

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.03.2015

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

Criminal Revision Case No.512 of 2010
and
Criminal Original Petition No.23229 of 2010

Criminal Revision

1.Geetha Devi

2.Vinoth

.... Petitioners/accused

Vs.

1. D.I.Nathan

.... 1st respondent/
defacto complainant

2. The Sub-Inspector of Police,
B-4, High Court Police station,
Chennai-600 001.

.... 2nd Respondent

Criminal Original Petition

1. D.I.Nathan

... Petitioner

Vs.

1. The Sub-Inspector of Police,
B-4, High Court Police Station,
Chennai-104.

2. Geetha Devi

3. Vinoth

... Respondents

Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., against the order passed in Crl.R.C.No.184 of 2009 on the file of the V Additional Sessions Judge, Chennai, dated 30.04.2010, reversing the judgment passed in C.C.No.13577 of 2007 on the file of the VII Metropolitan Magistrate, George Town, Chennai, dated 13.10.2009.

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to enhance the sentence in CrI.R.C.No.184 of 2009 on the file of the V Additional Sessions Judge, Chennai, which was filed against the judgment in C.C.No.13577 of 2007 on the file of the VII Metropolitan Magistrate, George Town, Chennai

Appearance in Criminal Revision Case

For Petitioners : Mr.K.Rajasekaran

For Respondents : Mr.A.N.Rajan (For R1)
Mrs.M.Shafana, Govt Advocate (crl Side)
(For R2)

Appearance in Criminal Original Petition

For Petitioners : Mr.A.N.Rajan

For Respondents : Mrs.M.Shafana, Govt Advocate (crl Side)
(For R1)
Mr.K.Rajasekaran(For R2)

COMMON JUDGMENT

Criminal Revision has been filed by the accused/petitioners as against the enhancement of sentence passed by the learned V Additional Sessions Judge, Chennai in CrI.R.C.No.184 of 2009 dated 30.04.2010, reversing the judgment passed in C.C.No.13577 of 2007 on the file of the VII Metropolitan Magistrate, George Town, Chennai, dated 13.10.2009.

2.Not being satisfied with the enhancement of sentence passed by the learned V Additional Sessions Judge, Chennai in CrI.R.C.No.184 of 2009 dated 30.04.2010, the defacto-complainant has filed the present criminal original petition.

3.Since the issues in the criminal revision as well as in the criminal original petition arose out of the same order passed in CrI.R.C.No.184 of 2009 on the file of the learned V Additional Sessions Judge, Chennai, the revision and original petition are disposed of, by way of this common order.

4.For the sake of convenience, the petitioners in Criminal Revision Case No.512 of 2010, who are the respondents in the Criminal Original Petition No.23229 of 2010, will be referred as Revision petitioners and the respondent in Criminal Revision Case No.512 of 2010, who is the petitioner in Crl.O.P.No.23229 of 2010, will be referred as Defacto-complainant.

5.The brief facts of the case are as follows:-

5(1)The defacto-complainant/petitioner in criminal original petition viz., Mr.D.I.Nathan is a practising Advocate and his wife is one Vinitha, who is the daughter of the first revision petitioner viz., Geetha Devi. The second revision petitioner Vinoth is the son of the first revision petitioner. In other words, the Revision Petitioners are the mother-in-law and brother-in-law of the Defacto-complainant.

5(2)The marriage between the defacto-complainant viz., Mr.D.I.Nathan and the said Vinitha was not successful. According to the defacto-complainant, while his marriage with the said Vinitha is in subsistence, the said Vinitha married one Suresh; hence, he lodged a complaint with regard to the bigamous marriage of his wife. The said complaint was registered in Crime No.1441 of 2007 on the file of the All Women Police Station. In such a situation, on 29.05.2007 at 14.30 hours, while the defacto-complainant was walking along with his friends, in front of a Cofee House situated at High Court Compound, Chennai, the revision petitioners along with one Ajith Kumar @ Kutta waylaid the defacto-complainant and questioned the defacto-complainant as to the complaint lodged by him for taking action with regard to the bigamous marriage of the 1st revision petitioner's daughter Vinitha with one Suresh. In the course of heated argument, the revision petitioners joined together and assaulted the defacto-complainant using their hands and caused simple injuries. Hence, the defacto-complainant lodged a complaint with the B4, High Court Police Station against the revision petitioner and the said complaint was registered in Crime No.18 of 2007. On completion of investigation, the Police had filed final report in C.C.No.13577 of 2007 under Sections 341, 323 r/w 34 IPC before the VII Metropolitan Magistrate, George Town, Chennai. During the initial questioning itself, the revision petitioners pleaded guilty. Hence, the learned Magistrate imposed a fine of Rs.250/-, in default to undergo one week simple imprisonment, under Section 341 r/w 34 IPC and also imposed a fine of Rs.750/-, in default to undergo three months simple imprisonment, under Section 323 r/w 34 IPC. Since the learned Magistrate had imposed only fine on the revision petitioners, the defacto-complainant had filed a revision in Crl.R.C.No.184 of 2009 before the V Additional Sessions Judge, Chennai, for enhancement of

