

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

208

Date of Decision: 22.04.2024
CRM-A-2105-MA-2017 (O & M)

Reeta alias Soma Devi
...Applicant
Versus

Veena
...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Vishwajeet, Legal Aid Counsel
for the applicant.

Harpreet Singh Brar, J. (Oral)

CRM-12872-2019

The instant application has been filed for restoration of the main case and recalling of order dated 02.04.2019.

For the reasons mentioned in the application, the same is allowed.

Main petition is ordered to be restored to its original number and is taken on board today itself.

MAIN CASE

1. The present application is preferred under Section 378(4) of Cr.P.C. against the judgment of acquittal dated 05.06.2017 passed by learned Judicial Magistrate 1st Class, Pathankot, in the case stemming criminal complainant, bearing no. 33/28.04.2014 under Sections 406 and 498-A read with Section 34 of the IPC.

2. Briefly, the facts are that the marriage of the applicant-complainant with one Varinder Kumar alias Sonu was solemnised on

15.02.2009 in accordance with Hindu rites and rituals. The respondent-accused is the mother in law of the applicant-complainant. Soon after the wedding, the respondent-accused kept demanding more dowry from the applicant-complainant. The respondent-accused told the applicant that her son wants to go to America in order to set up his business and asked her to bring Rs. 2,00,000/- lakhs from her mother. Upon expressing her reservation in fulfilling the demands of the respondent, she was physically assaulted. Further, the respondent-accused pressed the applicant to buy a motorcycle for them. In the meantime the applicant conceived a child but due to the constant torture and ill-treatment meted out by the respondent-accused and other family members, the applicant delivered a dead child. The ornaments and other household goods of the applicant-complainant were retained by the respondent-accused and were not returned to the applicant-complainant. The applicant-complainant moved a complaint before the Senior Superintendent of Police, Gurdaspur which was handed over to the Women Cell but no action was taken. Hence the complainant before the Magistrate.

3. Having heard the learned counsel for the applicant after perusing the record of the case with his able assistance, it transpires that all the allegations against the respondent-accused are general and omnibus in nature. The applicant deposed that she was physically assaulted by the respondent. However, a perusal of the complaint reveals that the allegations of beatings levelled by the applicant are only against the husband of the accused. There are no specific allegations of assault against the respondent-accused. Moreover, it is alleged by the applicant that she lost her unborn child due to the constant harassment she was subjected to yet, no material has been brought on record to substantiate this claim. There is no evidence to show that the respondent

tortured or ill-treated the applicant. Moreover, no medical evidence has been adduced to support the assertions of the applicant. As per the applicant, the martial dispute has been compromised several times with the help of elders but no independent witness has been examined by the applicant in this regard. From the day of the wedding and till the filing of the complaint, the applicant neither moved a complaint before any authority nor any report was lodged with the police. Though the applicant has averred that she did file a complaint before the SSP, Gurdaspur, but nothing has been shown to prove this. In the absence of specific allegations, overt acts and incriminating material against the respondent, the learned trial Court rightfully acquitted the respondent for the offence punishable under Section 498-A of IPC.

4. Furthermore, the applicant brought on record a list containing all the dowry articles (Ex. CW1). However, no evidence has been adduced by the applicant to prove that the articles mentioned in the said list which were entrusted to the accused were purchased by the applicant in the first place as no cash memo or bill has been produced by the applicant. Additionally, the list of dowry articles bears no date and therefore it is impossible to figure out when the same was prepared. Lastly, to attract the offence punishable under Section 406 IPC, the applicant would have to demand the return of the dowry articles and if then the respondent-accused fails to do so the ingredients would be satisfied. The contents of the complaint, however, shows that no such demand was made by the applicant. The complainant has simply stated that the respondent in collusion with others misappropriated her dowry articles and refused to give the *stridhan* to the complainant.

5. 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** 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.

6. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

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

22.04.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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