

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.RC. NO.397 OF 2004

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. questioning the propriety and legality of judgment, dated 10.11.2003 in C.C.No.84 of 2000 passed by the Judicial Magistrate of First Class, Kota whereby the trial court acquitted the respondents 1 to 4 for the offences punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act.

2. The petitioner is the de facto complainant who was examined as PW-1 before the trial Court, the respondent No.1 is resident of Kasibugga village of Palasa mandal of Srikakulam District and respondents 2 to 4 are native of Kamalapuram village of Mandasa mandal of Srikakulam District. The offence took place prior to 14.12.1999 at Gangannapalem village and Eshwar Nagar, Kodambakkam, Chennai. On 14.12.1999 the petitioner herein wife of first respondent went to Vakadu Police Station and lodged report stating that her marriage was performed by her parents with first respondent on 18.05.1995 at G.S.Rayulu Kalyana Mandapam, Gudur, at the time of marriage, her parents paid Rs.One lakh in cash, 25 sovereigns of gold and Rs.50,000/- worth articles as dowry, in the presence of one Annala Molakaiah and Gatala Venkateshwarlu PW-5. Immediately after coming to Gangannapalem, the respondents started harassing PW-1 for her failure to meet the illegal demand for payment of Rs.50,000/- as additional dowry. After they went to Eshwar Nagar, Kodambakka, Chennai, the accused continued the same harassment and requested to take necessary action against the respondents.

3. On the strength of the report, the police registered a case in Crime No.61 of 1998 for the offences punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act. During investigation, the Sub-Inspector of Police was on leave and on 27.12.1999 he verified the investigation done by PW-7 and filed charge sheet for the offences punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act.

4. The trial court after securing the presence of the respondents, complied Section 207 Cr.P.C., framed charges against the respondents for the offences punishable under Section 498-A IPC and Section 4 of D.P. Act, read over and explained to them, they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined PWs.1 to 7 and marked Exs:P-1 to P-5. On behalf of the respondents, Exs:D-1 to 10 were marked.

6. After closure of prosecution evidence, the respondents 1 to 4 were examined under Section 313 Cr.P.C. explaining the incriminating circumstances that appeared against them in the evidence of prosecution witnesses and they denied the same and marked Exs:D-1 to D-10.

7. Upon hearing argument of both the counsel, the Court below found the respondents 1 to 4 not guilty and acquitted them for the offences punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act assigning various reasons in the judgment.

8. The present criminal revision case is filed by the de facto complainant challenging the acquittal of respondents on various grounds, mainly on the ground that the trial court relied on Ex.P-3 to conclude that the respondents did commit no offence as there was no reference about demand of dowry etc. The trial Court also failed to consider the contents

of Ex.P-1 that the respondents demanded for payment of dowry which attracts an offence punishable under Section 4 of Dowry Prohibition Act.

9. During hearing learned counsel for the petitioner Sri Sharan Reddy contended that the evidence was not appreciated by the court below in proper perspective and would draw attention of this court to various paras in the judgment of trial court, more particularly para 10 and also Ex.D-1 including second para of page 13 of the judgment to contend that the trial court did not appreciate the evidence in proper perspective and committed an error. It is also contended that the court below without appreciating evidence on record, arrived at specific finding without any basis and such finding can be said to be manifest error warranting interference of this court by exercising power under Sections 397 and 401 of Cr.P.C.

10. Leaned counsel for the respondents 1 to 4 Si P. Gangarami Reddy supported the judgment passed by the court below while drawing attention of this Court to Sections 397 and 401 Cr.P.C. and unless this court finds perversity or apparent error, this court cannot set aside the calendar and judgment and order retrial, since, there are no exceptional circumstances to pass such an order to remit the matter to the court below.

11. Considering rival contentions and material on record, the point that arises for consideration is:

“Whether the findings recorded by the court below are manifestly perverse or patently erroneous? If so, whether this court can exercise power to remit the matter to the trial court for retrial?”

