

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Revision Petition 651/2002**

% **Decided on: 10th August, 2010**

HARBHAJAN SINGH BHALLA **Petitioner**

Through: **Mr. Aseem Mehrotra and**
Mr. Mohd. Fuzail Khan, Advs.

Versus

STATE OF DELHI & ORS. **Respondents**
Through: **Mr. M.P. Singh, APP for the State.**

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

- | | | |
|----|--|-----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

A.K. PATHAK, J. (ORAL)

Respondent nos. 2 to 5 have been acquitted of the charges under Sections 498-A/304-B of the Indian Penal Code (IPC) by the learned trial court. Petitioner (complainant), who is father of the deceased, has filed this revision petition under Section 397 of the Code of Criminal Procedure (Cr.P.C.) challenging the acquittal of respondent nos. 2 to 5 and praying that they may be convicted under the aforesaid provisions.

2. The brief facts necessary for the disposal of this petition

are that the daughter of the petitioner namely Mamta committed suicide on 22nd May, 1994 at her matrimonial home by hanging herself from a ventilator with the help of a chunni within two and half years of her marriage. Respondent no. 3 is husband, respondent no. 2 is father-in-law, respondent no. 4 is jeth and respondent no. 5 is jethani of the deceased.

3. Petitioner made a statement before the Sub Divisional Magistrate (S.D.M.), Punjabi Bagh that he had spent lot of money in the marriage of his daughter and gave dowry beyond his financial capacity. However, respondents were not satisfied with the same. After about 10/12 days of her marriage respondent nos. 2 to 5 started harassing the deceased on trivial matters. They used to ask the deceased to bring jewellery and cash. About ten days prior to the incident, petitioner gave Rs.10,000/- in cash and one cooler to the respondent. About twenty days prior to the incident respondent no. 3 suffered epilepsy attack and was hospitalised in Janhit Hospital. On this occasion petitioner visited the hospital when in his presence, respondents gave beatings to the deceased. Even doctor reprimanded them. Brother of the deceased was to get married on 8th May, 1994. Deceased was permitted to attend the marriage at the last moment. On the very next day of her brother's marriage deceased was taken back to her matrimonial home.

4. In nutshell, prosecution case was that deceased had died an unnatural death within the seven years of her marriage and before her death she was subjected to demands of dowry, harassment and cruelty in her matrimonial home. Thus, respondent nos. 2 to 5 were guilty of having committed “dowry death” besides treating the deceased with cruelty prior to her death and were liable to be punished under Sections 498-A/304-B IPC.

5. Trial court framed charges under Sections 498-A/34 IPC and under Sections 304-B/34 IPC against the respondent nos. 2 to 5 on 5th January, 1994 to which they pleaded not guilty and claimed trial. Prosecution examined seventeen witnesses in all to support its version. After prosecution concluded its evidence, statement, under Section 313 Cr.P.C. of the respondent nos. 2 to 5 were recorded wherein entire incriminating material, which had come on record, was put to them. The case of the respondents was that of denial. It was stated that the marriage between the deceased and respondent no. 3 was simple one. Deceased was not having good relations with her father even prior to her marriage inasmuch as, a court case was pending between them. Petitioner took some jewellery during his son’s marriage from the deceased who had gone to attend marriage of her brother and when she demanded the same back petitioner refused. On this count,

deceased was perturbed and sad and it appears that she had committed suicide for this reason.

6. Respondents examined twelve witnesses in their defence. Certain documents were also proved on record to show that the deceased along with her brothers and sisters had filed a suit against the petitioner for permanent injunction praying therein that he be restrained from selling, transferring or alienating the property no. WZ-622A, Rishi Nagar, Shakurbasti, Delhi – 34 to any third party. It was alleged that this property belonged to their late mother which petitioner was intending to dispose.

7. Trial court appreciated the evidence adduced by the parties and did not find the same to be sufficient enough to conclude that the deceased was treated with cruelty by the respondent nos. 2 to 5 on the point of dowry or otherwise before her death so as to hold the respondents guilty of having committed offences under Section 498-A/304-B IPC. It was held that prosecution had failed to prove that PW1 Harbhajan Singh Bhalla (petitioner) had paid a sum of Rs.10,000/- to respondent no. 3 pursuant to the dowry demand raised by the respondent nos. 2 to 5 inasmuch as, PW4 Jagdish Singh Bhalla had not supported this version. That apart, improvements were made by PW1 Harbhajan Singh Bhalla and PW7 Rajesh Singh Bhalla (brother of the deceased) with regard

to demand of dowry and harassment of deceased on account of dowry, which otherwise, was not supported by any independent witness. PW2 Surinder Kaur and PW9 Omwati, who were residing in the same locality where the deceased had been living with her husband, did not support the allegations of demand of dowry and harassment of deceased by the respondents. PW13 Devender Chopra, cousin of the deceased, had also not supported the harassment of the deceased on the point of dowry. That apart, DW1 Om Prakash, DW3 Fakir Chand, DW4 Lila Dhar, DW5 S.S. Bains, who were independent witnesses, had deposed categorically that deceased was not harassed by the respondents for bringing more dowry. Besides this, sufficient documentary evidence was produced on record to show that deceased was not maintaining good relations with the petitioner even prior to her marriage. Even prior to her marriage she along with her brothers and sister including PW7, had filed a suit for permanent injunction against the petitioner apprehending that he may sell the immovable property owned by her late mother. This suit was dismissed for non-prosecution only after the marriage of deceased.

