

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1017 of 2008

ORDER:

1 Assailing the judgment dated 07.01.2002 passed in C.C.No.116 of 2000 on the file of the Court of the IV Additional Munsif Magistrate, Guntur, wherein and whereby the respondents herein were acquitted of the charge under Section 498-A of IPC and Section 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 Basing on the complaint lodged by one P. Marry Philips Rani (P.W.1), the Station House Officer, Kothapet Law and Order Police Station, Guntur registered a case in Cr.No.470 of 1999 under Section 498-A of IPC and Section 4 of Dowry Prohibition Act and after completion of investigation, the investigating officer filed charge sheet against the respondents for the offence under Section 498-A of IPC and Section 4 of Dowry Prohibition Act.

4 The case of the prosecution is that the marriage of the P.W.1 was officiated with the first respondent herein on 07.10.1994. At the time of marriage, the parents of P.W.1 gave Rs.1.00 lakh of cash and 25 sovereigns of gold to the first respondent towards dowry. Immediately after the marriage, P.W.1 and the first respondent lived together at the parents' house of P.W.1. As per the allegations made in the complaint on 20.10.1999 respondent Nos.1 to 3 came to the house of P.W.1 and demanded her to give divorce to the first respondent or else pay additional dowry. Respondent Nos.1 to 3 harassed P.W.1 for additional dowry at the instigation of respondent Nos.4 to 7.

5 The learned IV Additional Munsif Magistrate, Guntur has taken the case on file under Section 498-A of IPC and Section 4 of Dowry Prohibition Act and numbered it as C.C.No.116 of 2000. The learned

Magistrate heard the version of the prosecution as well as the defence and framed charges under Sections 498-A of IPC and Section 4 of Dowry Prohibition Act against the respondents. The respondents pleaded not guilty for the said charges and claimed to be tried.

6 To unearth the truth thereby to substantiate the case of prosecution, P.Ws.1 to 6 were examined and Exs.P.1 to P.7 were marked. On behalf of the defence, though no oral evidence was adduced, Exs.D.1 and D.2 were marked in the cross examination of P.Ws.1 and 2 respectively.

7 After having a thoughtful consideration to the oral and documentary evidence available on record, the learned IV Additional Munsif Magistrate, Guntur arrived at a conclusion that the prosecution failed to prove the guilt of the respondents for the charged offences beyond all reasonable doubt and accordingly acquitted them of the said charges. Feeling aggrieved by the said acquittal of the respondents for the charges under sections 498-A of IPC and Section 4 of Dowry Prohibition Act, the de-facto complainant preferred the present Criminal Revision Case.

8 The contention of the learned counsel for the petitioner is three fold. **1)** The trial Court committed grave error while placing reliance on Exs.D.1 and D.2, **2)** The findings recorded by the trial Court are based on surmises and conjectures and **3)** The trial Court failed to consider the testimony of the prosecution witnesses in right perspective and acquitted them on a wrong premise of law.

9 *Per contra*, the learned counsel for the respondents submitted that the findings recorded by the trial Court are based on sound principles of law. He further submitted that while exercising revisional jurisdiction under Sections 397 and 401 Cr.P.C. this Court shall not lightly interfere with the findings recorded by the court below more particularly in case of acquittal. He further submitted that it is not a fit case to interfere with the findings recorded by the trial Court.

10 Heard the learned Additional Public Prosecutor representing the

State.

11 Now the point for determination in this Criminal Revision Case is **“Whether the findings recorded by the trial Court are perverse and not sustainable in law?”**

12 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.”

13 Let me consider the version put forth by the prosecution in the light of the above legal principle in order to ascertain whether the findings recorded by the trial Court warrant interference of this Court under Section 397 and 401 Cr.P.C.

14 PW.1 who is the de-facto complainant in the present case is the wife of the first respondent. P.W.2 is the mother of P.W.1. P.Ws.3 to 5 are neighbours of P.W.1 and P.W.6 is the investigating officer. First respondent is the husband of P.W.1 and respondent Nos.2 and 3 are in-laws of P.W.1. Respondent Nos.4 to 6 are brothers of the 2nd respondent and 7th respondent is the brother of third respondent.

15 The testimony of P.Ws.1 to 5 clearly reveals that the marriage of the first respondent was performed with P.W.1 on 07.10.1994 at Kondapaturu village of Guntur District. After solemnization of the marriage, P.W.1 and the first respondent resided in the house of the parents of P.W.1 from 1994 to 1998. Out of the lawful wedlock, P.W.1 and the first respondent were blessed with a child in 1995. Though the first respondent was an engineering graduate, he could not get job up to 1998. Initially in the year 1998 the first respondent got job as Conductor in APSRTC and thereafter in Railways.

16 The prosecution version is that the first respondent subjected P.W.1 to cruelty for additional dowry at the instance and instigation of the other respondents. The testimony of P.Ws.1 and 2 clearly reveals that respondent Nos.2 and 3 who are the parents of the first respondent are permanent residents of Kondapatur village and that they are eking out their livelihood by attending agricultural work. As seen from the testimony of P.Ws.1 and 2, the first respondent used to take money from P.W.1 for his personal expenses due to his unemployment. Mere asking of money for pocket expenses would not fall within the ambit of Section 498-A of IPC. In order to convict a person for the offence 498-A of IPC, the prosecution has to establish that the husband or his relatives subjected the wife to cruelty for additional dowry.

