

HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No. 292 OF 2007

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners/A.1 to A.4 challenging the judgment dated 20.02.2007, passed by the learned XI Additional District & Sessions Judge (Fast Track Court), Guntur at Tenali, in Criminal Appeal No.324 of 2005, whereunder and whereby the conviction and sentence passed against the revision petitioner/A.1 for the offences punishable under Sections 495 and 498-A of the Indian Penal Code, 1860 (for short 'IPC') and against the revision petitioners/A.2 to A.4 for the offences punishable under Sections 495 r/w 120-B and 498-A IPC, vide judgment dated 25.08.2005 in C.C.No.348 of 2002 by the II Additional Munsif Magistrate, Tenali, were confirmed, while acquitting A.5 and A.6 for the offences punishable under Section 495 r/w 120-B and 498-A IPC.

2. The revision petitioners herein are A.1 to A.4 and the respondent herein is the complainant in C.C.No.348 of 2002 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the prosecution in brief is that on 24.10.2001 A.1 to A.4 came to the house of PW3 at Kollur and represented that they got sufficient properties at Hyderabad and they want to marry a girl from poor family to A.1. Then, PW3 called the *de facto* complainant – PW1 and her parents to Kollur. At that time, A.5 and A.6 also came to Kollur. All the accused conspired together and made believe PW1, her parents and PW3 that it was the first marriage to A.1. Believing the said words, the parents of PW1 agreed to give her to A.1 in marriage. The betrothal function was performed on 27.10.2001. The marriage of PW1 with A.1 was performed at Tirupati as per Hindu rites and customs on 03.11.2001. After marriage, A.2 to A.6 went to Hyderabad and A.1 came to Pidaparthipalem to the house of PW1. After completion of nuptial ceremony,

PW1 and A.1 went to Hyderabad to lead conjugal life. PW1 had a happy marital life for only 3 or 4 days with A.1. Thereafter, while A.1 was in search of his clothes, PW1 noticed the marriage photos of A.1 with some other girl. On seeing the photos, PW1 got astonished and asked A.1 to A.4 about the photos. Then, A.1 to A.4 grew wild against PW1, threatened her with dire consequences if she disclosed about the photos to anybody and caused criminal intimidation. Thereafter, A.1 to A.4 began torturing PW1 with their sarcastic words and sometimes they also manhandled her. After receiving the complaint, the Station House Officer, Kollur Police Station registered the same as a case in Crime No.9 of 2002 for the offences punishable under Sections 120-B, 495, 498-A r/w 34 IPC. The Investigating Officer, after recording the statements of all the witnesses and after completion of investigation, filed the Charge sheet into the Court.

4. The learned II Additional Munsif Magistrate, Tenali took cognizance of the case and framed charges for the offences punishable under Sections 120-B, 417 and 498-A IPC against A.1 to A.6 and under Section 495 IPC against A.1.

5. During trial, to prove the case of prosecution, PWs.1 to 6 were examined and Exs.P.1 and P.2 were got marked. On behalf of the accused, Exs.D.1 and D.2 were marked.

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and reported no oral evidence on their behalf.

7. After perusal of the oral and documentary evidence and after hearing the arguments, the trial Court held that all the accused conspired together and arranged the marriage of PW1 with A.1 and also performed their marriage at Tirupati without informing about the former marriage, hence they are liable for punishment under Section 120-B IPC. The trial Court also further held that the prosecution was able to prove the guilt of the accused for the offence punishable under Section 495 and 498-A IPC. Accordingly, the accused were convicted and A.1 was sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/-, in default to suffer Simple Imprisonment for three months for the offence punishable under Section 495 IPC; A.2 to A.6

were sentenced to undergo Simple Imprisonment for three months and to pay a fine of Rs.100/- each, in default to suffer Simple Imprisonment for one week each for the offence punishable under Section 495 r/w 120-B IPC and A.1 to A.6 were sentenced to undergo Simple Imprisonment for three months and to pay a fine of Rs.200/- each, in default to suffer Simple Imprisonment for one week for the offence punishable under Section 498-A IPC. The trial Court also directed to serve all the aforesaid sentences to run concurrently.

