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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-A-755-2022 in/&
CRA-AS-348-2024 (O&M)

Date of decision: 15.10.2024

Bhawna Makkar

....Applicant/Appellant

V/s

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Anil Kumar Spehia, Advocate for the applicant-appellant.

SUMEET GOEL, J. (Oral)

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This is an application under Section 378 (4) of Code of Criminal Procedure seeking leave to file an appeal against order dated 05.07.2022 passed by Judicial Magistrate Ist Class, Panchkula.

In view of submission made by learned counsel for the applicant and for the reasons stated in the application, the same is allowed. Registry is directed to assign the number to the proposed appeal accompanying the application seeking leave to file appeal today itself.

With the consent of learned counsel, the main case is taken up on board for hearing today itself.

Main case

Present appeal is directed against the judgment dated 05.07.2022 passed by Judicial Magistrate Ist Class, Panchkula, whereby respondent Nos.2 to 5 (herein) were acquitted from the charges under Sections 323, 406,

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498-A, 506 and 120-B of IPC in a criminal complaint filed by the complainant-applicant.

2. For clarity and simplicity, the complainant-appellant, who has filed the complaint in question, will be referred to as the 'complainant' while respondent Nos.2 to 5, the accused in the complaint in question, will be referred to as the 'accused' throughout this judgment.

3. In the present appeal, the pertinent facts for adjudication are that the applicant-complainant instituted a complaint against the accused-respondent Nos.2 to 5, all residents of H.No.C-177, Bimla Niwas, Gobindpuri, Modi Nagar, P.S. Modi Nagar, Pargana Jallabad, District Ghaziabad, under Sections 323, 406, 498-A, 506 and 120-B of the Indian Penal Code (for brevity the 'IPC') before Judicial Magistrate Ist Class, Panchkula, who took cognizance of the matter and concluded the same vide judgment dated 05.07.2022; acquitted the accused (respondent Nos.2 to 5 herein) of all the charges. The Court below held that there is no clinching or trustworthy evidence on record to prove that the complainant was tortured on account of insufficient dowry and hence it can be safely held that the prosecution has miserably failed to bring home the guilt to the accused beyond all shadows of reasonable doubt for the alleged commission of offences & hence the accused ought to be acquitted by giving him the benefit of doubt.

4. The appellant, aggrieved by the findings of the Court below, has now invoked the appellate jurisdiction of this Court, seeking re-examination of the findings as the same are based on alleged misappreciation of evidence and procedural irregularities. However, it is well-

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settled law that the scope in appeal is limited and does not entail a re-appreciation of evidence unless there is a manifest illegality or a serious miscarriage of justice.

5. In brief, the case of the prosecution, as detailed in the complaint, is that complainant namely Bhawna Makkar married accused – Kamaldeep Makkar (respondent No.2 herein) on 01.05.2011 as per Hindu rites at Hotel Peninsula, Panchkula. Both the complainant and accused-respondent No.2 (herein) were divorcees at the time of their instant marriage. The family of the complainant was upfront about not fulfilling any dowry demands yet the accused-respondent No.2 (herein) and his family members insisted on an extravagant wedding and pressuring the parents of the complainant to solemnize the marriage in some hotel with great pomp and show. On the specific demand and condition of the accused, the parents of the complainant performed the marriage at Hotel Peninsulla, Panchkula and spend around Rs. 5 lakhs and entrusted gold and silver ornaments. After the marriage, the complainant was subjected to harassment, taunts, and physical abuse by the accused, who complained about the insufficient dowry and demanded more cash. Despite attempts of the complainant to adjust and maintain peace, the harassment escalated, including her being treated as a servant, beaten, and locked in rooms. The situation worsened when the complainant became pregnant and gave birth to a female child on 18.01.2018, after which the accused continued to neglect and abuse her. The complainant was ultimately thrown out of her matrimonial home. The accused-respondent No.2 (herein) filed a divorce petition in Ghaziabad, which was later transferred to Panchkula. Despite a decree in favor of the

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complainant under Section 9 of the Hindu Marriage Act, accused-respondent No.2 (herein) refused to reconcile. The complainant also filed police complaints regarding her dowry and Istridhan being withheld, but no action was taken by the Police which necessitated the complainant to file a complaint *ibid* before the Court of Judicial Magistrate Ist Class, Panchkula. On the basis of preliminary evidence led by the complainant, accused were summoned and charge-sheeted for commission of offence punishable under Sections 323, 120-B, 406, 498-A of IPC. However, on the basis of pre-charge evidence, the accused was charge-sheeted for the commission of offences punishable under Sections 406, 498-A and 120-B of IPC to which the accused pleaded not guilty and claimed trial.