punishment. By order dated 30.04.2010, the learned V Additional Sessions Judge, Chennai has enhanced the sentence from the fine of Rs.250/- to simple imprisonment for 15 days for the offence under Section 341 r/w 34 IPC and from the fine of Rs.750/- to simple imprisonment for three months for the offence under Section 323 IPC r/w 34 IPC.

5(3) Aggrieved over the enhancement of punishment by the Sessions Court, the Criminal Revision Petition in Crl.R.C.No.512 of 2010 has been filed by the accused. Not being satisfied with the enhancement of the sentence, the defacto-complainant has filed the criminal original petition in Crl.O.P.No.23229 of 2010 by invoking section 482 of Criminal Procedure Code, for further enhancement of sentence.

6. The learned counsel for the revision petitioners/accused submitted that the defacto-complainant is the son-in-law of the 1st revision petitioner and he married the 1st revision petitioner's daughter Vinitha, but the said marriage was not successful. Hence, there was a personal animosity between the defacto-complainant and the revision petitioners. Due to the personal animosity, the defacto-complainant has been filing many complaints before the authorities and four of them have culminated into criminal proceedings. In one of the complainants lodged by the defacto-complainant, the Police have filed a charge-sheet for the offences under Section 341, 323 r/w 34 IPC, before the learned VII Metropolitan Magistrate, George Town, Chennai, in C.C.No.13577 of 2007; in the initial questioning under Section 251 of Criminal Procedure Code, the revision petitioners pleaded guilty and the learned VII Metropolitan Magistrate, George Town also imposed a fine of Rs.250/- in default to undergo one week simple imprisonment under Section 341 r/w 34 IPC and also imposed a fine of Rs.750/- in default to undergo three months simple imprisonment under Section 323 r/w 34 IPC. Not being satisfied with the quantum of punishment imposed on the revision petitioners, the defacto-complainant filed a revision in Crl.R.C.No.184 of 2009 before the V Additional Sessions Judge, Chennai for enhancement of the punishment imposed on the revision petitioners by the learned VII Metropolitan Magistrate, George Town. The learned V Additional Sessions Judge, Chennai by judgment dated 30.04.2010, enhanced the punishment by sentencing the revision petitioners to undergo simple imprisonment for 15 days for the offence under Section 341 r/w 34 IPC and to undergo simple imprisonment for three months for the offence under Section 323 IPC r/w 34 IPC.

7. It is a specific submission of the learned counsel for the revision petitioners that while enhancing the punishment in revision,

by exercising the revisional powers under Section 397 of Cr.P.C., the learned Sessions Judge ought to have given an opportunity of showing cause against such enhancement of punishment to the revision petitioners/accused. But, without giving such an opportunity, straight-away after hearing the submissions made on either side, by judgment dated 30.04.2010, the V Additional Sessions Judge, Chennai has enhanced the punishment. In this regard, the learned counsel for the revision petitioners has also made a detailed argument by inviting the attention of this Court to Section 377 r/w Section 386 (c) of Cr.P.C. and submitted that if no opportunity was given to the accused person to show cause before an enhancement of the punishment by the Court, then such an enhancement of punishment is liable to be set aside. In support of his contention, the learned counsel for the revision petitioners has also relied upon the judgments reported in 1984 (1) SCC 518 (Surjit Singh and ors Vs. State of Punjab) and 1990 SCC (4) 718 (Govind Ramji Jadhav Vs. The State of Maharashtra).

