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

CRR-3560-2019 (O&M)

Date of decision: 22.07.2024

Raj Kumari

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR, J. (ORAL)**CRM-41064-2019**

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 79 days in filing of the present revision.

For the reasons mentioned in the application, the same is allowed and the delay of 79 days in filing the revision petition is condoned.

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1. The present revision petition is preferred against judgment dated 01.06.2019 passed by learned Sessions Judge, Shaheed Bhagat Singh Nagar,

whereby appeal against judgment of acquittal dated 27.02.2018 passed by

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learned Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar in FIR no. 02 dated 09.01.2013 registered under Sections 406, 498-A of the IPC, at Police Station Sadar, Banga was dismissed.

2. Briefly, the facts are that the petitioner-complainant moved a written complaint dated 01.10.2012 to DIG, Rupnagar Range wherein she alleged that her marriage with Harjit Kumar was solemnised in the year 2005. Since the very beginning of her matrimonial life, the petitioner-complainant was subjected to physical and mental harassment at the hands of her in-laws, including respondents No. 2 and 3, who are the father in law and the mother in law of the petitioner for the purpose of bringing more dowry. The husband demanded a car from the petitioner-complainant. Upon her inability to fulfil the demand of her husband, she was subjected to physical assault. Subsequently, she was turned out of the matrimonial house after 6 months of her wedding. The father of the petitioner unable to bear the shock and died due to the acts of the respondents-accused. Hence, the complaint before the DIG. On the basis of the complaint, the present FIR was registered against the husband. During the course of trial, the respondents-accused were summoned as additional accused after the prosecution moved an application under Section 319 of Cr.P.C.

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3. After assessing all material on record, the learned Trial Court acquitted the respondent-accused vide judgment dated 27.02.2018. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 01.06.2019.

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 judgements of the learned courts below to indicate perversity or misreading of evidence in their judgements. 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 petitioner adduced a list of articles allegedly given by the parents of the complainant to her in-laws. However, there is no mention as to which article was specifically entrusted to which of the accused. Moreover, it is merely a handwritten list attested by the petitioner herself and does not bear the signature of any witness. Therefore no reliance can be place upon the said list. Specific entrustment and misappropriation of the property needs to be decisively proved. Further, a perusal of the trial record depicts that the dowry articles were neither demanded back by the petitioner nor the accused refused to hand over the same to her or her family members. As a result, the factum of the

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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. Also, no dowry articles have been recovered from the possession of the respondents-accused, as admitted by the petitioner in her cross-examination. In fact, no application was moved before the learned trial Court for recovery of the dowry articles.

5. Furthermore, with respect to Section 489A, it is settled law that cruelty must be subjected in close proximity of lodging the complaint. In the present case, the petitioner herself has conceded that she left the matrimonial home in 2005 and was living in her paternal home ever since. The complaint, however, was moved after a period of 7 years. Delay in setting the law into motion by lodging of complaint and registration of FIR is normally viewed by the courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative to satisfactorily and cogently explain the delay, which has petitioner has failed to do so. Mere omnibus and vague allegation of cruelty cannot be the sole basis for convicting the accused under Section 498-A of IPC. No specific date or time has been mentioned with regard to the incidents of cruelty and harassment that the petitioner was subjected to at the hands of the respondents-accused. Additionally, there is no medical evidence

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to prove the allegations of physical assault. Lastly, as per the report made on the basis of the inquiry conducted by the DSP, the respondents-accused were categorically held to be innocent. This report was never challenged by the petitioner. This inaction also leads this Court to draw an adverse inference with regard to the prosecution case.

6. 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. (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.

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

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Court or the learned Trial Court which warrants interference by this Court. As such, there is no merit in the present revision petition and the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

22.07.2024*Ajay Goswami*

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>