

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 215 OF 2016

Sau. Anusayabai D/o. Tanku
Ghadhari, Aged 71 Years,
(Orig.Complainant)
Occupation Pensioner, Resident
of Pathak Galli, Parola, Taluka
Parola, District Jalgaon

APPLICANT

V E R S U S

- | | | | |
|----|---------------------------|---|--------------------|
| 1] | Ratan Tanku Gadhari, Age |] | RESPONDENTS |
| | Major, Occupation Service |] | (Ori.Respondent |
| | |] | Nos.1 and 2) |
| 2] | Sulochana Raan Gadhari, |] | |
| | Age Major, Occ. Household |] | |
| 3] | The State of Maharashtra, | | |
| | Through Police Station, | | |
| | Parola, Taluka Parola, | | |
| | District Jalgaon | | |

Mr. J.M. Murkute, Advocate for the Applicant
Ms. A.N. Ansari, Advocate for Respondent Nos.1 and 2
Mr. K.S. Patil, A.P.P. for Respondent No.3-State

CORAM : V.L. ACHLIYA, J.

JUDGMENT RESERVED ON : 21.04.2017
JUDGMENT DELIVERED ON : 19.07.2017

JUDGMENT :

Rule. Rule returnable forthwith. By consent heard finally at the stage of admission.

1. By the present Revision Application, applicant – complainant has challenged the legality and correctness of Judgment and order dated 30th July, 2016, passed by the Additional Sessions Judge, Amalner, District Jalgaon in Criminal Appeal No. 18 of 2012 as well as the Judgment and Order dated 27th December, 2011 passed in STCC No. 190 of 1991 by the Judicial Magistrate, First Class, Parola, District Jalgaon acquitting the respondents – accused.

2. Before advertng to appreciate the submissions advanced, it is necessary to consider few facts leading to filing of revision application. The applicant and respondent Nos.1 and 2 are closely related with each other. There was a dispute amongst them on account of certain house property and litigation in that behalf was pending in Civil Court.

On 19th September, 1990, the applicant (hereinafter referred as '**complainant**') visited the Police Station Parola and lodged the report to the effect that at about 07.00 to 07.30 p.m. when she was present in her house and doing domestic work, the respondent Nos.1 and 2 (hereinafter referred as '**accused Nos.1 and 2**') entered in to her house. They abused her and gave threat that they would see her if she failed to vacate the house. They assaulted her by fist and kick blows. When her two niece came to rescue her, the accused No.1 caught hold her hairs and dragged her out of the house. They assaulted all of them. When she raised shouts for help, the persons from the vicinity came and rescued her. On the basis of complaint lodged, the offences punishable under Sections 323, 448, 504, 506 read with Section 34 of the Indian Penal Code came to be registered against the accused vide Crime No. 104 of 1990. On completion of investigation, the charge-sheet was prepared and filed in the Court of Judicial Magistrate, First Class, Parola. The case was registered as summary case.

3. On 13th December, 1993, the particulars of offence were explained to accused. Both of them pleaded not guilty and claimed to be tried. The case was tried as Summary Case. In order to prove it's case, during the period 1994 to January, 2000 the prosecution has examined ten witnesses. The work of recording of evidence was concluded on 4th January, 2000. On same day, the statements of accused were recorded and thereafter the case was posted for argument. On 13th March, 2000, the arguments were heard. However the Judgment was not delivered. Due to transfer, the Presiding Judge left the charge without delivering the Judgment. Thereafter, prosecution filed application vide Exhibit 104 seeking order to conduct *de novo* trial in view of Section 326 (3) of Cr.P.C. The accused gave no objection for *de novo* trial. Vide order dated 28th March, 2000, the application seeking *de novo* trial was allowed. The charge was framed vide Exhibit 105. Plea of the accused was recorded vide Exhibit 106. The accused pleaded not guilty and claimed to be tried. Since thereafter no fresh evidence was recorded. On 25th January, 2001,

