

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.490 of 2008

ORDER:

The revision is filed by the *de facto* complainant/PW.1 in C.C.No.3 of 2004 on the file of the Judicial Magistrate of First Class, Sulthanabad, questioning the acquittal of respondents No.1 to 5, who were A.1 to A.5, in C.C.No.3 of 2004, dated 11-10-2006. The revision petitioner/PW.1 filed the complaint alleging offences punishable under Section 498-A I.P.C., and Sections 3 and 4 of the Dowry Prohibition Act. The case was registered and charge-sheet was filed.

The brief facts of the case of the prosecution are as under:-

A.1 is the husband of the *de facto* complainant/PW.1. Their marriage took place on 29-08-1999. A.2 and A.3 are the parents, A.3 is the sister and A.4 is the brother-in-law of A.1. At the time of marriage, as demanded by the accused, substantial amount of dowry both in the shape of cash and kind was given. After the marriage, for about five months only, PW.1 and A.1 led happy marital life and thereafter, all the accused including her husband demanded additional dowry of Rs.50,000/-. When PW.1 expressed her inability to bring additional dowry as demanded by the accused, all the accused subjected her to cruelty, physically and mentally, and also necked her out from their house. In the panchayat convened, by PWs.3 and 4 and others, on 10-08-2003, the accused agreed to live amicably with PW.1 and took PW.1 with them. One week thereafter, all the accused again continued their harassment towards PW.1 and subjected her to cruelty demanding additional dowry, due to which PW.1 left the company of A.1 and staying with her parents since then.

On receipt of a complaint from PW.1, the case was registered in Cr.No.161 of 2003 of P.S.Sulthanabad. During the course of investigation, the statements of the witnesses were recorded and after

completion of the investigation, charge-sheet was filed. During the course of trial, on behalf of the prosecution, PWs.1 to 5 were examined and Exs.P.1 and P.2 were marked. The accused denied the evidence on record. By Judgment, dated 11-10-2006, the learned Judicial Magistrate of First Class, Sulthanabad found the accused not guilty and acquitted them.

Aggrieved by the same, the viceim/PW.1 filed the revision contending that the trial Court erred in not taking into consideration the consistent evidence of PWs.1 to 4, that the trial Court has relied upon the minor discrepancies that the learned Magistrate has not at all adverted to the charges under Sections 3 & 4 of the Dowry Prohibition Act and the evidence on that aspect and hence the acquittal cannot be sustained.

On behalf of the respondents/accused it is submitted that except for the interested witnesses (PW.1/the wife, PW.2/father of PW.1, PW.3/casteman of PWs.1 and 2, and PW.4/colleague of PW.2), not even a single eye-witness was examined, and since the evidence of the interested witnesses was discrepant, the trial Court has rightly acquitted them and there is no merit in the revision which is liable to be dismissed.

Heard both sides.

The point that arises for consideration is as to whether the complainant could prove her case beyond reasonable doubt or whether the Judgment rendered by the trial Court suffers from any material illegality or irregularity warranting interference by the revisional Court?

Point:-

The petitioner/PW 1 is the *de facto* complainant in Cr.No.161/2003 of Sultanbad Police Station. She is the wife of the 1st respondent/A1. The respondents/A1 to A5 were charge sheeted by

the Sulthanabad Police for the offences punishable under Sections 498-A IPC and under Sections 3 & 4 of Dowry Prohibition Act. The case was taken on file as C.C.No.3/2004 on the file of the Judicial Magistrate of First Class, Sulthanabad. After full fledged trial, by judgment dated 11.10.2006, the learned Magistrate acquitted the respondents/accused of the charges levelled against them. Aggrieved by the said acquittal, the victim of the case, viz., PW 1, the wife, filed the present revision.

While exercising the powers under Section 401 of Cr.P.C, what is required to be seen by the Revisional Court, namely, the High Court is that it should be a case of manifest illegality, gross miscarriage of justice, but not merely improper appreciation of the evidence. The power of the High Court should be exercised only in exceptional cases, where interests of public justice require interference for the correction of manifest illegality or of the prevention of gross miscarriage of justice. It cannot ordinarily be invoked merely because the trial Court has taken a wrong view of the law or not appreciated the evidence on record. However, the maximum that could be done in exercise of revisional jurisdiction is that the impugned judgment can be set aside and the matter need to be remanded to the trial Court for fresh consideration and disposal, but the acquittal cannot be converted into conviction.

