

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 132/2013**

% **Reserved on: 20th July, 2016**

Decided on: 25th July, 2016

DHIRENDER

..... Petitioner

Through Mr. B.S. Joon, Mr. Neeraj Balhara,
Mr. Varun Chug, Mr. Siddarth Joon,
Advs.

versus

STATE GOVT. OF NCT OF DELHI & ANR. Respondent

Through Mr. Ravi Nayak, APP with SI
Narendra Kumar PS R.K. Puram.
Mr. S.Singh, Mr. Murari Babu, Advs.
for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The petitioner was convicted for offence punishable under Section 354 IPC on a complaint registered vide FIR No.1/2011 at PS R.K. Puram vide the order of the learned Metropolitan Magistrate dated 7th May, 2012 and directed to undergo simple imprisonment for a period of six months. On an appeal filed, the learned ASJ vide its decision dated 28th August, 2012 upheld the conviction, however directed release on probation for a period of one year subject to the petitioner furnishing a personal bond in the sum of ₹30,000/- with one surety and to keep peace and good behavior for the said period of time and to pay a compensation of ₹20,000/- to the complainant. Aggrieved by that order the petitioner prefers the present petition.

2. Before this Court learned counsel for the petitioner urges that despite the fact that witnesses admitted that there were public witnesses at the place

of incident, no independent witness was examined. There is no evidence on record that the petitioner consumed liquor as the MLC was not proved. There are contradictions in the statements of the husband and the wife in as much as the husband of the complainant stated that 2-3 Police Officers reached after the incident whereas the wife stated that only 1 Police Officer reached after the incident. The statement of the complainant and her husband as to how they were taken to the Police Station is also contradictory. Thus the learned Trial Court and the learned Appellate Court erred in convicting the petitioner.

3. Before dealing with the merits of the case it would be relevant to note the scope of interference in a petition under Section 397 Cr.P.C. as appreciation of evidence has already been done by two Courts below i.e. learned Metropolitan Magistrate and the learned Additional Sessions Judge. The Supreme Court in the decision reported as (2004) 7 SCC 659 State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand & Ors. held:

“21. In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 CrPC. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party i.e. Ram Briksh Singh v. Ambika Yadav [(2004) 7 SCC 665] . That was the case in which the High Court interfered in revision because material evidence was overlooked by the courts below.

22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision

conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.”

4. The prosecutrix in her examination deposed that on 31st December, 2010 at about 11.00 PM when she came out of her house with her son for toilet, the petitioner who was in a drunken condition touched her left breast and pushed her towards the bathroom. She raised alarm when her husband came out and rescued her. Thereafter information was sent to the Police and the petitioner was apprehended. In cross-examination the prosecutrix stated that when she made the noise only her husband came out and nobody from the neighbourhood came out. Later 2-3 people came there. Her statement and statement of her husband were recorded, however nothing further has been elicited in her cross-examination. The husband of the prosecutrix was examined as PW-2 who corroborated her version. Minor variations in the testimony of witnesses as to how many police officers came to the spot do not affect their credibility. The medical examination of the petitioner was conducted, however since no witness in this regard was examined, the MLC has not been proved. Thus the same cannot be looked into. Even the fact that the petitioner was intoxicated would have only further corroborated the

version of the prosecutrix, whose version is otherwise corroborated by her husband and instant PCR call.

5. As per the evidence, no other person was present when the incident took place, thus no corroboration can be sought from independent witnesses. The statements of the complainant and her husband cannot be thrown out from consideration merely for want of corroboration.

6. One more contention raised by the learned counsel for the petitioner was that cross-complaint was filed by the petitioner against the complainant and her husband and the two cases ought to have been tried together. On a query put by this Court, learned counsel for the petitioner admitted that when the trial was going on no application was filed before the learned Trial Court seeking clubbing of the trial of the two cases. Hence this contention merits no consideration.

7. Considering the facts and circumstances of the case I find no reason to interfere in the impugned judgment. Petition is dismissed.

Crl.M.A. 3576/2016

By this application the petitioner seeks to place on record the particulars of the complaint case titled as '*Dhirender Prasad Vs. Dilip Pandey & Ors. CC No.138/1C/14*'.

In view of the observations made above this application is dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

JULY 25, 2016
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