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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3987-2017 (O&M)
Date of Decision: 03.04.2024

Usha Devi

... Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. N.S. Sodhi, Advocate with
Ms. Gaganpreet Kaur, Advocate
For the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM-34659-2017

1. Prayer in the present application filed under Section 5 of Limitation Act is for condonation of delay of 85 days in filing the revision petition.

In view of the averments made in the application, same is allowed and delay of 85 days in filing the revision petition is condoned.

CRR-3987-2017

1. The present revision petition has been preferred against the impugned judgment dated 07.04.2017 passed by learned Additional Sessions

Judge, Bathinda, whereby the appeal filed by the petitioner was dismissed and the judgment dated 13.11.2015 passed by learned Judicial Magistrate 1st Class, Phul was upheld, whereby respondent No.2-accused was acquitted of charges framed against her in FIR No.129 dated 17.07.2006 under Sections 406 & 420 of IPC, registered at Police Station Sadar Rampura, District Bathinda.

2. Briefly, the facts are that petitioner-complainant Usha Devi moved an application to the Senior Superintendent of Police, Bathinda praying for registration of an FIR against respondent No.2 Surjit Kaur, who is mother-in-law of the petitioner, along with two other accused, alleging that she had been cheated and also received beatings at the hands of the aforementioned accused. It was further alleged by the petitioner that she had solemnized marriage with Jagtar Singh about one and half year ago and during her marriage, her parents gave sufficient dowry articles beyond their capacity including 15 *tolas* of Gold. At the time of marriage, the petitioner was told by Jagtar Singh that he was already divorced and had six children from his earlier marriage. Soon after the marriage, Ranjit Singh lodged a complaint alleging that Jagtar Singh, i.e., husband of the petitioner was already married to his daughter Paramjit Kaur and he had illegally married the petitioner. Upon enquiry, the petitioner came to know that her husband Jagtar Singh had already solemnized five marriages. However, a compromise in writing was affected between husband of the petitioner and Ranjit Singh, where it was

agreed that the marriage expenses borne by Ranjit Singh on the marriage ceremony of her daughter would be paid back to him. So, the petitioner called her mother-in-law to India from USA to arrange for the payment of Rs.6,30,000/- to Ranjit Singh qua the compromise but when Surjit Kaur reached India, she revealed that she had not brought the said sum with her. Consequently, the petitioner arranged the said amount from her relatives along with gold ornaments and handed it all over to her mother-in-law/respondent No.2. Thereafter, respondent No.2-Surjit Kaur returned to America in April, 2006. Upon her return, when the petitioner visited her and demanded back her gold ornaments, respondent No.2 refused to return the same and further demanded Rs.5,00,000/- to purchase a house in the city. When the petitioner refused by saying that she had already paid Rs.6,30,000/- to her after borrowing it from her relatives but she was forced by respondent No.2 on account that she would not take the petitioner along with her to America. It was further alleged by the petitioner that the gold ring given to her during the marriage ceremony was also taken from her, while she was asleep and when she raised objections, respondent No.2 threatened her to kill. On 10.06.2006, the petitioner was thrown out of her matrimonial house and was made to return to her parental house, where she was again threatened for her life on telephone.

3. After receiving the said complaint, investigation was conducted by the concerned police and the FIR (*supra*) was registered against respondent

No.2. The learned trial Court, on finding a prima facie case against respondent No.2, charge-sheeted her under Sections 406, 498-A, 420 of IPC, to which she pleaded not guilty and claimed trial. Ultimately, the learned trial Court, after recording that there is no cogent and material evidence on file to prove the allegations levelled by the petitioner against respondent No.2, acquitted her of the charges framed against her. Aggrieved by the said acquittal, the petitioner has approached this Court by way of the present petition.

4. Learned counsel for the petitioner vociferously contends that there is sufficient material on record to establish that the petitioner was maltreated and harassed by respondent No.2-accused qua demand of dowry articles. Further, receipts of the gold purchased, which was handed over to the accused by the petitioner, but never returned, is sufficient to establish the commission of an offence under Section 406 of IPC. It is further contended that one of the reasons for acquitting the accused was her absence from the marriage ceremony of the petitioner during which the dowry articles were entrusted but the case of the petitioner has nothing to do with the day of her marriage, but later when the accused came to India from America. He further submits that gold ornaments were taken from the petitioner by the accused on account of threats to the effect that the accused would not take her to America otherwise.

5. Learned counsel for the petitioner further submits that the judgments passed by the learned Courts below are wrong and contrary to the

facts as well as law and therefore, require re-appreciation of the entire facts available on record and are liable to be set aside.

6. I have heard learned counsel for the petitioner and after perusing the paper-book with his able assistance, it transpires that accused Surjit Kaur was not present at the time of the marriage of the petitioner with her son Jagtar Singh as she was in America. Further, the petitioner has nowhere alleged that the accused harassed her to bring more dowry articles from her parents during the cohabitation of the petitioner with Jagtar Singh, thereby, making the charge under Section 498-A is unsustainable. Further, perusal of the material on record reveals that there is nothing to suggest that there ever was any dishonest representation on the part of the accused towards the petitioner in order to obtain money from her and the intention to cheat her from the very inception is nowhere made out against the accused.

7. Moreover, there is no document to prove that the amount in question, i.e., Rs.6,30,000/- was given to Ranjit Singh qua settlement, as admitted by the prosecution witness PW-2 being the brother of the petitioner. The brother of the petitioner further admitted in his testimony that the said money was directly given to Ranjit Singh in presence of the petitioner and Jagtar Singh but accused Surjit Kaur arrived later on. It further appears that the petitioner PW1 has improved her version before the learned trial Court. All the aforesaid facts clubbed together are sufficient for this Court to opine that there is no force in the arguments advanced by learned counsel for the petitioner.

8. Furthermore, 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 point towards the innocence of the accused, the view, which favours the accused, should prevail over the other points 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 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*, 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 learned trial Court.

9. A two Judge Bench of Hon'ble Supreme Court in case of *Chandrappa (supra)* has laid down the parameters with regard to the power of appellate Court, while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) *An appellate Court has full power to review, re-appreciate 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 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 emphasise 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."

10. 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 Courts below, which warrants interference by this Court. As such, there is no merit in the present petition and the same stands dismissed.

11. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

[HARPREET SINGH BRAR]
JUDGE

03.04.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No