8. Learned counsel for the petitioner has vehemently contended that trial court has completely overlooked the testimony of PW4 Jagdish Bhalla who had categorically

deposed that deceased was not kept properly by the respondent nos. 2 to 5 in the matrimonial home after her marriage. Not only this, dowry was also demanded at the time of marriage. He has contended that even though testimony of PW4 may not be sufficient to conclude that respondent nos. 2 to 5 had caused "dowry death" of the deceased but still it was sufficient to conclude that respondent nos. 2 to 5 had harassed the deceased with a view to coerce her to meet their unlawful demands of cash, cooler, VCR and other valuable articles and on account of her failure to meet such demands the deceased was harassed and as such respondents were guilty of committing offence under Section 498-A IPC. He has further contended that even if ingredients of offence under Section 304-B were not attracted in the case, the ingredients of offence under Section 498-A were certainly complied with from the testimony of PW4 coupled with testimony of PW1 and PW7. He further contended that trial court had committed an error in accepting the statements of the neighbours as against the father and brother of the deceased. PW4 Jagdish Bhalla was not even related to the deceased and was an independent witness. Reliance has been placed on ***Devender Prashad vs. Shanti Devi & Ors. 2007 (3) JCC 2260*** and ***K. Chinnaswamy Reddy vs. State of Andhra Pradesh 1963 (3) 412 Supreme Court Reports*** to buttress the arguments that

in case any material evidence has been overlooked by the trial court while acquitting the accused the High Court can interfere in exercise of its revisional jurisdiction.

9. I have considered the above contentions of the counsel for the petitioner and perused the Trial Court Record. It is well settled that a court of revision would not normally reassess the evidence and interfere merely because the view taken by the trial court based on the available evidence could not be a possible view. In other words, revision would not lie on the mere ground of mis-appreciation of evidence unless a glaring feature is brought to the notice of the revisional court which would otherwise tantamount to flagrant miscarriage of justice. In its revisional jurisdiction High Court can call for and examine the record of any proceeding for the purpose of satisfying itself as to the correctness of the order. In other words, the jurisdiction is one of the supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. The revisional power cannot be equated with the power of an Appellate Court. Ordinarily, it would not be appropriate for the High Court to re-appreciate evidence and come to its own conclusion on the same when the evidence has already been appreciated by the trial court unless any glaring feature is brought to the notice of the High Court.

10. In K. Chinnaswamy Reddy's case (supra) it was held that

revisional jurisdiction can be exercised by the High Court in exceptional cases when there is some glaring defect in the procedure or there is manifest error on a point of law and consequently, there has been a flagrant miscarriage of justice. In *D. Stephens vs. Nosibolla* (1951) 1 SCR 284 it was held that the revision jurisdiction conferred on the High Court is not to be lightly exercised when it is invoked by a private complainant against an order of acquittal, against which Government has a right to appeal. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. Similar view has been expressed in *Johar and Ors. Vs. Mangal Prasad and Anr.* AIR 2008 SC 1165.

11. In the backdrop of above settled legal position, I have gone through the statements of the witnesses recorded by the Trial Court and I do not find any force in the contention of learned counsel for the petitioner that material evidence with regard to demand of dowry and harassment of the deceased has been overlooked by the Trial Court. Overall evidence adduced by the parties has been taken into consideration by the Trial Court for arriving at a conclusion that prosecution had failed to prove harassment of deceased on the point of demand of dowry so as to force her to commit suicide. In the

FIR petitioner has made general allegations regarding demand of dowry and harassment of the deceased except that a special instance has been mentioned regarding payment of Rs.10,000/- in cash and cooler about ten days before the incident. With regard to the payment of Rs.10,000/- PW4 has not supported PW1. Other statement of PW4 is not in consonance with the prosecution story. He has deposed that at the time of engagement ceremony respondent no. 2 demanded a gold bangle from the father of the deceased through him. Since it was not their custom to give gold bangle at the time of engagement, therefore, a gold ring was given. After the marriage respondent no. 2 told him that the said ring was not heavy. Therefore, on his intervention ring was changed. The suit pieces given in the marriage were also not liked by the respondent no. 2 as he uttered that the same were not even worth for his servants. After the marriage deceased informed him that the respondents were maltreating her and were demanding VCR. However, his this statement in the Court is not in consonance with the prosecution story. Besides this, independent witnesses produced by the prosecution, who were not related with the respondents, have categorically deposed that the deceased was not harassed by the respondents on account of dowry. Even, cousin of deceased did not support PW1 regarding demand of dowry.

That apart it has also come on record that the deceased was not having smooth relations with the Petitioner, inasmuch as, in his cross-examination PW1 first stated that he never visited matrimonial house of Mamta but later said that he visited her house only once. This by itself indicates that he was not maintaining good relations with her.

12. I do not find the view taken by the Trial Court to be perverse or suffering from any manifest error. Trial Court has taken a view after appreciating the evidence adduced by the parties which cannot be said to be not a possible view.

13. For the foregoing reasons petition is dismissed being devoid of merits.

A.K. PATHAK, J.

August 10, 2010

ga