prosecution moved an application (Exhibit 111) to decide the case on the basis of earlier evidence. So also the applicant-complainant also made similar request by filing application vide Exhibit 112. By order dated 28th December, 2004 below Exhibits 111 and 112 passed in the matter, the learned Magistrate rejected those applications by observing that there is already order to conduct *de novo* proceeding and the learned Judge is not empowered to conduct trial by following summary procedure. It is also observed that there is a direction to conduct the case on day-to-day basis. Learned Judge directed the prosecution to keep their witnesses present on the next date without fail. Thereafter the case was repeatedly kept for recording of evidence. The prosecution failed to examine a single witness. The applicant also filed application seeking issuance of summons to the witnesses, which was granted on condition the complainant will serve the summons and keep the witnesses present. However, the applicant-complainant also failed to produce the witnesses. The applicant has even not deposited *bhatta* for issuance of summons.

Thereafter, the prosecution as well as complainant filed joint pursis to decide the case on the basis of earlier evidence. On 27th December, 2011, the learned Judicial Magistrate delivered the Judgment and acquitted the accused.

4. The applicant-complainant preferred appeal under Section 372 of Cr.P.C. in the Court of Additional Sessions Judge, Amalner, District Jalgaon, which was registered as Criminal Appeal No. 18 of 2012. The Appellate Court has dismissed appeal vide Judgment and Order dated 30th July, 2016. Being aggrieved, the applicant-complainant has preferred this Revision Application.

5. I have heard the submissions advanced at length by the learned counsels respectively for the applicant as well as respondent Nos.1 and 2 and A.P.P. for the State and further perused the record and proceedings.

6. Before advertng to appreciate the

submissions advanced as to merit of the submissions advanced, it is necessary to consider the scope of exercise of revisional powers of High Court as against the order of acquittal of accused in a proceeding filed at the instance of private party. In the case of ***K.Chinnaswamy Reddy vs. State of A.P. and another***, reported in ***A.I.R. 1962 SC 1788***, the Apex Court has examined this aspect and observed as under :-

"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 a. 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 a. 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."

7. Thus, in a revision filed against the order of acquittal, the High Court is expected to exercise its revisional jurisdiction very sparingly and that too when there is some glaring defect in procedure or there is manifest error on the point of law resulted into causing serious miscarriage of justice.

8. Perusal of the record and proceeding reveals that the case was tried as Summary Case. It is apparent from the face of record that the Judgment was not delivered though the arguments were heard. It

also reflects that the proceeding was conducted in complete disregard of provisions of Section 326 (3) of the Code of Criminal Procedure. The successive Magistrate continued to record the evidence. On 28th March, 2000, the prosecution moved an application vide Exhibit 104 to convert the summary triable case into Warrant triable case. The application was allowed and the following order was passed on 28th March, 2000 :-

"O R D E R

Perused the application and say.

Heard the learned A.P.P. and Shri Choudhary,
Advocate for accused.

In view of nature of the case and in the
interest of justice, application is allowed.
Charge be framed.

Sd/-

28/3/2000"

9. Pursuant to above quoted order, the case was converted into the Warrant Triable Case and the Charge was framed on 28th March, 2000 vide Exhibit 105. Plea

of the accused Nos.1 and 2 were recorded vide Exhibit 106 and 107 respectively. Both of them pleaded not guilty and claimed to be tried. Thus, the case which was initially tried as 'Summary Case' was converted into a 'Warrant Case' by virtue of order dated 28th March, 2000 passed below Exhibit 104. It reveals that, on and after 28th March, 2000 no evidence was adduced. In the year 2004, the application came to be filed by the prosecution vide Exhibit 111 to decide the case on the basis of earlier evidence recorded in the case. On 28th December, 2004, the learned Magistrate rejected the application (Exhibit 111) and observed that already there is an order to conduct the case as *de novo* and posted the case for recording evidence. It appears that on 15th October, 2005 again the particulars of offence were explained to accused vide Exhibit 143 and the Plea of accused was recorded. Thus, it appears that the case was again decided to be conducted in summary manner. Thereafter also no evidence was adduced by prosecution. On 29th July, 2008, vide Exhibit 159, the accused moved an application under Section 239 of the code of Criminal

