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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-85-2019 (O&M)
Date of Decision: 24.10.2024

Mamta Khungar

...Applicant

Versus

Jagdip Arora and others

...Respondents

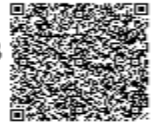
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lovepreet Singh, Advocate for
Mr. J.S. Jaidka, Advocate
for the applicant.

HARPREET SINGH BRAR, J.

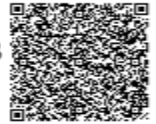
1. The present application under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 419 (4) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] has been preferred against judgment of acquittal dated 23.08.2018 passed by learned Judicial Magistrate 1st Class, Ludhiana in criminal complaint bearing No.COMI/6115771/2013 under Sections 406, 498-A, 506, 120-B, 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Jamalpur, Ludhiana.

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2. Briefly, the facts are that the marriage between the applicant and respondent No.1 was solemnized on 09.09.2008. It was second marriage of both the parties. The respondents-accused were not satisfied with the dowry articles brought by the applicant, causing them to harass her. Respondents No.1 & 3 demanded an Alto car from the applicant. On her inability to do so, the applicant was beaten and abused. The applicant was shunned out of the matrimonial home on 10.01.2009, while she was pregnant. Subsequently, a compromise was arrived at between the parties and the applicant came back to her matrimonial home in the month of January, 2010. However, she was forbidden from meeting her parents and when she raised an objection to the same, she was severely beaten. The respondents-accused neither cared for the applicant nor her minor child, and would often shunned them out of the matrimonial home. In the month of January, 2013, the applicant, respondent No.1 and their child were moved into a separate rented accommodation. However, respondent No.1 failed to cohabit with or maintain them. Ultimately, on 17.03.2013, the applicant was shunned out of the matrimonial home and since then, she along with her minor child is residing with her parents. The applicant demanded her *stridhan* and other articles back from the respondents-accused, but they failed to provide the same and threatened her of dire consequencem if she makes such a demand again.

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3. Having heard learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that the applicant, in her deposition as CW1, presented a list of articles given by her parents at the time of her marriage. It was claimed that the bills qua the same were with mother of respondent No.1, but no evidence was led to prove the same. The purchase of the articles, as indicated on the list, remains unproved since neither persons, from whom the said articles were purchased, have been examined nor any cogent evidence has been led to prove the alleged bills. Even the photographs led by mother of the applicant, while appearing as CW3, were not backed by a certificate issued under Section 65-B of the Indian Evidence Act, 1872. Even otherwise, the said photographs do not show exchange of any article. Further, CW3-mother of the applicant has stated that it was customary to present certain gifts at the time of the marriage of a daughter. As such, since entrustment of articles remain unproved, the offence under Section 406 of IPC is not attracted.

4. Moreover, there is no specificity to the allegations made by the applicant qua cruelty. No date or time with respect to the alleged acts of harassment have been provided by the applicant or other complainant's witnesses. Neither the narrative put forward by the applicant is corroborated by other witnesses nor any medical record has been brought

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on the record to prove instances of cruelty, as alleged. The prosecution also failed to establish as to on what date or even in which month, the demand for dowry was made. Finally, no evidence had been brought on record, including from the trial for grant of maintenance under Section 125 of Cr.P.C. (*now Section 144 of BNSS*), that would indicate that respondent No.1 failed to pay the rent for the rented accommodation or forbid her from visiting her paternal home.

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. (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, passed in 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 learned trial Court.

6. In view of the discussion above, this Court finds that learned counsel for the applicant has failed to point out any perversity or illegality

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in findings recorded by learned Court below, which warrants any interference at the hands of this Court. Accordingly, the application seeking leave to file the appeal is dismissed being bereft of any merit.

7. All the pending miscellaneous application(s), if any, shall stand disposed of.

24.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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