

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.133 of 2009

Parvathavarthini

.. Petitioner

Versus

1. State by:

The Inspector of Police
All Women Police Station
Avinashi Police Station

2. T.Gopikrishnan

3. N.R.Thiruvengadam

4. S.Kamalam

5. P.Sadhasivam

6. P.Jayasudha

7. N.Prabakaran

.. Respondents

Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. against the order dated 21.01.2008 passed by the learned District Munsif cum Judicial Magistrate, Avinashi in C.C.No.294 of 2005.

For Petitioner : Mr.S.Gunalan

For Respondents : Mr.V.Arul
Government Advocate
(Crl.side) for R1

Mr.C.S.Dhanasekaran
for RR3 to 7

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ORDER

The petitioner, who is the defacto complainant in C.C. No.294 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Avinashi, has come forward with this Criminal Revision Case aggrieved by the order of acquittal passed by the Court below.

2. The brief facts of the case is as follows:

The petitioner and the first accused got married on 25.03.1996 as per Hindu Rites and Customs and they were living together happily in Gobichettipalayam. However, after six months, the first accused, viz, the husband of the petitioner and his family members started harassing the petitioner in one way or other and also demanded dowry. It is her further case that even though she was pregnant, without

considering the same, the accused persons sent her out of the matrimonial home. In connection with this incident, the petitioner had given a complaint before the first respondent police based on which the case in Crime No. 9 of 2005 came to be registered for the offences punishable under Sections 498A and 406 of IPC. After investigation, the first respondent filed final report which was taken on file in C.C. No.294 of 2005. The trial court, after analysing the oral and documentary evidence, acquitted all the accused, against which the present Criminal Revision Case is filed.

3. The learned counsel for the petitioner would contend that the court below failed to consider the uniform evidence given by the prosecution witnesses. P.Ws. 2 and 3 have corroborated the evidence given by PW1. However, the Court below disbelieved their version without any valid reasons. He would further state that PWs.5 and 6 are independent witnesses and they also spoke about the dowry demand. But, the Court below had only taken note of minor discrepancies in the evidence of the prosecution witnesses to reject the theory put forward by the prosecution. Accordingly, he would pray for setting aside the order of acquittal passed by the Court below.

4. Learned counsel appearing for the respondents 2 to 7/accused would contend that the alleged demand of dowry never arise. He would further submit that the Court below after analysing the entire oral and documentary evidence adduced, came to the conclusion that there was no clear and cogent evidence given by any of the prosecution witnesses as to when the demand was made, to whom it was paid etc. He would also submit that it was the husband who started the business and the defacto complainant was also working there. Accordingly, acquitted the accused warranting no interference in this revision.

5. Learned Government Advocate appearing for the first respondent/ State would contend that the Court below, on analysis of the oral and documentary evidence on record and after pointing out various discrepancies in the evidence of the prosecution case, came to a logical conclusion of acquitting all the accused.

6. I heard the learned counsel for the petitioner, learned Government Advocate (Criminal Side) appearing for the first respondent as well as the learned counsel appearing for the accused.

7. The main ground of attack made by the counsel for the petitioner is that the accused persons demanded 150 sovereigns of jewels, Rs.5 lakhs in cash and a car. He would further contend that the Court below disbelieved the documents, viz., letters produced by P.Ws. 2 and 3 evidencing the demand of dowry on the ground that there was no seal at delivery point. However, on a perusal of the order passed by the Court below, it is seen that it has held that there is no direct evidence for the dowry demand. Further, it has held that there is no clear and cogent evidence as to when the demand was made and to whom it was paid etc for instigating all the family members in the case. Though it is stated in the complaint that the accused persons demanded Rs.5 lakhs for starting a computer company, no document has been produced to establish the same. Whereas the first accused in his cross-examination would depose that he only established the business and the defacto complainant was also working

there and she used to withdraw money from the account to meet out her expenses. Considering all the above aspects, the Court below acquitted the accused.

8. Further, the Hon'ble Apex Court in the judgment reported in AIR 1968 SC 707 [Mahendra Pratap Singh vs. Sarju Singh and another], has held that only if there is any illegality or perverse or gross miscarriage of the order passed by the lower Court in ordering acquittal, then only the High Court can interfere with the same in the revision. The relevant portion is extracted here under for ready reference:

"The practice on the subject has been stated by this Court on more than one occasion. In D. Stephens v. Nosibolla only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misapprehensions of evidence. Again, in Logendranath Jha v. Shri Polailal Biswas, this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is "perverse" or "lacking in true correct perspective". It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the Subordinate Court, it is always difficult to reweigh the evidence ignoring the opinion of the High Court. Again in K. Chinnaswamy Reddy v. State of Andhra Pradesh, it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the court had no jurisdiction to try the case or the court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court. As stated, not one of these points which have been laid down by this Court was covered in the present case. In fact on reading the judgment of the High Court it is apparent to us that the learned Judge has reweighed the evidence from his own point of view and reached inferences contrary to those of the Sessions Judge on almost every point. This we do not conceive to be his duty in dealing in revision with an acquittal when Government has not chosen to file an appeal against it. In other words, the learned Judge in the High Court has not attended to the rules laid down by this Court and has acted in breach of them".

9. It is evident from the aforesaid judgment of the Honourable Supreme Court that this Court cannot re-appreciate the evidence and interfere with the order of acquittal passed by the trial court if the view taken by the trial court is also a reasonable view on the basis of evidence on record and the evidence recorded by the trial court are not manifestly erroneous, contrary to the evidence on record or perverse. In this case, the revision petitioner is unable to establish by any valid evidence that the order passed by the Court below is perverse or contrary to evidence available on record.

10. Applying the aforesaid decision to the facts and circumstances of this case, in the present case, there are no evidence available on record to connect the accused to the offence complained of and the prosecution has miserably failed to establish the guilt against the accused beyond reasonable doubt. Therefore, I am of the view that the order of acquittal passed by the court below is reasonable, plausible and it need not be slightly brushed aside. I do not find any reason to interfere with the order of acquittal passed by the court below. The Criminal Revision Case is therefore dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vj2

To

1. The District Munsif cum Judicial Magistrate,
Avinashi.
2. The Public Prosecutor,
Madras.
3. Do Through The Chief Judicial Magistrate,
Coimbatore.

+1 cc to Mr.Indumathi,Advocate(sr.44016)
+1 cc to Mr.Dhanasekaran,Advocate(sr.43957)

Cr1.Rc.133 of 2009

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