

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.121 of 2008

ORDER:

1 Assailing the judgment dated 11.10.2007 passed in C.C.No.83 of 2002 on the file of the Court of the III Additional Judicial Magistrate of I Class, Tirupati wherein and whereby the respondents herein were acquitted of the charge under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act, the de-facto complainant filed the present Criminal Revision Case under Section 397 and 401 Cr.P.C.

2 The factual matrix that led to the filing of the present Criminal Revision Case, in brief, is as follows:

3 On 01.11.2001 P.W.1 submitted a complaint (Ex.P.1) to the Station House Officer Gajulamandam Police Station (P.W.5) who in turn registered a case in Cr.No.190 of 2001 for the offences under Section 498-A of IPC. As per the allegations made in the charge sheet, the respondent Nos.1 to 4 subjected the petitioner to cruelty for additional dowry. It is further alleged that P.W.2 gave Rs.3.00 lakhs of cash and gold ornaments to the first respondent at the time of marriage. After completion of investigation, P.W.6 laid charge sheet against respondent Nos.1 to 4 for the offence punishable under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act. The learned III Additional Judicial Magistrate of I Class, Tirupati, after satisfying himself with the material placed before him, has taken cognizance of the offence against the respondents under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act.

4 To prove the guilt of the respondents, on behalf of the prosecution P.Ws.1 to 6 were examined and Exs.P.1 to P.6 were marked. On behalf of the defence, D.W.1 was examined and Ex.D.1 was marked.

5 After appraising the oral, documentary evidence and other material available on record, the trial Court by judgment dated 11.10.2007 arrived at a conclusion that the prosecution failed to prove the guilt of the

respondents for the offence under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act and acquitted them. Feeling aggrieved by the judgment of the trial Court, the de-facto complainant filed the present Criminal Revision Case.

6 The contention of the learned counsel for the petitioner / de-facto complainant is three fold: **1)** the findings recorded by the trial Court are perverse as the same are not based on any material much less legally admissible evidence, **2)** the trial Court magnified minor discrepancies and acquitted the respondents, which is not permissible under law; and **3)** the trial Court ought not to have placed reliance on the testimony of D.W.1 with regard to the intellectual faculty of P.W.1.

7 *Per contra*, the learned counsel for the respondents submitted that the findings recorded by the trial Court are based on sound reasoning and principles of law. He further submitted that the testimony of D.W.1 supported the version of the defence with regard to the intellectual faculty of P.W.1. He further submitted that even if the evidence of P.Ws.1 to 4 is taken into consideration no case is made out against the respondents and the same was considered by the trial Court in right perspective.

8 Now the points for determination in this Criminal Revision Case are: **1)** Whether the prosecution has established the guilt of the respondent Nos.1 to 4 for the offence under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act, and **2)** Whether the findings recorded by the trial Court are perverse warranting interference of this Court while exercising jurisdiction under Sections 397 and 401 of IPC?

9 At this juncture, I feel it apposite to refer to the case law on this aspect in order to appreciate the rival contentions.

K. Chinnaswamy Reddy v. State of A.P. ^[1],

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only 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. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

Akalu Ahir v. Ramdeo Ram^[2],

10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial.

Shilok Bhardwaj v Runika Bhardwaj^[3]

12. In any case, it is well settled that the scope of revisional jurisdiction of the High Court does not extend to reappraisal of evidence. In exercise of revisional jurisdiction, the High Court can interfere with the acquittal only if there is perversity in the order of acquittal.

Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke^[4],

14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may

not interfere with decision in exercise of their revisional jurisdiction.

Bablu Kumar v. State of Bihar^[5],

14. In Bansi Lal v. Laxman Singh^[6], on the question of limited revisional jurisdiction under Section 401 CrPC and the duty of the Court, a two-Judge Bench opined that such a power has to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on point of law and there has consequently been flagrant miscarriage of justice. A mere circumstance that finding of fact recorded by the trial court which may be in the opinion of the High Court is erroneous or incorrect, would not justify setting aside the order of acquittal and directing a retrial of the accused.