6. Learned counsel for the appellant has iterated that the Court below has erred in acquitting the accused-respondent Nos.2 to 5 and the impugned order is contrary to the law, facts and evidence on record. According to learned counsel, the Court below has gravely erred in not appreciating the evidence led by the prosecution and acquitted the accused on untenable grounds. Learned counsel has further reiterated that the trial Court has failed to appreciate that from the evidence on record, the prosecution has been able to bring home the guilt of the accused for having committed the offences punishable under Sections 406/498-A and 120-B of IPC beyond the reasonable shadow of doubt. It has been argued that the trial Court has overlooked the statement as well as evidence on record, while coming to the conclusion that no specific entrustment with regard to dowry articles has been shown to the accused. The learned counsel further argued that the trial Court has overlooked key evidence regarding the entrustment of



dowry articles. Furthermore, the complainant clearly stated in her complaint and testimony that the dowry items were entrusted to the accused at the time of marriage in the presence of relatives and friends. This crucial detail, including the entrustment of jewellery, was ignored by the Court. Learned counsel has further canvassed that the Court below has wrongly acquitted the accused, despite there being sufficient evidence on record to establish his guilt and hence his acquittal is not justified in light of the evidence presented.

7. The principles governing the scope of interference by the High Court in an appeal against the judgment of acquittal, have been laid down by the Hon'ble Supreme Court in the judgment passed in the case titled as ***Babu Sahebagouda Rudragoudar and others versus State of Karnataka, 2024 INSC 320 = 2024(2) Law Herald (SC) 928*** held as under:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- (a) That the judgment of acquittal suffers from patent perversity;*
- (b) That the same is based on a misreading/omission to consider material evidence on record;*
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”*

8. In the light of the above principles laid down by the Hon'ble Supreme Court, I have thoughtfully considered the arguments advanced on behalf of the appellant, perused the entire case record and the judgment passed by the learned Court below.

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9. While going through the impugned judgment passed by the Court below, it appears that the complainant has failed to satisfactorily discharge her burden of proof by presenting credible and reliable evidence or witnesses. It is a well-settled principle of law that the burden rests upon the prosecution to establish the guilt of the accused through cogent and convincing evidence, and any failure to do so entitles the accused to the benefit of doubt.

10. As per the case put forth by the complainant, it is alleged by the complainant that soon after her marriage with accused-respondent No.2 (herein) on 01.05.2011, her husband and in-laws were dis-satisfied with the dowry and harassed her to bring more cash, jewellery and a flat. However, the trial Court, after the appraisal of the evidence on record, found the claims of the complainant unconvincing. Despite the allegations made by the complainant, which is supported by her father namely Tek Chand about dowry demands and harassment, no specific dates or evidence were produced/provided to support these claims to inspire confidence. There is no medical evidence on record to substantiate any claims of physical assault or beating by the accused. During the period the complainant lived with her husband, there is no indication that she was ever taken to a doctor for injuries related to assault. Instead, the marriage was consummated, and a daughter was born, which further weakens the case of the complainant. Upon reviewing the complaint (Ex.P1), and the statements of the complainant (PW-1) and her father namely Tek Chand (PW-2), it becomes evident that they failed to specify any particular dates or instances when the alleged dowry demands were made. During the cross-examination, neither

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the complainant nor her father could provide any specific date, month, or year when these alleged incidents occurred. Both had admitted in their cross-examination that they had not mentioned any precise date regarding when the accused demanded dowry or when the complainant was allegedly tortured for the same. In the considered opinion of this Court, this lack of evidence and the absence of corroborate evidence raises serious doubts about the credibility of the allegations. The contradictions in the statements of the complainant, along with the absence of physical or documentary evidence, suggest that the allegations raised against the accused are not severe as have been portrayed by the complainant. Furthermore, the complainant herself has admitted the discrepancies between her police complaint and her statements made before the trial Court regarding the dowry demands. This glaring inconsistency between the testimonies of the complainant introduces a material contradiction, which directly impacts the credibility of the witnesses and the case of the prosecution. Such discrepancies cannot be lightly overlooked as they strike at the very root of the prosecution's narrative and reliability of the evidence presented. In criminal jurisprudence, where the burden of proof lies squarely on the prosecution to establish the guilt beyond the reasonable doubt, the conflicting statements of star prosecution witness particularly the complainant significantly undermine the ability of the prosecution to prove the charges conclusively and potentially warranting an acquittal by giving the accused the benefit of doubt. Moreover, there is no reasonable explanation forthcoming either from the evidence produced by the complainant or records of the case or from the averments made in the present petition, on this aspect.