17 As per the testimony of P.W.1, her parents gave Rs.1.00 lakh of cash and 25 sovereigns of gold to the first respondent towards dowry 10 days prior to the date of marriage. There is no whisper in the testimony of PWs.1 and 2 that they gave Rs.1.00 lakh of cash and 25 sovereigns of gold to the first respondent towards dowry, in pursuance of his demand. As per the testimony of P.Ws.1 and 2, respondent Nos.1 to 7 came to their house on 20.10.1999 and demanded P.W.1 to give divorce to the first respondent. There is no whisper in the testimony of these two witnesses that respondent Nos.1 to 7 demanded additional dowry from them. Even as per the testimony of PWs.3 to 5, in the year 1999, respondent Nos.1 to 7 came to the house of P.W.2 and picked up quarrel with them. They stated that they went to the house of P.W.2 and pacified the matter. There is no whisper in the testimony of P.Ws.3 to 5 that the respondent Nos.1 to 3 subjected P.W.1 to cruelty for additional dowry. Mere altercation between the wife and relatives of the husband cannot be equated with demand of dowry. The testimony of P.Ws.3 to 5 is no way helpful to the prosecution to establish that the respondent Nos.1 to 3 demanded additional dowry from P.Ws.1 and 2 at the instigation of the respondent Nos.4 to 7.

18 The possibility of falsely roping the relatives of the husband in matrimonial cases cannot be ruled out completely, therefore, the Court has to scrutinize the testimony of witnesses meticulously so as to find out the embellishments, improvements, omissions and contradictions. During the course of giving evidence in the Court, P.Ws.1 and 2 stated that the respondent Nos.1 to 7 came to their house on 20.10.1999. At the time of recording 161 Cr.P.C statements, P.Ws.1 and 2 stated to the investigating officer that respondent Nos.1 to 7 came to their house on 20.10.1998. In the cross-examination they denied the suggestion that they stated to the investigating officer that the respondent Nos.1 to 7 came to their house on 20.10.1998 and picked up quarrel as in Exs.D.1 and D.2. Therefore, the statement made by P.Ws.1 and 2 before the Court is contrary to the statement made before the police so far as the date of incident is

concerned. In the cross-examination P.W.6 in unequivocal terms stated that P.Ws.1 and 2 stated before him as in Exs.D.1 and D.2.

19 The crucial question that falls for consideration is whether the Court can place reliance on these two contradictions. The Court cannot glorify the minor contradictions and omissions thereby to discard the prosecution version. However, the Court shall not lose sight of the contradictions which go to the root of the case of the prosecution. The Court can place reliance on the contradictions if the conditions stipulated under Section 162 Cr.P.C and Section 145 of the Indian Evidence Act are strictly complied with.

20 In ***Tahsildar Singh v State of U.P.***,^[10] the Hon'ble apex Court held as under:

“Marginal variations cannot be dubbed as improvements. The omissions, which amount to contradictions, which go to the root of the case or materially affect the trial or case of prosecution, render the testimony of the witness liable to be discredited.”

21 In ***V.K. Mishra v. State of Uttarakhand***^[11] at page 600:

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

22 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the Court can place reliance on Exs.D.1 and D.2. The material placed before the Court creates a doubt whether the alleged incident took place on 20.10.1999 or 20.10.1998. A perusal of the record reveals that P.W.1 lodged a complaint to the Station House Officer, Kothapet Law and Order Police Station, Guntur on 18.11.1999. Even as per the testimony of P.W.1, they can reach the Police Station within 15 minutes from their house. This

Court is very much conscious that mere delay in lodging complaint by itself is not a valid ground to discard the case of the prosecution without taking into consideration the other material available on record. If the incident took place on 20.10.1998, certainly, the prosecution failed to assign reasons much less cogent and convincing reasons for abnormal delay of more than one year in lodging the complaint. Even assuming but not conceding that the incident took place on 20.10.1999, as referred supra, the complaint was lodged on 18.11.1999, still, there is delay of nearly one month in lodging the complaint. The prosecution has not put forth any explanation much less cogent and convincing explanation for the delay in lodging the complaint by P.W.1. The version put forth by the prosecution creates a doubt with regard to the exact date of the alleged incident. This particular aspect, coupled with the material contradictions in the testimony of prime witnesses i.e. P.Ws.1 and 2 cracks very foundation of the prosecution version.

23 The material available on record falls short to establish that the respondents have committed the offences punishable under Section 498-A of IPC and Section 4 of Dowry Prohibition Act. The trial Court considered the testimony of the witnesses in right perspective and arrived at a conclusion that the respondents are found not guilty of the charged offences. The findings recorded by the trial Court are fully supported by the material available on record. The findings recorded by the trial Court are not perverse or there is no legal flaw in its findings which warrant interference of this Court. Viewed from any angle, i.e. factual or legal aspects, it is not a fit case to interfere with the well considered judgment of the trial Court by exercising the jurisdiction of this Court under Section 397 and 401 Cr.P.C.

24 In the result, the Criminal Revision Case lacks merits and bonafides and is accordingly dismissed. As a sequel, miscellaneous petitions, pending in this Criminal Revision Case, if any, shall stand dismissed.

T. SUNIL CHOWDARY, J

Date: 25th February, 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
[10] AIR 1959 SC 1012
[11] (2015) 9 SCC 588