

**210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-3380-2018 (O&M)
Date of decision: 09.04.2024

HemaPetitioner

Versus

Manoj and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.S. Hooda, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

CRM-35795-2018

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 432 days in filing of the present revision.

For the reasons mentioned in the application, the same is allowed and the delay of 432 days is condoned.

CRR-3380-2018

1. The present revision petition is preferred against judgment dated 06.03.2017 passed by learned Additional Sessions Judge, Nuh, whereby appeal against judgment of acquittal dated 05.11.2015 passed by learned Sub-Divisional Judicial Magistrate, Ferozepur Jhirka in FIR no. 144 dated 13.06.2013 registered under Sections 498-A, 406, 506, 323, 120-B of the IPC at Police Station Ferozepur Jhirka, District Nuh, was dismissed.

2. Briefly, the facts are that the marriage of the petitioner-complainant with respondent no.1-accused was solemnised on 08.02.2012 in accordance with Hindu rites and rituals. One child was born out of wedlock.

Soon after the wedding, the respondents-accused kept demanding for more dowry from the petitioner-complainant. Further, the respondents-accused pressed the petitioner to buy a car for them. Upon expressing her reservation in fulfilling the demands of the respondents, she was physically assaulted and turned out of the matrimonial home on 01.02.2013. The ornaments and other household goods of the petitioner-complainant were retained by the respondents-accused and were not returned to the petitioner-complainant. Subsequently, a Panchayat was convened on 03.03.2013 to amicably resolve the dispute, however, no solution was arrived. The FIR was registered on the basis of the statement of the complainant on 13.06.2013. After completion of the investigation, the Challan was presented against respondents 1 to 4. Finding a prima facie case made out under Sections 498-A, 406, 506, 323, 120-B of the IPC, charges against the accused were framed on 22.11.2013, to which they pleaded not guilty and claimed trial.

3. After assessing all material on record, the learned Trial Court acquitted the respondents-accused vide judgment dated 05.11.2015. Aggrieved by the same, the petitioner preferred an appeal before the learned Lower Appellate Court which was dismissed vide judgment dated 06.03.2017.

4. Learned counsel for the petitioner assails the judgment of the Lower Appellate Court on the ground that it has mechanically decided the appeal of the petitioner and has upheld the observations of the of the learned Trial Court without due application of mind and not recording any reasoned and concrete observations. The Courts below completely disregarded the fact that the charges of offences punishable under Sections 498-A, 406, 506, 323, 120-B of the IPC have been clearly and unimpeachably proved, thus leading to material irregularity and perversity.

5. Learned counsel further submits that the prosecution led ample evidence to prove the guilt of the respondents-accused. The testimonies of the complainant, her grandfather and her uncle were sufficient to establish the prosecution case against the accused. Moreover, the Investigating Officer also proved the factum of cruelty and misappropriation of *istridhan* which is in consonance with the statements of the petitioner and her family members.

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 respect to the offence under section 406 of IPC, mere bald allegations concerning the entrustment of articles of dowry, or refusal on the part of the accused to return such articles, would not be sufficient to convict them under Section 406 of the IPC. The complainant in the present case has miserably failed to prove whether any specific item was entrusted to any of the accused. Further, any amount spent by the father of the complainant on the wedding ceremony was spent of his own volition. Moreover, nothing has been brought on record to either prove the purchase of the items mentioned in the complaint or prove the transportation of the said items from her paternal home to her matrimonial home.

7. Furthermore, nothing has been produced before the learned Trial Court to satisfy the Court that the complainant was harassed and physically assaulted by the accused for not bringing enough articles of dowry. There is no concrete evidence that the complainant was meted out ill treatment by the accused. No medical record has been submitted or neighbours or other independent witnesses examined to prove the guilt of the respondents-accused beyond the shadow of reasonable doubt.

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 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 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.

(HARPREET SINGH BRAR)
JUDGE

09.04.2024
Neha

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