8. With regard to the criminal original petition filed by the defacto-complainant under Section 482 of Cr.P.C., for further enhancement of sentence, the learned counsel for the revision petitioners/accused submitted that since the defacto-complainant had already invoked the revisional jurisdiction for enhancement of punishment before the Sessions Court, the Defacto-complainant cannot invoke the extraordinary jurisdiction of this court under Section 482 of Cr.P.C; therefore, the criminal original petition is liable to be dismissed. In this regard, the learned counsel appearing for the revision petitioners relied upon the following judgments_

- i) AIR 1997 SC 987 (Krishnan Vs. Krishnaveni)
- ii) 2014(2) MWN (Cr) 207 (D.Prabhu Srinivasan vs. Dr.G.Rammprabu)

9. Per contra, the learned counsel appearing for the defacto-complainant submitted that the sentence enhanced by the learned Sessions Judge is inadequate, considering the gravity of the offence; therefore, the defacto-complainant filed the criminal original petition for further enhancement under Section 482 of Cr.P.C. In this regard, the learned counsel for the defacto-complainant relied upon the judgment reported in 1995 SCC (cr) 634 (Ganesh Narayan Hegde Vs. S.Bangarappa and others) and submitted that availing of remedy of revision to the Sessions Judge under Section 399 of Cr.P.C., does not bar a person from invoking the power of the High Court under Section 482 of Cr.P.C. For the same proposition, the learned counsel for the defacto-complainant also relied upon the judgment reported in AIR 1977 SC 1066 (Narpal Singh and others Vs. State of Haryana). Thus, the learned counsel for the defacto-complainant prays for further enhancement of the sentence by allowing the criminal original petition.

10. With regard to the revision petition filed by the revision petitioners/accused, the learned counsel for the defacto-complainant submitted that the learned Sessions Judge, only after hearing the submissions made by the learned counsel appearing for either side in CrI.R.C.No.184 of 2009, has enhanced the punishment. Therefore, it is incorrect to state that no opportunity was given to the revision petitioners/accused before enhancement of the punishment. Further, the learned counsel for the defacto-complainant submitted that in the present case the revision petitioners had pleaded guilty at the stage of initial questioning itself before the learned Magistrate; therefore, the question of giving opportunity to show cause before enhancing the punishment to the accused does not arise in this case. Further, the learned counsel for the defacto-complainant submitted that the judgments relied upon by the learned counsel for the revision petitioners cannot be made applicable to the present facts of the case since in all the cases relied upon by the learned counsel for the revision petitioners the accused therein have contested the cases before the Trial Court. In the present case, since the accused/revision petitioners themselves pleaded guilty before the Trial Court, now they cannot object over the enhancement of punishment.

11. In view of the submissions made on either side, the following points have to be considered in this case—

(1) Whether the order of the learned Sessions Judge is liable to be set aside since no opportunity of showing cause against the enhancement of punishment was given to the revision petitioners/accused before enhancement of the punishment?

(2) Whether the criminal original petition filed by the defacto-complainant seeking further enhancement of punishment under Section 482 of Cr.P.C. could be entertained?

POINT NO.1:-

12. Pursuant to a complaint given by the defacto-complainant as against the revision petitioners, the respondent-Police filed charge-sheet for the offence under Section 341, 323 r/w 34 IPC before the learned VII Metropolitan Magistrate, George Town, Chennai. During the initial questioning under Section 251 of Cr.P.C. itself, the revision petitioners pleaded guilty. Therefore, the learned Magistrate has imposed a fine of Rs.250/-, in default to undergo one week simple imprisonment under Section 341 r/w 34 IPC and also imposed a fine of Rs.750/-, in default to undergo three months simple imprisonment under Section 323 r/w 34 IPC. Not being satisfied with

the quantum of punishment imposed on the revision petitioners, the defacto-complainant filed a revision in CrI.R.C.No.184 of 2009 before the Vth Additional Sessions Judge, Chennai and the learned Sessions Judge, after hearing both the sides in CrI.R.C.No.184 of 2009, has enhanced the punishment from the fine of Rs.250/- to simple imprisonment for 15 days for the offence under Section 341 r/w 34 IPC and from the fine of Rs.750/- to simple imprisonment for three months for the offence under Section 323 IPC r/w 34 IPC.

