

CRM-A-1354-2019

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1354-2019

Date of decision : January 25, 2024

Jugraj Singh

....Applicant

VERSUS

Gurmeet Kaur and anothers

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Madhur Singh, Legal Aid Counsel for the
applicant

KULDEEP TIWARI,J. (ORAL)

1. The instant application under Section 378(4) of the Cr.P.C., seeking grant of leave to appeal, has been filed by the present applicant against the judgment of acquittal recorded by the learned trial court concerned, in a private complaint No. 16 dated 20.9.2014, registered under Sections 494, 114 of the Indian Penal Code, whereby, the respondents have been acquitted of the charges framed against them.

2. Learned counsel for the applicant has submitted that the applicant, who is complainant, has proved charges by leading cogent evidence beyond reasonable doubt, which has not been appreciated by the learned trial court concerned, in its right perspective. He has further submitted that Mark-C3, which is the self suffered statement of Gurmeet Kaur accused-respondent no. 1, proved that she has solemnized second

marriage during the life time of her husband Jugraj Singh (the present complainant-applicant). He has also submitted that the statement of Bhupinder Singh, who is an independent witness, and has stepped into the witness box as CW3, clearly proved the factum that Gurmeet Kaur has solemnized marriage with respondent No. 2-Ramesh Singh, on dated 28.7.2014. However, his evidence was also not considered by the learned trial court concerned, who, in fact, participated as a guest in the second marriage as solemnized between the respondents no. 1 and 2. Finally, he has submitted that the defence which the respondents-accused have taken before the learned trial court concerned, itself proved that the second marriage was solemnized, as they have relied upon a customary divorce, which, in fact, establishes that the respondents-accused, on the basis of that customary divorce, solemnized the second marriage on dated 28.7.2014.

3. This Court has examined the judgment passed by the learned trial court concerned. The complaint in the instant matter was filed by the applicant with the allegations that his marriage was solemnized with accused No.1, on dated 25.09.2012. However, she never liked the complainant and often used to leave the complainant's company because she wanted to marry someone else. He also filed petition under Section 9 of the Hindu Marriage Act, against accused no.1 which was decided in his favour, vide judgment and decree dated 26.02.2014. However, inspite of the same, accused No.1 solemnized her second marriage with accused No.2, on dated 28.07.2014, without getting her first marriage dissolved. Other accused abetted the said marriage and Bhupinder Singh, son of Teja

Singh, witnessed the said marriage being performed at village Kalotha, Tehsil Ratia. The said Bhupinder Singh also tried to intervene in the said marriage but accused refused to entertain/listen to him.

4. After preliminary evidence, respondents-accused were summoned to face trial under Sections 494 & 114 IPC. After pre-charge evidence, the charges were framed by the learned trial court concerned under Sections 494 & 108 IPC. Post-charge evidence, the complainant examined himself as CW-1, his father Mohinder Singh as CW-2 and also examined Bhupinder Singh as CW-3.

5. In defence, the respondents-accused examined Mani Singh as DW-1, and one Joginder Singh as DW2.

6. The learned trial court concerned, after considering the evidence led by both the parties, has held that the applicant has miserably failed to prove the solemnization of second marriage between Gurmeet Kaur and Ramesh Singh, respondent Nos. 1 and 2, respectively. The relevant observation of the learned trial court concerned is read as under:-

“After hearing learned counsel for complainant, learned defence counsel and after going through the case file properly and after taking into consideration the evidence led by complainant and cross-examination of the witnesses conducted by Ld. defence counsel, this Court is of the considered conclusion that complainant has miserably failed to prove his complaint against both the accused by leading cogent and convincing evidence beyond every reasonable shadow of doubt because it is

