

Judgment reserved on: 18.03.2025
Judgment delivered on: 26.03.2025

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.531 of 2013

Smt. Bhawna BishtAppellant
 Vs.
 Tara Singh Bisht and AnotherRespondents

Presence:

Mr. Dinesh Chauhan, learned counsel for the appellant.
Mr. Birendra Singh Adhikari, learned counsel for respondents.

Hon'ble Pankaj Purohit, J. (Per)

This is an appeal preferred by the appellant-complainant assailing the judgment and order dated 30.09.2013 passed by learned Chief Judicial Magistrate, Almora, in Criminal Case No.849 of 2007 *Smt. Bhawna Bisht Vs. Tara Singh and another*, whereby, the said Court has acquitted the respondents for the offence punishable under Sections 406 and 120-B IPC.

2. The facts in brief are that the appellant-complainant was the first wife of deceased Om Prakash Bisht. She alleged that the deceased remarried while she was his lawfully wedded wife. As per the complaint story, it was stated that 10 tola gold and other streedhan was given by her father to her in-laws; after the death of her ex-husband, the said property is in possession of the respondents, who are not returning it. Learned CJM Almora, after recording statement of appellant u/s 200 and 202 Cr.P.C., summoned the respondents u/s 406 & 120-B IPC.

3. During trial, as many as four witnesses were produced by the prosecution in order to prove its case. Thereafter, the statements of respondents/accused

persons were recorded under Section 313 of the Cr.P.C., in which, they denied the complainant's story. The Trial Court at the end of trial has recorded the findings of acquittal. Hence, this Appeal.

4. Learned counsel for the appellant submits that appellant's deceased husband remarried one-Ms. Pushpa, during the lifetime of appellant, without dissolving the earlier marriage. The appellant filed a Criminal Complaint Case No. 166 of 2007 in the Court of learned Chief Judicial Magistrate, Almora, against her ex-husband under Sections 494 and 406 IPC, which was dismissed as not pressed, as the ex-husband died during the pendency of the case. Thereafter, the case in-question was filed against the respondents for returning the gold and *streedhan* properties. In which, the respondents were acquitted by the learned Court below on the ground that the appellant/complainant in her complaint herself stated that the alleged property was snatched by her late husband and after his death, could be best in possession of his present wife and not in possession of the respondents.

5. Learned counsel for the appellant further submits that this is a fit case for reversal of acquittal, as the judgment is based on a misreading/omission to consider the material evidence on record. To substantiate his argument, he placed his reliance upon the judgment rendered by Hon'ble Supreme Court in the case of **Constable 907 Surendra Singh and Anr. Vs. State of Uttarakhand** rendered in **Criminal Appeal No.355 of 2013**, especially, on para 12, which is quoted below:-

"12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of

acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and 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.”

6. On the other hand, learned counsel for the respondents submits that even on face of record and after bare perusal of the complaint, it is clear that essential ingredients of Section 406 IPC are not met out. He placed reliance upon a judgment rendered by Hon'ble Supreme Court in the case of **Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and another** rendered in **Criminal Appeal No.1716 of 2007 dated 14.12.2007**. Para 16 and 18 of the said judgment are as under:

“16. According to Section 405 Indian Penal Code, the offence of criminal breach of trust is committed when a person who is entrusted in any manner with the property or with any dominion over it, dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or wilfully suffers any other person so to do. Thus in the commission of the offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

18. In the present case, from a plain reading of the complaint filed by the complainant on 8.11.1994, extracted above, it is clear that the facts mentioned in the complaint, taken on their face value, do not make out a prima facie case against the appellants for having dishonestly misappropriated the Stridhan of the complainant, allegedly handed over to them, thereby committing criminal breach of trust punishable under Section 406 Indian Penal Code. It is manifestly clear from the afore-extracted complaint as also the relevant portion of the charge- sheet that there is neither any allegation of entrustment of any

kind of property by the complainant to the appellants nor its misappropriation by them. Furthermore, it is also noted in the charge-sheet itself that the complainant had refused to take articles back when this offer was made to her by the Investigating Officer. Therefore, in our opinion, the very pre-requisite of entrustment of the property and its misappropriation by the appellants are lacking in the instant case. We have no hesitation in holding that the learned Additional Sessions Judge and the High Court erred in law in coming to the conclusion that a case for framing of charge under Section 406 I.P.C. was made out."

7. Learned counsel for the respondents also placed a reliance upon Para 3 of the judgment rendered by Hon'ble Supreme Court in the case of **Ghurey Lal Vs. State of U.P.** rendered in Criminal Appeal No.155 of 2006 dated 30.07.2008 reported in **(2008) 10 SCC 450**, which is extracted as under:-

"3. We have endeavoured to set out the guidelines for the appellate courts in dealing with appeals against acquittal. An overriding theme emanates from the law on appeals against acquittals. The appellate court is given wide powers to review the evidence to come to its own conclusions. But this power must be exercised with great care and caution. In order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of innocence is further strengthened by the acquittal. The appellate court should, therefore, reverse an acquittal only when it has "very substantial and compelling reasons."

8. Learned counsel for the respondent contends that appellate court should be slow in interfering with the judgments of acquittal unless there is perversity. He further submits that the case law cited by the appellant is rather helpful to the respondents-accused.

9. Heard learned counsel for the parties and perused the entire material available on record. The finding recorded by the learned trial court is quite convincing and needs no interference, as from a bare

reading of the material available on record, it is clear that the facts mentioned even taken on their face value won't make out a prima-facie case against the respondents for having dishonestly misappropriated the stridhan of the appellant/complainant, allegedly handed over to them, thereby, commits criminal breach of trust punishable u/s 406 IPC. It is manifestly clear that there is neither any entrustment of kind of properties by the appellant/complainant to the respondents is proved nor there could be any question of its misappropriation by respondents/accused.

10. There is yet another aspect of the matter. The respondents have been acquitted. In appeal against acquittal it is held by Hon'ble Apex Court in catena of judgments that the Courts should be slow in interfering in the judgments of acquittal as the innocence of the accused is further reinforced by his acquittal. Unless and until there is perversity in the judgment of acquittal, the same should not be interfered with.

11. It is trite law that that while hearing the appeal against acquittal, the power of reviewing evidence must be exercised with great care and caution. In order to ensure that the innocents are not punished, the appellate court should attach due weight to the lower court's acquittal because the presumption of the innocence is further strengthened by the acquittal. The appellate court should reverse an acquittal only when there are "very substantial and compelling reasons". I am fortified in my view by the judgment of the Hon'ble Apex Court in case of ***Ghurey Lal (Supra)***.

12. The trial court has passed an elaborate judgment for recording the finding of acquittal and this Court does not want to reiterate the same for the sake of

repetition. Learned counsel for the appellant could not argue any ground so as to interfere with the well reasoned judgment passed by the trial court.

13. For the aforesaid reasons and following the dictum of the Hon'ble Apex Court, I am also of the considered view that no ground for interference, at all, is made out in this matter, as there is no illegality and perversity in the impugned judgment and order.

14. The appeal is bereft of merit and the same is accordingly dismissed.

15. Let the T.C.R. be immediately sent back to the trial court for consignment.

(Pankaj Purohit, J.)
26.03.2025

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