Procedure seeking their discharge. The application remained pending. Thereafter, applicant moved application vide Exhibit 178 to engage Advocate. Learned Magistrate allowed that application. Still no witness was examined by the prosecution. On 25th November, 2011, the joint pursis came to be filed by learned A.P.P. and the applicant/complainant to decide the case on the basis of earlier evidence. On 23rd November, 2011, the applicant filed separate pursis vide Exhibit 186 to decide the case on the basis of earlier evidence recorded i.e. the evidence recorded during the period 1994 to 2000. It is stated that now it is not possible for applicant to seek presence of witnesses.

10. Thus the chequered history of the case as discussed above, reveals the manner in which the case was conducted by the prosecution and the orders passed by the successive Magistrate without taking pains to consider the earlier orders passed in the matter. In the year 2011, the learned Magistrate decided to dispose of the case on the basis of the evidence which

was previously recorded during the year 1993 to 1994 by ignoring the order of *de novo* trial passed in the year 2000. Being aggrieved, the complainant has preferred appeal under Section 372 of Cr.P.C. challenging the correctness of the Judgment of the trial Court in acquitting the accused. The appellate Court though reached to conclusion that the learned Magistrate committed gross illegality in deciding the case on the basis of evidence recorded earlier by ignoring the order earlier passed in the matter but refused to remand the case to trial Court by observing that the order passed being illegal, same cannot be cured.

11. The submissions advanced by learned counsel for the applicant/complainant that for the mistake on the part of learned Magistrate, the applicant /complainant should not suffer though appears to be appealing, but not convincing. As discussed, the prosecution as well as complainant have filed joint pursis vide Exhibit 186 and requested the Court to decide the case on the basis of evidence which was

earlier recorded. In the pursis filed by the applicant/complainant, it is specifically mentioned that now it is not possible to secure presence of the witnesses. In fact, the learned Judge of the trial Court has given sufficient opportunity to the applicant/complainant to produce the witness as per the order of *de novo* trial passed in the matter. The applicant failed to produce the witness and filed pursis to decide the case on the basis of earlier evidence. In this view, now the applicant/complainant cannot be permitted to say that for the fault on the part of Court, the applicant/complainant should not suffer.

12. The order to conduct *de novo* trial was passed way back in the year 2000. For the period 17 years, the prosecution as well as complainant failed to produce witnesses. The learned Judge of the trial Court had granted several opportunities to prosecution as well as complainant to produce the witnesses. However, the prosecution as well as applicant/complainant failed to produce the witnesses.

Therefore, for the fault on the part of prosecution as well as the complainant, the accused cannot be subjected to suffer further rigours of prosecution. The accused are tried for offences punishable under Sections 323, 448, 504, 506 read with Section 34 of the Indian Penal Code, for which maximum punishment provided is sentence of not more than one year. The accused are suffering the rigours of prosecution since last more than 25 years. The incident occurred in the year 1992. Charge-sheet was filed in the year 1993. The hearing of the case was commenced in the year 1993. The evidence of prosecution witnesses started in the year 1994 and concluded in the year 2000. Although the case was closed for Judgment in the year 2000, the Judgment was not delivered. After passing of order to conduct *de novo* proceeding the prosecution fails to adduce evidence for the period of 10 years. Thus, on facts, the appellate Court was fully justified in refusing to remand the case for fresh trial.

13. Thus, considering the overall facts of the

case and the submissions advanced, in the light of broad principles to be borne mind in exercise of revisional jurisdiction by High court, in a revision filed at the instance of private party against the order of acquittal, I am of the view that no case is made out to entertain the revision petition. I am, therefore, not inclined to entertain the revision petition. In the result, the Revision Application is dismissed. Rule discharged. Record and proceedings be sent back to trial Court.

(V.L. ACHLIYA, J.)