13. Now, it is the submission of the learned counsel for the revision petitioners that before enhancing the punishment, the learned Sessions Judge has not given any opportunity of showing cause against such enhancement of punishment. But, it is the submission of the learned counsel for the defacto-complainant that after hearing the arguments of both sides in CrI.R.C.No.184 of 2009 filed by the Defacto-complainant only, the learned Sessions Judge has enhanced the punishment; therefore, there is no need to give any opportunity to the accused separately to show cause against the proposed enhancement of punishment by the learned Sessions Judge. It is the further submission of the learned counsel for the defacto-complainant that since the revision petitioners have pleaded guilty at the initial questioning stage itself before the Trial Court without contesting the case, there is no need for giving opportunity of showing cause against the enhancement of punishment.

14. The judgment relied upon by the learned counsel for the revision petitioners reported in 1984 (1) SCC 518 (Surjit Singh and ors Vs. State of Punjab) gives a fitting answer to the issue as to whether sufficient opportunity has to be given to the accused to show cause before enhancement of punishment. In the said decision, it has been held as follows_

"3. While dismissing the appeal of the appellants a Division Bench of the High Court observed 'that Surjit Singh and Harjinder Singh who had been proved to have committed the murder of Bachan Singh in quite a ruthless manner as is apparent from the number of injuries found on the person of the deceased'. The High Court further observed that it is a fit case in which over and above the sentence of imprisonment for life imposed by the trial Court a fine of Rs.5,000/- in default to suffer further rigorous imprisonment for two years must be imposed on the appellants. This additional sentence imposed by the High Court unquestionably constitutes an enhancement of sentence. The High Court did not

issue notice calling upon the appellants to show cause why the sentence imposed upon them be not enhanced before doing so. Rules of natural justice as also the prescribed procedure required that the sentence imposed on the accused cannot be enhanced without giving notice to the appellants and the opportunity to be heard on the proposed action. The record does not show that such a notice and opportunity were given to the appellants and in the absence of notice the appellants had no opportunity to contest the proposed action. Therefore, we allow this appeal limited to the question that the sentence of fine of Rs.5,000/- and the default sentence imposed on each appellant by the High Court is quashed and set aside confirming the sentence of imprisonment for life imposed by the trial Court. The appeal is allowed to the extent herein indicated."

In the decision reported in 1990 SCC (4) 718 (Govind Ramji Jadhav Vs. The State of Maharashtra) it has been held as follows—

"2.The High Court both in exercise of its revisional jurisdiction under Section 397 read with Section 401 Cr.P.C. and its appellate jurisdiction under Section 377 read with Section 386(c) of Cr.P.C., in matter of enhancement of sentence should give the accused a reasonable opportunity of showing cause against such enhancement as contemplated under the first proviso to Section 386 as well under sub-section (3) of Section 377 of the Code. The rules of natural justice as also the prescribed procedure require issuing notice to the appellant and affording an opportunity to be heard on the proposed action for enhancement of sentence.

3.In the instant case, the High Court has enhanced the sentence unmindful of the relevant provisions of the Code of Criminal Procedure and also the rules of natural justice and by over-stepping its jurisdiction adopted a leeway in enhancing the sentence from three years to seven years for the conviction under Section 201 IPC which exercise of powers in violation of the prescribed procedure, is impermissible."

In an unreported decision delivered by the Madurai Bench of this Court in CrI.R.C.(MD).No.543 of 2009, (Venkatesh Vs. The Sub-

Inspector of Police and three others), dated 19.01.2010, it has been held as follows_

.....The Honourable Supreme Court in the judgment reported in AIR 1983 SC 747 [Thippeswamy v. State of Karnataka] has observed as follows:-

"It is obvious that by reason of plea-bargaining, the appellant pleaded guilty and did not avail of the opportunity to defend himself against the charge, which is a course he would certainly not have followed if he had known that he would not be let off with a mere sentence of fine but would be sentenced to imprisonment. It would be clearly violative of Art.21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. Of course when we say this, we do not for a moment wish to suggest that the court of appeal or revision should not interfere where a disproportionately low sentence is imposed on the accused as a result of plea-bargaining. But in such a case, it would not be reasonable, fair just to act on the plea of guilty for the purpose of enhancing the sentence. The Court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed against him."

From the above decision of the Honourable Supreme Court, it is to be seen that if the accused had pleaded guilty and he is sentenced by the trial Court, then it is not proper for the appellate or revisional Court to enhance

the sentence. If at all, it is to be done, by way of giving an opportunity to the accused, the conviction itself must be set aside and the case should be remanded to the trial Court for fresh disposal.

