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

CRR-1114-2022 (O&M)

Date of decision: 05.08.2024

Ruby

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Veeraj Sharma, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J.**CRM-19638-2022**

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 408 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 408 days in filing the present revision petition is hereby condoned.

CRR-1114-2022 (O&M)

1. The present revision petition is preferred against judgment dated 21.01.2019 passed by learned Sessions Judge, S.B.S. Nagar whereby appeal against judgment of conviction dated 31.10.2017 passed by learned Judicial Magistrate 1st Class, S.B.S. Nagar in criminal complaint, bearing No. 4859/13 registered under Sections 406, 498-A and 120-B of the IPC, was allowed.

2. Briefly, the facts are that the petitioner-complainant moved a written complaint before the learned trial Court wherein she alleged that her marriage with respondent no.3-accused was solemnised on 02.10.2008



according to 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 subjected to physical and mental harassment at the hands of the respondents-accused for the purpose of bringing more dowry. The petitioner was severely beaten and the respondents-accused even hit her stomach when she was pregnant due to which she was admitted in Civil Hospital, Ropar on 17.05.2009. Many *panchayts* were convened to resolve the matrimonial dispute, however, to no avail and on 15.12.2011, the respondents-accused flatly refused to take the petitioner back. Further, the respondents-accused misappropriated her *stridhan*. Hence, the complaint.

3. After assessing all material on record, the learned Trial Court convicted the respondents-accused under Section 498-A of the IPC vide judgment dated 31.10.2017. Aggrieved by the same, the respondents-accused preferred an appeal before the learned lower Appellate Court which was allowed vide judgment dated 21.01.2019.

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it appears that there is nothing in the judgement of the learned lower Appellate Court below to indicate perversity or misreading of evidence. 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 adduced a list of articles allegedly given by the complainant to her in-laws, at the time of marriage. However, 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 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, the victim has not mentioned anything with regard to what type of dowry articles were demanded by her husband i.e. respondent No.3 and her in-laws, due to which she was subjected to cruelty. As per the prosecution version, the petitioner was severely beaten and the respondents-accused even hit her stomach when she was pregnant due to which she was admitted in Civil Hospital, Ropar on 17.05.2009. In her cross-examination, however, the petitioner has admitted to leaving her matrimonial house of her own volition. Curiously, even the husband of the petitioner came to visit her in the hospital, which further makes the claim of physical assault suspicious. As per the testimony of CW-5, namely, Dr. H.K. Singh, who conducted the medical examination of the petitioner, the possibility of bleeding could not be ruled out due to pregnancy. Moreover, no injury was found on the person of the petitioner during her medical examination. In the backdrop of these circumstances, it cannot be ruled out that it was simply a regular check-up at the Civil Hospital.

6. The power of this 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**).

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 illegality in findings recorded by the learned lower Appellate Court which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is dismissed.

8. Pending applications, if any, stands disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

05.08.2024
Neha

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