10.1 Furthermore, the Court below has found the allegations under Sections 498-A, 406 of IPC, to be without merit, as they lack any substantive evidence or corroborative material. The prosecution has failed to establish a prima facie case to substantiate the charges. Moreover, as far as the entrustment of alleged dowry articles is concerned, the complainant has failed to provide any specific details regarding the handing over of any particular dowry items to any specific individual within the family of the accused. In the absence of clear allegations or evidence of such entrustment, the question of misappropriation of dowry articles does not arise. Under Section 406 of IPC, criminal breach of trust requires clear proof of entrustment and subsequent misappropriation or dishonest conversion of the property. In the instant case, the lack of specific allegations and evidence makes it difficult to establish the elements necessary for prosecuting the accused under this provision. In the considered opinion of this Court, in the absence of credible material on record, the Court below has rightly concluded that the essential ingredients required to prove these offences were not satisfied, resulting in the dismissal of the charges. These material contradictions undermine the case of the prosecution and it fails to meet the stand of proving the guilt beyond a reasonable doubt and casts a significant element of doubt regarding the alleged allegations in question and potentially weakened the case of the victim.

11. It is a well established principle in criminal jurisprudence that the burden of proof rests squarely upon the prosecution, which must establish the guilt of the accused beyond reasonable doubt. Any failure to meet this standard, particularly when key evidence is either missing or

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questionable, entitles the accused to the benefit of doubt. It has been consistently held that suspicion, however grave, cannot substitute for proof, and where there exists any reasonable doubt, the benefit of such doubt must be given to the accused and he must be acquitted in accordance with law. In light of the above discussed discrepancies and inconsistencies, it can be safely inferred that the case put forth by the prosecution is false and there is no evidence of the alleged incident as projected by the victim. Where the complainant herself has failed to substantiate her case beyond reasonable doubt, as has happened in the case in hand, the defence, if any, raised/pleaded by the accused recedes into the background and rather becomes immaterial. However, as has been noted by the learned Judicial Magistrate Ist Class, Panchkula, while passing the judgment of acquittal, in concluding para No.26 of the judgment that there is no clinching or trustworthy evidence on record to prove that the complainant was tortured on the ground of insufficient dowry and it can be safely inferred that the prosecution has miserably failed to bring home the guilt of the accused beyond reasonable doubt for the alleged commission of offences punishable under Sections 406, 498-A and 120-B of the IPC. In the instant case, the prosecution has miserably failed to discharge its liability. The eagerness of the victim to implicate the accused through vague and general accusations further indicates a possible attempt to implicate them, regardless of their actual participation/involvement, in an effort to harass them.

12. In the facts and circumstances of the entire case coupled with the presence of multiple inconsistencies in the case, the learned trial Court,



has rightly arrived at the conclusion that the story put forth by the complainant was false and the allegations raised lack substance.

13. The facts of the case clearly narrate that the complainant has tried to conceal the real genesis of the case. However, the Court below has meticulously and judiciously examined the matter, appreciating the facts and evidence in their proper context. The Court below has rightly discerned the attempt of the victim to distort the narrative and has delivered the findings based on thorough evaluation of the material on record.

14. Perusal of the impugned judgment of acquittal passed by the Court below shows that the entire evidence led by the prosecution has been gone through in detail and in a painstaking manner and has dealt with each and every aspect of the case in a pragmatic manner. The judgment of acquittal is based on sound reasoning; does not suffer from any illegality or perversity. As such, the judgment of acquittal dated 05.07.2022 passed by the Judicial Magistrate Ist Class, Panchkula, is upheld. Resultantly, the present appeal, being bereft of merits, fails and is dismissed.

15. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

October 15, 2024
Ajay

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