

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL REVISION CASE No.716 of 2005**

**ORDER:**

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed questioning the propriety and legality of the Judgment, dated 06.06.2002, passed in Calendar Case No.56 of 1999 by the Additional Judicial Magistrate of First Class, Avanigadda, whereby the learned Magistrate found the accused not guilty for the offences punishable under Sections 498-A and 494 read with 34 IPC and accordingly acquitted them for the said offences.

2. For the sake of convenience, the parties hereinafter will be referred to as they arrayed before the trial Court.

3. Aggrieved by the said Judgment, the *de facto* complainant filed this revision case on various grounds, mainly on the ground that the Court below failed to consider the evidence on record in proper perspective, more particularly Exs.P.1 to P.4, which clearly established that A.1 harassed the *de facto* complainant/petitioner for her failure to meet the illegal demand of payment of dowry. The trial Court also failed to assess the conduct of A.1 with reference to the material available on record and committed an error in finding the accused not guilty of the offences referred supra.

4. The *de facto* complainant lodged a complaint with the police alleging that she was subjected to cruelty by all the accused at Kanderu Village. After she gave birth to two children, some disputes arose between her and A.1. Due to the differences, A.2 to

A.7, subjected her to cruelty in different ways for her failure to meet the illegal demand for payment of dowry.

5. On the strength of complaint lodged by the *de facto* complainant, police registered a case against the accused and after completion of investigation police filed charge sheet against the accused for the offences punishable under Sections 498-A and 494 read with 34 IPC.

6. Upon securing the presence of the accused and after compliance of Section 207 Cr.P.C., framed charges for the offences punishable under Sections 498-A and 494 read with 34 IPC, read over the explained to them in Telugu, but, they pleaded not guilty and claimed to be tried.

7. During trial, on behalf of prosecution, P.Ws.1 to 6 were examined and got marked Exs.P.1 to P.6. On behalf of defence, Exs.D.1 and D.2 were marked.

8. After closure of prosecution case, the accused were examined under Section 313 Cr.P.C., explaining the incriminating material that appeared against them, they denied the same and reported no defence evidence.

9. Upon hearing argument of both counsel, the trial Court found the accused not guilty for the offences referred supra and accordingly, acquitted them under Section 248 (1) Cr.P.C.

10. When the matter came up for hearing, learned counsel for the petitioner Sri Sai Gangadhar Chamorthy, neither appeared nor any representation is made on his behalf, therefore, this Court has

no option except to verify the record and pass appropriate orders without dismissing the revision case for default in view of law declared by the Delhi High Court reported in ***Misha Sharma v. Vinod Kumar Sharma***<sup>1</sup>, wherein it is held that the revision petition cannot be dismissed for default even if the petitioner or Advocate does not appear before the Court. The Court can examine the record and decide the revision case on merits. Therefore, persuaded by the principle laid down in the above Judgment, this Court decides to dispose of the present revision case basing on the material available on record.

11. It is an undisputed fact that the marriage between the complainant and A.1 was performed and during their lawful wedlock, they were blessed with two children. The main contention of the complainant before the trial Court was that she was subjected to cruelty for her failure to meet the illegal demand of dowry. This fact was not substantiated by the prosecution before the trial court though examined as many as six witnesses. The trial Court, upon appreciation of entire evidence on record, recorded a fact finding that no material evidence is brought on record to convict the accused for the said offences. Even before this Court, the counsel for the petitioner did not bring to my notice any piece of evidence to substantiate prosecution case.

12. The powers of the High Court are limited. This Court cannot interfere with the fact finding recorded by the court below. But, under Section 401(3) Cr.P.C., there is a clear interdict to exercise power to convert acquittal into conviction, but this Court can order

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<sup>1</sup> 1990 Cr.LJ. (NOC) 57 (Del.)

re-trial only in exceptional circumstances. 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 be exercised by the High Court only in exceptional cases, when there is some 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. Ordinarily, High Court does not interfere against an order of acquittal passed Lower Court.

13. In **K. Chinnaswamy Reddy vs. State of Andhra**<sup>2</sup>, the Supreme Court held as follows:

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 s. 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 of 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 s. 439(4). We have therefore to see whether

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<sup>2</sup> 1962 AIR 1788

the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.”

In view of the law declared by the Apex Court, this Court can interfere with the acquittal only in extraordinary circumstances where the findings are not based on any evidence. At the same time, Section 401(3) Cr.P.C made it clear that in revision, the High Court cannot convert a finding of acquittal into one of conviction ordering re-trial. When there is no finding of acquittal for the offence, the power of revisional court to convert an acquittal into conviction under Section 401(3) Cr.P.C does not operate. Even to order for re-trial, there must be exceptional circumstances. In the present case, in the absence of any exceptional circumstances to order for re-trial and all the more, the findings of the trial Court are probable and there is any amount of justification to record such reason. Hence, I find no ground to set-aside the order of acquittal under challenge passed by the Additional Judicial Magistrate of First Class, Avanigadda, in Calendar Case No.56 of 1999, dated 06.06.2002, and the criminal revision case deserves to be dismissed.

14. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision case shall stand closed.

**SEPTEMBER 21, 2017**  
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**M. SATYANARAYANA MURTHY, J**

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**



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**Date: 21.09.2017**

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