

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2682 of 2016

JUDGMENT:

1 Challenging the judgment dated 07.08.2015 passed in Criminal Appeal No.126 of 2014 on the file of the Special Judge for S.C& S.T (POA) Act-cum-V Additional District Sessions Judge Medak at Sangareddy wherein and whereby the conviction and sentence imposed against the petitioner by the learned Judicial Magistrate of I Class, Narayankhed, vide judgment dated 26.09.2014 in C.C.No.298 of 2009 for the offences punishable under Sections 498-A of IPC and Section 4 of Dowry Prohibition Act were confirmed, the petitioner filed the present Criminal Revision Case under Sections 397 and 401 Cr.P.C.

2 Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor.

3 The facts leading to filing of the present Criminal Revision Case in nutshell are that on 04.10.2009, one E. Narsamma (P.W.1) lodged a complaint with the Station House Officer, Narayankhed Police Station, who in turn registered a case in Cr.No.150 of 2009 for the offences punishable under Sections 323 and 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act. After completion of investigation, the investigating officer laid charge sheet against the petitioner for the offences punishable under Sections 323 and 498-A of IPC

and Sections 3 and 4 of Dowry Prohibition Act and the same was taken on file by the learned Magistrate for the above offences and numbered the same as C.C.No.298 of 2009. The learned Magistrate framed charges against the petitioner under 323 and 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act, read over and explained to him in vernacular language (Telugu) for which he pleaded not guilty and claimed to be tried.

4 Before the trial Court, to bring home the guilt of the petitioner, on behalf of the prosecution P.Ws.1 to 7 were examined and Exs.P.1 to P.3 were marked. On behalf of the defence, no oral or documentary evidence was adduced.

5 After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the learned Magistrate arrived at a conclusion that the petitioner was found not guilty of the offence punishable under Section 498-A of IPC and convicted and sentenced him to suffer simple imprisonment for two years and also to pay fine of Rs.2,000/-, in default, to suffer simple imprisonment for three months. The petitioner was also found guilty of the offence punishable under Section 4 of the Dowry Prohibition Act and was convicted and sentenced to suffer simple imprisonment for one year and also to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for three months. However, the petitioner

was not found guilty of the offence punishable under Section 323 of IPC and Section 3 of Dowry Prohibition Act and was acquitted of the said offence. The learned Magistrate directed that the sentence of imprisonment imposed against the petitioner for the offences punishable under Section 498-A of IPC and Section 4 of Dowry Prohibition Act to run concurrently.

6 Aggrieved by the said conviction and sentence, the petitioner preferred Criminal Appeal No.126 of 2014 on the file of the Special Judge for S.C& S.T (POA) Act-cum-V Additional District Sessions Judge Medak at Sangareddy, and the same was dismissed. Hence the present Criminal Revision Case.

7 In order to appreciate the rival contentions, I feel it apposite to refer the case law on this aspect.

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

¹ AIR 1962 SC 1788

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.

In **State of Haryana Vs. Rajmal and Another**² the apex Court held as under:

14. In *State of A.P. v. Pituhuk Sreeinvasa Rao* {(2000) 9 SCC 537} this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference, to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

15. It has been also held by this Court in *Amar Chand Agarwala v. Shanti Bose and Anr.* {(1973) 4 SCC 10} that the revisional jurisdiction of the High Court under Section 439 Code of Criminal Procedure is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a **flagrant miscarriage** of justice.

8 As per the principle enunciated in the cases cited *supra*, it has not been open for the High Court to interfere with the concurrent findings of the courts below especially by re-appreciating the evidence in its revisional jurisdiction.

9 Let me consider whether there is any legal flaw in the findings recorded by the courts below.

10 There is no dispute with regard to the *inter se* relationship between the petitioner and the first respondent (P.W.1). It is the case of the prosecution that the petitioner subjected P.W.1 to cruelty for additional dowry. P.Ws.2 and 3 are parents and

² (2011) 14 SCC 326

P.W.4 is brother of P.W.1. Merely because P.Ws.2, 3 and 4 happened to be close relatives of P.W.1, that itself, is not a valid ground to disbelieve their version. In family matters, parents are the competent persons to speak about the demand of additional dowry. In the cross-examination of these witnesses, nothing is elicited to discard their evidence so far as the demand of additional dowry through P.W.1. The oral testimony of P.Ws.1 to 4 is cogent and convincing in all aspects. The testimony of P.W.5 also supports the version of P.Ws.1 to 4. The revisional court cannot lightly interfere with the concurrent findings of fact recorded by the courts below unless the findings are perverse i.e. such findings are based on no evidence or based on evidence which does not stand for judicial scrutiny. P.W.1 is the competent person to speak about the family affairs that transpired between her and the petitioner.

11 The trial Court gave a categorical finding that the petitioner subjected P.W.1 to cruelty for additional dowry and thereby committed an offence punishable under Section 498-A of IPC. The trial Court also arrived at a conclusion that the petitioner was found guilty of the offence punishable under Section 4 of the Dowry Prohibition Act. The appellate Court, after re-appraising the oral and documentary evidence available on record, came to a conclusion that the petitioner committed

the offences punishable under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act.

12 The findings recorded by both the Courts below are supported by material much less legally admissible material. There are no grounds much less valid grounds to set aside the well considered findings recorded by the trial Court as confirmed by the appellate Court. Thus, I am also of the considered view that the petitioner is guilty of the offence punishable under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act.

13 The learned counsel for the petitioner submitted that the sentence imposed against the petitioner is on higher side and it is disproportionate to the gravity of the offence. He further submitted that the petitioner has been in jail since 07.08.2015 and requested that a lenient view may be taken while imposing the sentence.

14 A perusal of the record reveals that the petitioner has been in jail for more than one year three months. Taking into consideration the socio-economic conditions and other relevant factors, I am of the considered view that it is a fit case to reduce the sentence of imprisonment imposed against the petitioner by taking a lenient view.

15 In the result, the petitioner / accused is found guilty of the offence punishable under Sections 498-A of IPC and Section 4 of Dowry Prohibition Act. However, since the petitioner has been in jail since 07.08.2015, the sentence of imprisonment imposed against the petitioner by both the Courts below under the above sections is reduced to that of the period which he has already undergone. The petitioner shall be set at liberty forthwith, if his presence is not required in any other crime.

16 Except the above modification, the Criminal Revision Case, in all other aspects, is dismissed. As a sequel, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

Date: 21st November, 2016
Kvsn

T. SUNIL CHOWDARY, J