In the instant case, the specific allegation of the *de facto* complainant/PW 1 is that at the time of marriage, her father PW 2 gave a dowry of Rs.1,00,000/- to the husband/A1 in addition to certain household articles. For 5 months they lived together and during that period PW 1 conceived. Thereafter, the respondents/accused are alleged to have started demand of additional dowry of Rs.50,000/- and when that was not paid, they subjected her to harassment. Unable to bear the same, the *de facto* complainant/PW 1 came to her parents' house and subsequently gave birth to a female baby. Several panchayats and mediations were held, more particularly, in the presence of PWs 3 & 4, but no fruitful result was achieved. Therefore,

she filed the complaint.

The prosecution examined PWs 1 to 5 and produced Exs.P1 & P2. PWs 1 and 2, being the victim and her father, gave evidence with regard to the conduct of the respondents/accused. They also speak about their giving a cash of Rs.1,00,000/- as dowry together with household articles to the accused at the time of marriage. It is also in their evidence that thereafter, the accused demanded additional amount of Rs.50,000/- and started harassing the wife/PW 1. Mediations were held, and PWs 3 and 4 are examined to speak about the same.

The learned Magistrate has appreciated the evidence on record and one of the factors that weighed with the learned Magistrate in rejecting the evidence of PWs 1 to 4 is that when PW 1 is the victim, PW 2 is her father and PW 3 is relation and PW 4 is the colleague of PW 2. Since no independent witnesses are examined, the learned Magistrate acquitted the respondents/accused.

The learned counsel appearing for the petitioner/PW 1 submits that there is consistent and cogent evidence on record and the evidence of PWs 1 to 4 cannot be discarded merely because they are interested witnesses. The inconsistency and discrepancies that were highlighted by the learned Magistrate in disbelieving the evidence of the prosecution witnesses are too trivial in nature and they do not go to the root of the case so as to disbelieve the entire evidence of PWs 1 to 4. It is further submitted that merely because PWs 3 and 4 who acted as mediators are the relations or colleague of the father of PW 1, their evidence cannot be rejected. In support of his contention, the learned counsel for the petitioner/PW 1 has relied upon a decision of the Hon'ble Supreme Court in ***Sukhdev Yadav and others v. State of Bihar (Supreme Court)***^[1]. In the said authority, the Hon'ble Supreme Court, while referring to several judgments of the Supreme Court on the aspect, observed as under:

“It is now well settled that the Court can sift the

chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence.

True, there are lapses, but the question that arises for consideration is whether any prejudice has been caused by reason of such a lapse; if the answer thereto is in the affirmative obviously it will have a serious impact on to the trial but if in the event however, it is on the negative, no prejudice can be said to have been caused and correspondingly question of the trial being vitiated would not arise. The eyewitnesses account as available on record cannot but be termed to be trustworthy and by reason therefore, the lapses stand overshadowed by the testimony of the eyewitnesses.”

A perusal of the judgment acquitting the respondents/accused no doubt shows that much emphasis and importance has been laid by the learned Magistrate on the inconsistency and discrepancies in the evidence of PWs 1 to 4, and observed that PWs 3 and 4 are interested witnesses, which do not appear to be well founded.

In addition to the above, another material irregularity that is noticed from the judgment is that the respondents/accused have been specifically charged with an offence under sections 3 and 4 of Dowry Prohibition Act. As a matter of fact, both PWs 1 and 2 speak about their giving dowry at the time of marriage. During course of the examination of accused under Section 313 Cr.P/C, 1st respondent/A1 was confronted with the statement made by PWs 1 and 2 about their giving dowry, 1st respondent/A1 admitted the said statement as true. The learned counsel for the petitioner/PW 1 submits that even though the 1st respondent/A1-husband accepted the statement made by PWs 1 and 2 that a sum of Rs.1,00,000/- was paid as dowry, the learned Magistrate has failed to appreciate and take into consideration the above aspects.

A perusal of the judgment rendered by the learned Magistrate clearly shows that absolutely no discussion whatsoever is made in so far as the charge leveled against the respondents/accused for the offence punishable under sections 3 & 4 of the Dowry Prohibition Act are concerned. There is not even a single whisper about the statements of PWs 1 and 2 about their giving dowry at the time of marriage and the admission made by the 1st respondent/A1-husband in his examination under Section 313 Cr.P.C. in the judgment.

In view of the foregoing discussion, I find that the impugned judgment suffers from material irregularity and infirmity, warranting interference, and it cannot be sustained and the same is liable to be set aside, and the matter is required to be remanded to the trial Court for disposal afresh.

Accordingly, the Criminal Revision Case is allowed. The impugned judgment dated 11.10.2006 is set aside. The matter is remanded to trial Court for re-appreciation of evidence on record and disposal of C.C.No.3/2004 afresh, in accordance with law. It is needless to mention that the learned trial Court shall dispose of the matter afresh, in accordance with law, without being influenced by any of the observations made by this Court in the present revision case.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: .10.2015

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[\[1\]](#) 2002 (1) ALD (CrL.) 36 (SC)