8. Aggrieved by the conviction and sentence passed by the trial Court, A.1 to A.6 preferred Criminal Appeal No.324 of 2005 before the XI Additional District & Sessions Judge (Fast Track Court), Guntur at Tenali, where the appellate Court after hearing the arguments and considering the evidence on record, acquitted A.5 and A.6 for all the offences with which they charged and set aside the conviction and sentence passed against them, but confirmed the conviction and sentence passed by the trial Court against A.1 to A.4.

9. Being aggrieved by the judgment of the appellate Court passed in Criminal Appeal No.324 of 2005, the revision petitioners/A.1 to A.4 preferred the present revision case.

10. The learned counsel for the revision petitioners/A.1 to A.4 argued that the appellate Court acquitted A.5 and A.6 who are related to both the parties and they must have knowledge about the first marriage of A.1; that the parents of the *de facto* complainant also must have knowledge about the first marriage of A.1 as the age of PW1 and A.1 at the time of marriage was 18 and 35 years respectively; that the prosecution failed to prove the first marriage of A.1 independently as the marriage photos were not filed and mere admission of accused is not a proof of marriage; that the trial Court erred in holding that all the accused conspired together, arranged the marriage of PW1 with A.1 and performed it; that the trial Court as well the appellate Court believed the admissions of A.1 to A.4 and convicted them and that there is a delay in filing Ex.P.1 and non-explanation of the delay is fatal to the case of prosecution.

The learned counsel relied on a case-law reported in *Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh*, wherein the Hon'ble Supreme Court held at Para 18 as follows:

“It was contended that an admission made by the accused regarding the

second marriage is conclusive of the fact of a second marriage having taken place and that without any other evidence a conviction could be based on such admission. This Court rejected the said contention stating:

“...it is clear that in law such admission is not evidence of the fact of the second marriage having taken place. In a bigamy case, the second marriage as a fact, that is to say, the ceremonies constituting it must be proved.””

and finally, prayed the Court to allow the revision case by setting aside the impugned judgment of the appellate Court.

11. On the other hand, the learned Public Prosecutor argued that the evidence produced by the prosecution clearly established that the marriage of PW1 was performed with A.1 on 03.11.2001 as per the Hindu rites and customs at Tirupati and after marriage, PW1 along with A.1 went to Hyderabad to lead conjugal life; that when A.1 was searching his clothes, the *de facto* complainant noticed photos of A.1 with another lady and that on enquiry, A.1 informed that she is his first wife and her name is Kusuma; that the evidence of other witnesses also supported the case of prosecution; that PW2, who is the father of PW1, also stated that the accused never informed about the first marriage of A.1 and in turn he performed the marriage by paying Rs.50,000/- as dowry; that the prosecution is able to prove the guilt of the petitioners for the offences punishable under Sections 495, 498-A and 120-B IPC and the findings of both the Courts below need no interference, and therefore, prayed the Court to dismiss the revision case.

12. Now, the point for determination is --

Whether the revision petitioners/A.1 to A.4 are entitled to set aside the concurrent judgments passed by the trial Court as well the appellate Court?

13. **POINT:**

It is well settled that the revisional jurisdiction normally to be exercised in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. The revisional Court is however not expected to act as if

it is hearing an appeal and the jurisdiction is not to be ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on record. This Court would not interfere exercising the powers under Sections 401 and 397 Cr.P.C. unless it is shown to be perverse or without evidence or not tenable in law.

14. A perusal of the evidence shows that PW1, who is the *de facto* complainant, filed a private complaint under Ex.P.1 and the same was forwarded to the police, which was later registered as a case in Crime No.9 of 2002 for the offence punishable under Sections 120-B, 495, 498-A r/w 34 IPC.

15. PW1 in her evidence stated that she studied MCA; that at present she was residing with her parents; that on 03.11.2001, her marriage with A.1 was performed as per Hindu rites and customs and prior to that, there was an engagement ceremony wherein her father gave Rs.50,000/- to the accused; that after marriage, she joined the company of A.1 at Hyderabad where A.1, A.4 and herself used to reside; that she lived happily for about four days with A.1; that while arranging the clothes, she found the marriage photos of A.1 with another lady; that when she enquired, the accused threatened her and asked her to keep quiet, and later A.1 informed her that his marriage with one Kusuma was performed prior to their marriage. In the cross-examination of PW1, nothing has been elicited to disprove her evidence.