15. In Satyajit Banerjee v. State of W.B.^[7], it has been opined that (SCC p. 121, para 26) direction for retrial should not be made in all or every case where acquittal of the accused is for want of adequate or reliable evidence. It is only when an extraordinary situation with regard to the first trial is found so as to treat it as a farce or a “mock trial”, direction for retrial would be justified. The same principle has been reiterated in Mary Pappa Jebamani v. Ganesan^[8].

16. In Bindeshwari Prasad Singh v. State of Bihar^[9], while dealing with the power under Section 401 CrPC, the Court while not agreeing with the High Court interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant observed thus: (SCC p. 655, para 14)

“14. ... It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.”

10 Let me consider the facts of the case in the light of the above legal principle. Second respondent is mother and respondent Nos.3 and 4 are sisters of the first respondent. P.W.2 is the brother and P.W.4 is the mother of P.W.1. P.W.3 is the person who settled the marriage and mediated between the parties. P.Ws.5 and 6 are investigating officers.

11 As seen from the testimony of P.W.5 on 01.11.2001 P.W.1 came to the Police Station and lodged Ex.P.1 complaint basing on which he registered a case in Cr.No.190 of 2001 for the offence under Section 498-A of IPC. By examining P.Ws.1 and 5 and marking Exs.P.1 and P.2 the prosecution established that P.W.1 set the criminal law into motion. It is

an admitted fact that the marriage of P.W.1 was performed with the first respondent on 08.09.2000 at Srinivasa Kalyana Mantapam, Tiruchanur, Tirupati as per the caste custom and Hindu rites.

12 As per the case of the prosecution, the respondent Nos.1 to 4 subjected P.W.1 to cruelty for additional dowry. The defence version is that P.W.1 has been suffering from mental disorder. By suppressing the same, her marriage was performed with the first respondent. As per the testimony of P.Ws.1, 2 and 4 they gave Rs.3.00 lakhs cash and 35 sovereigns of gold to the first respondent at the time of marriage. In the cross-examination these three witnesses deposed that there is no documentary evidence to show that they gave Rs.3.00 lakhs cash and 35 tulas of gold to the first respondent at the time of marriage. It may not be possible for any body to prove the factum of giving dowry. As per the testimony of P.W.3 the mediator, he gave Rs.3.00 lakhs cash to the first respondent in two installments. There is no whisper in the testimony of P.Ws.1, 2 and 4 that P.W.3 gave Rs.3.00 lakhs cash to the first respondent in two installments.

13 First Information Report is not an encyclopedia to contain every minute aspect in it. At the same time, the de-facto complainant ought to have mentioned the material facts in the complaint. There is no mention in Ex.P.1 that the family members of P.W.1 gave Rs.3.00 lakhs cash and 35 sovereigns of gold to the first respondent at the time of marriage. In the cross examination P.W.1 in unequivocal terms admitted that she did not mention about the payment of dowry to the first respondent at the time of marriage. There is no whisper in the testimony of P.Ws.1 to 4 they paid the dowry to the first respondent in pursuance of his demand. It is a known fact that the family members of bride and bridegroom may present some thing to the newly wedded couple.

14 It is a settled a settled principle of law that the Court shall not base its findings on a stray sentence in the evidence of witness. As per the testimony of P.W.4, in the month of March 2001 the first respondent

dropped P.W.1 in their house. Even as per the testimony of P.Ws.1 and 2, the first respondent dropped P.W.1 at her parents house in the month of March 2001. This clearly indicates that both P.W.1 and the first respondent lived together hardly for a period of five months. As per the testimony of P.W.4, the respondents demanded an amount of Rs.1.00 lakh from them. There is no whisper in the testimony of P.W.1, respondent Nos.1 to 4 demanded an amount of Rs.1.00 lakh from her as additional dowry. As observed earlier, there is no mention in Ex.P.1 that the first respondent necked out the petitioner from their house by demanding additional dowry of Rs.1.00 lakh. If really the respondents demanded an amount of Rs.1.00 lakh and necked her out of the house, what prevented the petitioner to lodge a complaint in the month of March 2001 itself?

