annexure P-1) and photographs (Annexure P-2) along with copy of the order dated 14.11.2011 (Annexure P-3) passed in application under Section 125 Cr.P.C. filed by the petitioner, as additional evidence by way of the above-mentioned application under 391 Cr.P.C. He further submits that the learned Courts below have ignored the fact that the petitioner has badly suffered at the hands of the private respondents not once but twice as the dowry

articles given during both her marriage ceremonies have been misappropriated by them. He further submits that it was specifically proven on record that the petitioner was turned out of her matrimonial house being a legally wedded wife of respondent no.2. He further submits that the factum of marriage was admitted by respondent no.2 in his reply filed against the application moved by the petitioner under Section 125 Cr.P.C. which was allowed and an interim maintenance of Rs.3,000/- per month was awarded to the petitioner consequently. The aforesaid fact along with the testimony of the petitioner regarding the illegal second marriage of respondent no.2 with Surjit Kaur while still being married to her, was wrongly ignored by the learned trial Court. The said factum of marriage is further established from the CD containing video evidence as well as the photographs placed on record.

4. Learned State counsel contends that the respective judgments passed by the learned Courts below result from proper appreciation of the evidence on record and therefore, do not warrant any interference by this Court. He further submits that the application moved by the petitioner under Section 391 Cr.P.C. in this case will only unnecessarily delay the present case and cause undue prejudice to the private respondents who have been facing a protracted trial for the last 14 years.

5. I have heard the learned counsel for the applicant and carefully perused the record with his able assistance. Before proceeding further, it is pertinent to discuss the bare provisions of Section 391 Cr.P.C. which read as follows: -

"391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to

be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

6. Upon considering the facts of the case at hand and the material available on record, it transpires that the prosecution version was not supported by the petitioner-complainant and her father as both of them admitted in their cross-examination that from the date of first marriage of the petitioner with Balwinder Singh in 1998 till his death in 2002, the private respondents never harassed the petitioner. Further, respondent nos.5, 6 & 7 never visited the matrimonial house of the petitioner. No other complaint regarding the alleged harassment was ever filed by the petitioner before 2009 and even in the complaint moved on 15.09.2009 by the petitioner, neither any specific role has been attributed to the private respondents nor specific entrustment of the dowry articles has been disclosed. Only general and omnibus allegations have been levelled by the petitioner against the private respondents. Interestingly, the recovery memo proved on record reveals that the said articles were recovered by the petitioner herself. Further, the petitioner was never medically examined in consequence of any maltreatment or alleged beatings meted out to her by the private respondents.

7. As far as the factum of second marriage of respondent no.2 with Surjit Kaur is concerned, the prosecution tried to prove the same through photographs and receipts of Gurudwara where the said marriage was allegedly solemnized.

However, the said contention was duly rebutted by proving on record the stamp

papers and the attestation of the affidavit revealing that there was no such entry in the records regarding the said second marriage of respondent no.2. Even if the marriage of the petitioner and respondent no.2 is proved, the prosecution has been unable to prove that respondent no.2 ever married Surjit Kaur while he was still married to the petitioner. It is worth mentioning here that both the petitioner as well as her father failed to mention the date or month of re-marriage of the petitioner with respondent no.2 in their complaint and their examination-in-chief. No witness was ever produced by the prosecution before the learned Courts below to prove the aforesaid fact. Furthermore, it is manifestly clear from the perusal of the material on record that the complaint in the present case was filed by the petitioner after a delay of more than one year from the date of alleged incident only to arm-twist the private respondents into giving her son a share in the land belonging to respondent no.8. The same has been corroborated by the fact proven on record that a compromise was affected before the Panchayat between the present parties wherein, it was settled that a share of the said land would be given to the son of the petitioner born out of her first marriage but adopted by her father in 2004-2005. Therefore, it appears that the application filed by the petitioner under Section 391 Cr.P.C. is merely a ploy to prolong the case and has been filed with a vexatious spirit.

8. The Hon'ble Supreme Court has examined scope of Section 391 Cr.P.C. in the case of **Rambhau vs. State of Maharashtra, 2001(2) RCR(Criminal) 721**, wherein, it was held that these provisions being of exceptional nature, have to be exercised with circumspection in order to meet the ends of justice. In the said case, following observations were made:

"3. Be it noted that no set of principles can be set forth for such an exercise of power under Section 391, since the same is dependent upon the fact situation of the matter and having due regard to the concept of fair play and justice, well-being of the society.

4. Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to sub-serve the ends of Justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the Civil Procedure Code."

9. The Hon'ble Supreme Court in the case of **Zahira Habibulla H. Sheikh and another vs. State of Gujrat and others, 2004(2) RCR(Criminal) 836** has further examined the nature and scope of the powers under Section 391 Cr.P.C. and it was held that the power under Section 391 Cr.P.C. enables the appellate Court to exercise wide discretion but the same cannot be utilized for filling up any lacuna and it must be exercised with great care along with the following observations: -

"47. Section 391 of the Code is another salutary provision which clothes the Courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the Court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate Court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose, it is open to the appellate Court to call for further evidence before the appeal is disposed of. The appellate Court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the Court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of

guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the Court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

48. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391. 49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the appellate Court thinks that it is necessary in the interest of justice to take additional evidence it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretions of the appellate Court. As re-iterated supra, the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions."

10. The power under Section 391 Cr.P.C. is akin to the power under Order XLI Rule 27 of the Code of Civil Procedure, 1908 and such power is to be exercised sparingly in a suitable case and additional evidence cannot be tendered as a matter of right at the appellate stage. Only after satisfying the evidence sought to be brought on record as additional evidence is 'essential' for the just decision of the case and such discretion can be exercised and it must be based on sound judicial principles and the discretion under the provisions cannot be exercised to fill up gaps and lacunae in the evidence.

11. The Hon'ble Supreme Court in **Brigadier Sukhjeet Singh (Retired) MVC vs. State of Uttar Pradesh and others, (2019) 16 SCC 712**

has held that the expression "if it thinks, additional evidence to be necessary"

provided under Section 391(1) Cr.P.C. would mean necessary for deciding the appeal and such evidence is necessary to secure the ends of justice and relying upon ***Rambhau's case*** (supra) a caveat was put for the guidance of the Court that additional evidence cannot and ought not to be taken to cause any prejudice to the accused and it cannot be used as disguise for a re-trial or to change the nature of the case.

12. Furthermore, 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. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. **(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 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.

13. In view of the above discussion and after taking into account the facts and circumstances of the present 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 Courts below which warrants any interference by this Court. As such, there is no merit in the present criminal revision petition and hence, the same stands dismissed. Consequently, the application under

Section 391 Cr.P.C. also stands dismissed.

14. Pending miscellaneous applications, if any, stand disposed of accordingly.

07.05.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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