settled principle of law that in criminal cases, complainant is duty bound to prove its case against the accused beyond every reasonable shadow of doubt and requirement of law is "beyond every reasonable shadow of doubt" and therefore, in the case in hand, complainant is duty bound to prove second marriage of accused No.1 Gurmeet Kaur with accused No.2 Ramesh Singh during the existence of first marriage of accused No.1 with complainant. Therefore, complainant is duty bound to prove the firstly the existence of first valid marriage between him and accused No.1 and then complainant is duty bound to prove the existence of second marriage allegedly contracted by accused Gurmeet Kaur with accused No.2 Ramesh Singh during the existence of first marriage by leading sufficient evidence beyond every reasonable shadow of doubt and in order to prove the factum of first marriage and second marriage of accused Gurmeet Kaur with accused No.2 Ramesh Singh, complainant has only led oral evidence and complainant has orally deposed regarding his marriage with accused No.1 Gurmeet Kaur and he has orally deposed that Gurmeet Kaur has solemnized her second marriage with accused Ramesh Singh without getting any divorce from him and in order to prove the second marriage complainant has relied upon the testimony of CW-3 Bhupinder Singh who is the alleged eye witness of the second marriage performed by accused No.1 & 2 and Bhupinder Singh also orally deposed that Gurmeet Kaur has contracted second marriage with Ramesh Singh in his presence on 28.07.2014, at village Kalotha, Tehsil Ratia as he is the witness of said alleged second marriage and further

complainant has examined his father Mohinder Singh who has also orally deposed regarding the second marriage of accused Gurmeet Kaur with accused No.2 Ramesh Singh but complainant has not led any cogent and convincing oral as well as documentary evidence to prove second marriage of Gurmeet Kaur with accused No.2 Ramesh Singh and in order to prove the second marriage complainant has not produced any document on judicial file but complainant has only produced photocopy of statement of Gurmeet Kaur mark C3 and complainant has tried to prove second marriage of Gurmeet Kaur on the basis of this document but it is settled law that photo copy of document is not admissible in evidence and moreover marked documents cannot be read into evidence and therefore, complainant cannot take any benefit of mark C3 to prove the second marriage of Gurmeet Kaur with accused Ramesh Singh and the said photo copy is not a valid proof of second marriage between Gurmeet Kaur and Ramesh Singh and moreover, there is every possibility that Gurmeet Kaur had suffered said statement under any kind of pressure or promise or threat from any person and Gurmeet Kaur can also suffer such a statement falsely and therefore, photo copy of statement of Gurmeet Kaur mark C3 is not sufficient to prove the second marriage of Gurmeet Kaur with accused No.2 Ramesh Singh particularly when no other evidence regarding the second marriage has been led by the complainant because no Granthi of Gurudwara Shaib has been examined by the complainant who allegedly performed second marriage of accused No.1 and accused No.2 on 28.07.2014 and moreover, complainant has failed to

examine any other independent witness of the village Kalotha where the accused allegedly performed their second marriage and complainant has also not produced any photographs of alleged second marriage and no marriage certificate issued by any Gurudawara Sahib has been produced on judicial file by the complainant and there is no independent evidence of any panch and Sarpanch of village Kalotha regarding the performance of second marriage between accused Gurmeet Kaur and Ramesh Singh and so far as testimony of CW-3 Bhupinder Singh is concerned, during cross-examination he clearly admitted that he knows Jugraj Singh well and he know entire family of Jugraj Singh and his house is situated at distance of 6/7 Killas from house of Jugraj Singh. He attends marriage functions of Jugraj Singh meaning thereby he is good friend of Jugraj Singh. Therefore, he is interested witness and relative witness and his testimony cannot be believed blindly without other independent corroboration. Therefore, his testimony is not sufficient to prove second marriage of Gurmeet Kaur with Ramesh Singh. Therefore, without independent corroboration it cannot be accepted that accused Gurmeet Kaur has performed her second marriage with accused Ramesh Singh and moreover, complainant has also failed to prove the fact that Gurmeet Kaur is residing in the house of accused Ramesh Singh because no person from the neighborhood or from the locality of house of Ramesh Singh has been examined by the complainant to prove stay of Gurmeet Kaur inside the house of accused Ramesh Singh as his legally wedded wife. Therefore, without cogent and convincing evidence

