



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

CRM-A-2225-MA-2018
Date of decision: 31.07.2024

NeelamApplicant

Versus

Tek Chand and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sunaina Rani, Advocate for
Mr. N.S. Kamboj, Advocate
for the applicant.

HARPREET SINGH BRAR, J.

CRM-35097-2018

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 92 days in filing the accompanying application under Section 378 (3) of Cr.P.C. For the reasons mentioned in the application, the same is allowed and the delay of 92 days in filing the said application is condoned.

CRM-A-2225-MA-2018

1. The present application is preferred under Section 378 (3) of the Cr.P.C. against the judgment of acquittal dated 27.03.2018 passed by learned Judicial Magistrate 1st Class, Sirsa, in the case stemming from FIR, bearing no. 220, dated 26.10.2013 under Sections 498A, 406, 506 and 34 of IPC, registered at Police Station Ding, Sirsa.

2. Briefly, the facts are that the applicant-complainant moved a written complaint before the learned trial Court, wherein she alleged that her marriage with respondent no.1-accused was solemnised on 14.02.2013. Ample



dowry articles were given to the respondents-accused and their relatives. Soon after the wedding, it is alleged that the applicant-complainant was subjected to harassment at the hands of the respondents-accused for the purpose of bringing more dowry. The respondents-accused demanded Rs. 1 lakh in cash and a motorbike from the parents of the applicant. Since the applicant could not fulfil the demands raised by the respondents, she was turned out of the matrimonial house on 20.05.2013. On the next day, a *panchayat* was convened to resolve the dispute, however, nothing fructified and the respondents-accused refused to take her in. The applicant moved a representation before the local police. No action was taken and therefore the complaint was filed before the Magistrate under Section 156 of Cr.P.C. Consequently, the Magistrate directed the police to register the instant FIR. After assessing all material on record, the learned Trial Court acquitted the respondents-accused vide judgment dated 27.03.2018.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it appears that there is nothing in the judgement of the learned trial Court to indicate perversity or misreading of evidence. 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, there is no mention as to which article was specifically entrusted to which of the accused. Specific entrustment is *sine qua non* for establishing the offence under section 406 IPC which is conspicuously missing in the present case. Moreover, nothing has been brought on record to prove the purchase of the items by way of bills or invoices.

4. Furthermore, mere vague and omnibus allegations against all the members of the applicant's in-law's family 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 to prove the allegations of physical assault. In his cross-examination, the father of the applicant, who was examined as PW-2, deposed that that he does not remember on which date his daughter told him about the alleged demand of Rs. 1 lakh and a motorcycle. He further stated that he does not remember the date on which the *panchayat* was held. Curiously, nobody from the said *panchayat* was summoned as a witness, which further weakens the prosecution case.

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 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.

(HARPREET SINGH BRAR)
JUDGE

31.07.2024
Neha

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