16. PW2, who is the father of PW1, supported and corroborated the evidence of PW1 in all aspects. PW3, who is the co-son-in-law of PW2 and uncle of PW1, deposed that he gave Rs.50,000/- for the marriage of PW1 and the same was given to the accused. PW4 is the resident of Vemuru and he knows both the parties, and also attended the marriage of PW1 and A.1. The evidence of PW4 shows that he along with PWs 2 and 3 went to Hyderabad, enquired about the first marriage of A.1 and came to know that A.1 married one Kusuma who deserted A.1.

17. The main contention of the prosecution is that A.1 concealed about the former marriage and married PW1, as such he committed the offence punishable under Section 495 IPC. The reason for marrying PW1 by A.1 is that his first wife deserted him

and if he marries PW1, who is a village girl, she will obey and understand A.1. It is the contention of A.1 that they informed about the first marriage to the family of PW1 and only after informing the same, he married PW1, but to harass A.1 who got huge properties and to extract money, the present case is filed. The learned counsel for the petitioners no doubt relied on the case-law reported in

Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh (1 supra). The trial Court discussed the said case-law and held that the said decision was not applicable to the facts of the present case as the present case was filed by the second wife of A.1. The trial Court also considered that PW1 was aged about 19 years whereas A.1 was aged about 35 years at the time of their marriage. The trial Court further considered that after joining PW1 with A.1 at Hyderabad, within a short period, after seeing the photos she came to know about the earlier marriage of A.1 and she informed these facts to her parents, then her parents rushed to Hyderabad and enquired, and after coming to know about the earlier marriage of A.1 with one Kusuma, the present complaint is lodged. Therefore, the contention of the accused that PW1 and her parents got knowledge about the first marriage of A.1 with one Kusuma prior to her marriage, is to be negatived.

18. By way of giving suggestions to the witnesses, the accused admitted about the first marriage of A.1 with one Kusuma and due to some disputes, she deserted A.1 and living separately. Both the trial Court as well as the appellate Court rightly discussed the evidence of prosecution witnesses and held that the prosecution was able to prove the ingredients of Section 495 IPC and also the conspiracy of the accused. The trial Court in its evidence stated that when PW1 came to know about the first marriage, all the accused harassed her physically and mentally. Therefore, the trial Court gave a finding that the prosecution proved the ingredients of Section 498-A IPC. The appellate Court, after considering the evidence on record, held that there was no role played by A.5 and A.6 and rightly acquitted them from all the charges. Further, there is no appeal preferred by the State against acquittal judgment of appellate Court in favour of A.5 and A.6.

19. The evidence of PWs 1 to 4 clearly proved the charges levelled against the revision petitioners/A.1 to A.4 by the prosecution beyond all reasonable doubt.

However, the learned counsel for the revision petitioners/accused prayed the Court to take a lenient view against A.1. Considering the evidence on record, the order of conviction passed by both the Courts below is hereby confirmed. Insofar as sentence of imprisonment is concerned, in view of the facts and circumstances and considering the request of the learned counsel for the revision petitioners/accused to take a lenient view against A.1, I am of the view that if the sentence of imprisonment imposed on A.1 is reduced to some extent it would meet the ends of justice

20. Accordingly, the conviction recorded by the II Additional Munsif Magistrate, Tenali, in C.C.No.348 of 2002 for the offences punishable under Sections 495 and 498-A IPC against A.1 and under Sections 495 r/w 120-B and 498-A IPC against A.2 to A.4 as confirmed by the XI Additional District & Sessions Judge (Fast Track Court), Guntur at Tenali in Criminal Appeal No.324 of 2005, is hereby confirmed. But, the sentence of Rigorous Imprisonment of two years for the offence punishable under Section 495 IPC is hereby modified and reduced to one (1) year. However, it is made clear that the fine imposed against A.1 for the offence punishable under Section 495 IPC is not interfered with. All the remaining sentences imposed against the revision petitioners/A.1 to A.4 are not interfered with. The sentences imposed against the revision petitioners/A.1 to A.4 respectively shall run concurrently. The period of imprisonment already suffered by the revision petitioners/A.1 to A.4 is directed to be given set off.

21. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous petitions pending if any, in this Criminal Revision Case, shall stand closed.

ANIS, J

Date: 20.04.2015

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