12. It is the case of the prosecution that the respondents demanded for payment of dowry at the time of betrothal and drawn the attention of this Court to Ex.D-9 to contend that the allegations made in Ex.D-9 would

disclose the demand made by the respondents. Here the contents disclose that father of PW-1, the petitioner herein offered to pay Rs.50,000/- as dowry and perform the marriage as per their status. This letter does not disclose any demand made by the respondents to attract the offence punishable under Section 4 of Dowry Prohibition Act. Section 4 of Dowry Prohibition Act deals with penalty for demanding dowry and if any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees. But, the alleged demand was made on 18.05.1995 and whereas the complaint was lodged on 14.12.1999 and as per Rule 10(2) of Dowry Prohibition Act framed by the High Court, such complaint shall be made within two years from the date of alleged offence. But, here the complaint was lodged after four years. Therefore, on this ground alone the respondents cannot be convicted for the offence punishable under Section 4 of Dowry Prohibition Act.

13. The other contention raised before this Court is that there is sufficient evidence to conclude that the petitioner was subjected to harassment for her failure to meet the illegal demand for payment of dowry. But, in para 21 of its judgment, the trial court recorded a finding that the evidence of PW-1 is contradictory with the contents of Ex.P-3 which is a complaint lodged with the police and on the basis of it, F.I.R. was issued. But, failure to mention the details in Ex.P-3 is not a ground to disbelieve the case of the prosecution, if the petitioner is able to substantiate her contention by adducing any evidence, since Ex.P-3 need not contain minute details not an encyclopaedia of facts; however there are improvements as discussed by the trial court in the evidence of PW-1 and similarly in the evidence of PW-2 also, there are material contradictions in the evidence of PWs.2

and 3. Therefore, the trial court disbelieved the evidence of PWs.2 and 3 since they are not credible witnesses. PWs.4 and 5 are also not wholly credible and trustworthy witnesses, as per the finding recorded by the court below. Based on the contradictory statements and improvements subsequent to lodging Ex.P-3, the trial court came to the conclusion that there is no material to accept the contention of the petitioner.

14. As seen from various paras in the judgment of the trial court, the trial court mostly disbelieved the version of PW-1 on the basis of Ex.P-3. If Ex.P-3 is ignored there must be some consistent evidence to establish the guilt of the respondents for the offence punishable under Section 498-A IPC. Here, there is absolutely no allegation against the respondents 2 to 4, but made an allegation that she was subjected to cruelty demanding additional dowry by first respondent alone and she examined PWs.2 to 4 to corroborate the testimony of PW-1 with regard to demand of dowry. Exs.D-6 and D-7 letters were marked during evidence by the defence and those letters were addressed by the father of the petitioner. There was no whisper about demanding additional dowry. Even assuming that there is demand of dowry, they would have mentioned the said demand in those letters. Failure to make any mention about the alleged demand of dowry and subjecting her to harassment is another strong circumstance to disbelieve the case of the prosecution. Similarly, the evidence of PWs.2 and 3 is full of contradictions on material aspects regarding subjecting her to harassment. According to the case of the prosecution, when PW-1 joined with first respondent at Gangannapalem, the respondents 1 to 4 started harassing her to bring additional dowry of Rs.50,000/- and later at Eshwar Nagar, Kodambakkam, Chennai. PWs.2 to 4 residents of Eshwar Nagar and they are at Chennai in the same house allegedly, but their evidence is not consistent. Exs.P-6 and P-7 were allegedly written when she came down to Gangannapalem of Wakadu mandal, Nellore

District. If really there was harassment either at Gangannapalem or at Eshwarnagar, she would have mentioned the same in those letters, but they are silent with regard to alleged harassment. The alleged harassment took place at Gangannapalem. PWs.2 to 4 are the natural witnesses to speak about the harassment. But, they spoke even about the harassment at Eshwarnagar, Kodambakkam, Chennai, though they were not present at the scene of offence when PW-1 was subjected to cruelty for her failure to meet the illegal demand for payment of dowry. Therefore, their evidence is not consistent on material aspects regarding the harassment she meted in the hands of respondents 1 to 4 for her failure to meet the illegal demand for payment of dowry.

15. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

16. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

17. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of Apex Court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

19. Section 401 Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if

there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in *STATE OF WEST BENGAL v. TULSIDAS*¹. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in *PRAHLAD v. EMPORER*². Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

20. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

21. But, in one of the judgment reported in *RAM KISHAN SINGH v. HARMITKAUR AND ANOTHER*³, the Apex Court laid down certain principles to interfere with acquittal and they are as follows:

“As an appellate court, the High Court can set aside an order of acquittal. It can also review the evidence upon which it is founded. In doing so, however, the High Court has to keep in mind certain principles, which are, that the view of the trial Judge as to the credibility of the witnesses, the presumption of innocence of accused, the right of accused to the benefit of doubt. The High Court has also to give reasons that the acquittal was not justified.”

22. If those principles are applied to the present facts of the case, the Court has to record as to how the findings are perverse and how the law was not appreciated by the trial court in acquitting the respondents for the offences punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act and unless the court finds extreme circumstances to order retrial, the Court cannot order retrial of the case remitting the matter to the trial court by exercising power under Section 401 (3) Cr.P.C. as there is a clear bar from converting acquittal into conviction.

23. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and

³ AIR 1972 SC 468

do justice, though the power should be rarely exercised, as held by Apex Court in *S.P.S. JAYAM & CO. v. NEHRUSADAN*⁴.

24. In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in *BANSILAL v. LAXMAN*⁵.

25. In the absence of any perversity in appreciation of evidence or patent error, this Court cannot interfere with the findings of the trial Court. On the other hand, in view of Sub Section 3 of Section 401 Cr.P.C, this Court while exercising power under Section 397 and 401 Cr.P.C. cannot convert a finding of acquittal into one of conviction, as held by the Apex Court in *Logendranathjha v. Shri Polailala*⁶

26. At the same time, the High Court must see that it does not convert a finding of acquittal into that of conviction by ordering retrial, as held in *Chinnaswamy v. State of AP*⁷.

27. The court below recorded a fact finding, finding the accused not guilty. This court in normal circumstances would not interfere with such fact finding. But, here in the revision case, the petitioner wanted to convert the acquittal into conviction which is impermissible under Section 401(3) Cr.P.C. Therefore, order of acquittal cannot be entertained unless this court finds that the finding recorded by the court is without any evidence and the finding is perverse. But, here there are many inconsistencies in the evidence of PWs.1, 3 and 4. The Apex Court in *VIMAL SINGH v. KHUMAN SINGH*⁸ made it clear that the High Court can remit back the case to the trial court only in case of gross miscarriage of

⁴ 1977 Cr.L.J. 1101

⁵ (1986) 3 SCC 445

⁶ 1951 SC 316

⁷ 1962 SC 1788.

⁸ (1998) 7 SCC 223

justice. The Apex Court in RAMA v. JAGANNATH⁹ it is held that the revisional jurisdiction of High Court should not be lightly exercised against the order of acquittal particularly when invoked by a private party. So when the High Court without going into merits of the case set aside the order of acquittal at the instance of the private party on the ground that lower appellate court dictated only the operative portion of the order of the court, the order is not sustainable.

28. Therefore, the law declared by the Apex Court in various judgments is consistent that unless the court finds manifest perversity in the findings recorded by the trial court, it cannot convert a finding of acquittal into one of conviction. But, here in this case, I find no such manifest perversity to exercise power under Section 401(1) Cr.P.C. to remit the matter for retrial. Therefore, I find no ground to interfere with the finding of judgment of acquittal recorded by the Court below for both the offences punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act.

29. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this case shall stand closed.

DATE: 15-09-2017
ccm

M. SATYANARAYANA MURTHY, J

⁹ AIR 1994 SC 26

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date:15.09.2017

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