A reading of the above said decisions would clearly show that if the punishment is to be enhanced in the revision filed by the defacto-complainant, sufficient opportunity should be given to the accused to show cause against such enhancement. But, in the instant case, no such opportunity was given to the revision petitioners before enhancement of punishment by the learned Sessions Judge. Since the revision petitioners have contested the case by making appearance through their counsel, it does not mean that sufficient opportunity was given to the revision petitioners with regard to the enhancement of punishment. So far as the enhancement of punishment is concerned, the learned Sessions Judge by expressing his intention to enhance the punishment, ought to have given an opportunity to the revision petitioners/accused to show cause against such enhancement. But, in the instant case, since the judgment has been delivered by the learned Sessions Judge by enhancing the punishment, but without affording opportunity to show cause in respect of enhancement of punishment, the judgment passed Crl.R.C.No.184 of 2009 by the learned V Additional Sessions Judge, Chennai is liable to be set aside.

15. It is the submission of the learned counsel for the defacto-complainant that since the revision petitioners pleaded guilty before the trial Court, at the stage of initial questioning under Section 251 of Cr.P.C., there is no need to give an opportunity to show cause against the proposed enhancement of punishment to the accused by the Sessions Judge. But, in my considered opinion, normally an accused will plead guilty only expecting lenient punishment. The common principle of penological proposition is that when an accused without contesting the matter pleads guilty, the Court should be lenient. Even in this case, since the revision petitioners pleaded guilty, the learned Magistrate by taking a lenient view imposed a fine. Under such circumstances, if the Sessions Court had intended to enhance the punishment in the revision filed by the defacto-complainant, the Sessions Court ought to have given an opportunity to the accused to show cause against such enhancement of punishment. Hence, in my considered opinion, since no opportunity was given to the revision petitioners/accused by Sessions Judge expressing his intention to enhance the punishment in the Criminal Revision filed by the defacto-complainant as against the order passed by the learned Magistrate, the Judgment of the Sessions Court is liable to be set aside.

16. So far as the Criminal Original Petition is concerned, this Court is of the view that once the revisional provision is invoked by a party before the Sessions Court, he/she cannot again invoke the extraordinary jurisdiction of the High Court under Section 482 of Cr.P.C. In this regard, a reference could be placed in the decision reported in AIR 1997 SC 987 (Krishnan Vs. Krishnaveni), wherein it has been held as follows_

"Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code."

In another decision reported in 2014 (2) MWN (Cr.) 207 [D.Prabhu Srinivasan Vs. Dr.G.Ramaprabha], it has been held as follows_

"A reading of sub-section (3) of Section 397 would make it crystal clear that if an Application under this Section has been made by any person either to the High Court or to the Sessions Court, no further Application by the same person shall be entertained by the other of them."

17. But, the learned counsel for the defacto-complainant relied upon the judgment reported in 1995 SCC (Cri) 634 [Ganesh Narayan Hegde Vs. S.Bangarappa], and submitted that though second revision does not lie under the Code, a petition under Section 482 of Cr.P.C., is not barred. But, on a careful reading of the said judgment relied on by the learned counsel for the defacto-complainant, I find that the Hon'ble Supreme Court has held in that case that the provision under Section 482 of Cr.P.C., can be invoked only when there is any abuse of process of Court or the interests of justice call for such exercise. But, in the instant case, I do not find any abuse of process of Court. Therefore, the petition under Section 482 of Cr.P.C., in the form of second revision, cannot be entertained. That apart, as already stated, the enhancement of punishment passed by the Sessions Court is without giving an opportunity to the accused to show cause against such enhancement of punishment.

18.Hence, the enhancement of sentence passed by the Vth Additional Sessions Judge in CrI.R.C.No.184 of 2009 dated 30.04.2010 is liable to be set aside. Accordingly, the same is set aside. Consequently, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To

- 1.The Vth Additional Sessions Judge,
Chennai.
- 2.The VIIth Metropolitan Magistrate,
George Town, Chennai.
- 3.The Inspector of Police,
B4, High Court Police Station,
Chennai - 1.

+2cc's to M/s.A.N.Rajan, Advocate, S.R.No.16785
+1cc to M/s.k.Rajasekaran, Advocate, S.R.No.16615

CrI.R.C.No.512 of 2010
and
CrI.O.P.No.23229 of 2010

TAD(CO)
CA(07/04/2015)

सत्यमेव जयते

WEB COPY