15 As seen from the testimony of P.Ws.1, 2 and 4, the first respondent filed O.P.No.97 of 2001 seeking divorce from P.W.1 in the month of September 2001 on the ground that the petitioner is suffering with some mental disorder. As seen from the testimony of PWs.1, 2 and 4, P.W.1 lodged a complaint after receipt of summons in the divorce O.P filed by the first respondent. As rightly pointed out by the learned counsel for the respondents the possibility of lodging of complaint by the petitioner as a counter blast to the divorce petition filed by the first respondent cannot be ruled out completely. This court is very much conscious that mere delay in lodging the complaint by itself is not a valid ground to discard the prosecution version. In the instant case, the prosecution failed to explain the reasons much less cogent and convincing reasons for not lodging of complaint against the respondents till receiving of summons in the divorce petition. The possibility of implicating the family members of the husband cannot be ruled out in matrimonial cases. Even if the testimony of P.Ws.1 to 4 is accepted in toto, there is no whisper in the evidence of P.Ws.1 to 4 that the respondents have subjected the petitioner to cruelty for additional dowry so as to punish them under section 498-A of IPC. As observed earlier, there is no material on record to establish that P.W.2 paid Rs.3.00

lakhs cash and 35 sovereigns of gold to the first respondent at the time of marriage towards dowry.

16 The defence has taken a specific plea that even by the time of marriage, P.W.1 is suffering with some ailment. D.W.1 was examined to prove the intellectual faculty of the petitioner. As per the testimony of D.W.1, in spite of their advice, the petitioner did not stay in the hospital for taking treatment. As per the testimony of D.W.1, the general intellectual quotient of a person would be 90 to 120. Her testimony further reveals that she gave certificate stating that the intellectual quotient of the petitioner is 65 only. She further deposed that it is difficult for the petitioner to establish relationship with people and also to learn things and there is a difficulty in home living and also to establish social relationship because of her intellectual quotient. The testimony of D.W.1 clinchingly establishes the intellectual quotient levels of the petitioner.

17 It seems that the first respondent dropped the petitioner at her parents house on coming to know about her health condition. In order to bring pressure on the respondents, the possibility of filing false case against them cannot be ruled out completely. The burden of proof lies on the prosecution to establish the guilt of the accused beyond all reasonable doubt.

18 The trial Court scrutinized the testimony of P.Ws.1 to 6 meticulously in order to ascertain the truthfulness or otherwise of the prosecution version. The findings recorded by the trial Court are based on oral and documentary evidence. The trial Court has assigned cogent and valid reasons to its findings. I am in complete agreement with the findings recorded by the trial Court.

19 Having regard to the facts and circumstances of the case, I am unable to accede to the contention raised by the learned counsel for the petitioner that the findings recorded by the trial Court are perverse. There is no legal flaw in the findings recorded by the trial Court. Viewed from factual or legal angle, there are no grounds much less valid grounds to

interfere with the well considered judgment of the trial Court and the present Criminal Revision Case is devoid of any merit and is liable to be dismissed.

20 In the result, the Criminal Revision Case is dismissed. As a sequel, miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 16-03-2016

Kvsn

[\[1\]](#) AIR 1962 SC 1788

[\[2\]](#) (1973) 2 SCC 583 = AIR 1973 SC 2145

[\[3\]](#) (2015) 2 SCC 721

[\[4\]](#) (2015) 3 SCC 123

[\[5\]](#) (2015) 8 SCC 787

[\[6\]](#) (1986) 3 SCC 444

[\[7\]](#) (2005) 1 SCC 115

[\[8\]](#) (2014) 14 SCC 477

[\[9\]](#) (2002) 6 SCC 650