



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

CRM-A-2883-2019

Date of decision: 09.08.2024

Kulwant Kaur

....Applicant

Versus

Baljinder Singh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present:** Mr. Raj Kumar Kakkar, Advocate  
for the applicant.**HARPREET SINGH BRAR, J.**

1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 25.09.2019 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Ferozepur, in a criminal complaint case, bearing no. RBT-33-2014, filed under Sections 406/498-A of the IPC.

2. Briefly, the facts are that the marriage of the complainant was solemnized with accused/respondent No.1 at Village Shakoor on 28.10.2007 and Rs.10 lakh was spent by her parents and dowry articles were given as demanded. Out of this wedlock, a male child was born, who is residing with the complainant. The accused/respondent No.1 was earlier married to Paramjeet Kaur and this fact was concealed from the complainant. It is further alleged that mother-in-law/respondent No.3-accused used to taunt the complainant and the accused persons demanded more dowry from her parents as the dowry articles already given are not up to their standards. When the complainant refused the same, the accused persons resorted to physical violence and turned her out of the matrimonial home. Further, after one and a



half years of marriage, the complainant came to know that respondent No.1/accused used to take intoxicants and always remain under its influence and when the complainant requested him to leave the drugs, he abused her and also gave severe beatings to her. It is further alleged that the accused persons used to keep the complainant and her husband in one room and none of them used to talk to them. They also extended threats to the complainant that if she will make any contact with her family members or visit them, then they will kill her brother and her family members. Furthermore, the accused persons, in the event of any illness, never provided any medicines to the complainant and her minor son and even the articles of daily necessities were also not provided to her and when her brother visited her, the accused persons again resorted to physical violence. Thereafter, panchayat was convened and with the intervention of the members, the accused persons rehabilitated the complainant and her son by executing one registered sale deed in her favour by accused/respondent No.2-Resham Singh for the land measuring 08 kanals on 30.11.2009, however, the possession of the same has not been handed over to her. Hence the complainant before the Magistrate.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that the proof of entrustment is sine qua non for establishing the liability of the accused under Section 406 of IPC. A review of the testimonies of prosecution witnesses reveals that there is no evidence indicating which specific articles were entrusted to whom or how they were misappropriated. The complainant in her examination-in-chief deposed that all the gold articles were given to all the accused persons except some household articles and Rs.3,50,000/- was given to respondent No.1 on shagun ceremony as demanded apart from



spending Rs.10 lakh on the marriage but in her cross examination, she deposed that she does not have any receipt regarding Rs.10 lakh and Rs.3,50,000/- as mentioned in her examination-in-chief. During cross examination of the father of the complainant, he has also deposed the same as the complainant and also deposed that he can produce the record of commission agent and cross-examination of the father of the complainant was deferred for want of record but on 27.10.2017, he deposed that he has not brought the record regarding taking amount of Rs.13,50,000/- from the commission agent and also the said agent was never examined in the Court. Hence, it cannot be ruled out that the complainant possessed a motive to file a false complaint against the respondents.

4. Furthermore, neither any list of dowry articles nor any photographs of entrustment have been placed on record. Further perusal shows that there are material contradictions in testimonies of prosecution witnesses with that of the complainant. There is an unexplained delay of two and a half years in filing the complaint apropos this case. Despite specific allegations that respondent No.1 was already married has remained unproven due to lack of any evidence *qua* the same. Most importantly, complainant failed to examine any doctor to corroborate her claim. Therefore, the case of the complainant has remained uncorroborated throughout leading this Court to uphold the impugned order.

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 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.

(HARPREET SINGH BRAR)  
JUDGE

09.08.2024  
Neha

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