it cannot be accepted that accused Gurmeet Kaur had performed her second marriage with accused Ramesh Singh during existence of her first marriage and so far as other documents relied upon by complainant are concerned, complainant has produced certified copy of judgment Ex.C1 and decree sheet Ex.C2 but both the documents also do not prove the second marriage of accused Gurmeet Kaur with accused Ramesh Singh but the said documents only prove the first marriage of complainant with accused No.1 Gurmeet Kaur and therefore, both the documents are not sufficient to prove the offence of bigamy allegedly committed by both the accused. Therefore, in this way complainant has miserably failed to prove his complaint against both the accused by leading cogent and convincing evidence beyond every reasonable shadow of doubt and evidence on record is not sufficient to prove the second marriage of Gurmeet Kaur with accused Ramesh Singh due to the reasons mentioned above and therefore, case of the complainant has become much doubtful due to the above said weak evidence and second marriage of accused has also become doubtful because same has not been proved by complainant beyond every reasonable shadow of doubt. Therefore, it is settled principle of law that if there is any doubt in the prosecution story benefit of doubt always goes infavour of accused. Therefore, in the case in hand, both the accused are also entitled to benefit of doubt and accordingly benefit of doubt is hereby extended to both the accused and accordingly I do not agree with the arguments and contentions of Ld. counsel for the complainant and I find no force in the same but I agree with the arguments and contentions of

Ld. defence counsel and I find force in the same. Accordingly points formulated above are hereby decided against complainant and infavour of both the accused and both the accused namely Gurmeet Kaur and Ramesh Singh are hereby acquitted of the charges framed against them by giving them benefit of doubt.”

6. Before embarking upon the process of ascertaining the validity of the impugned order of acquittal, it is deemed imperative to capture an overview of some significant legal propositions.

7. There is no dispute that this Court can re-appreciate the entire evidence while dealing with an order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in **State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008 (9) SCC 475**.

8. Also, Hon'ble Supreme Court in **Chandrappa vs. State of Karnataka, 2007(2) RCR (CrL) 92** laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:-

“(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court, based on the evidence

before it, may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) 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."

9. Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in

Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470.

10. On the touchstone of the hereinabove extracted legal propositions, this Court has, with the able assistance of the learned counsel for the applicant, has made a meticulous survey of the impugned order of acquittal. However, the impugned order of acquittal does not appear to be tainted with any illegality or perversity. The reasons for forming this inference are elucidated hereinafter.

11. Apart from oral evidence, there is no documentary evidence on record to prove that respondents No. 1 and 2 solemnized the second marriage. The statement of CW3-Bhupinder Singh, was found to be not trust worthy by the the learned trial court concerned, therefore, this Court is not considering his evidence to convert the judgment of acquittal into that of conviction. The mark C-3, which has not been proved as per the requirement of the Indian Evidence Act, cannot be considered to conclude that the second marriage was solemnized between respondent Nos. 1 and 2. Further, even if that evidence is considered, that is insufficient evidence, therefore, the applicant has failed to establish the charges against the accused-respondents, beyond reasonable doubt.

12. As a sequel to the discussion made hereinabove, this Court comes to a conclusion that since the complainant/present applicant had failed to discharge his onus of proof that Gurmeet Kaur and Ramesh Singh, respondents no. 1 and 2, respectively, have solemnized, the second marriage, therefore, the reasoning given in the impugned order of

acquittal does not suffer from any gross perversity or absurdity of mis-appreciation and non-appreciation of the evidence on record.

13. Moreover, since it is a trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances, therefore, this Court does not find any concrete ground to interfere with the order of acquittal. Consequently, the instant application, seeking grant of leave to appeal, is hereby **dismissed**, it being bereft of merits, and, **the impugned order of acquittal**, rendered by the learned Sub Divisional Judicial Magistrate, Budhlada, is hereby **upheld**.

January 25, 2024

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(KULDEEP TIWARI)
JUDGE

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