

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.242 OF 2004

ORDER:

This revision is filed by the de facto complainant under Section Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the impugned judgment dt.31.12.2003 in S.C.No.29 of 2001 passed by the Sessions Judge, Mahila Court, Visakhapatnam finding the accused not guilty for the offences punishable under Sections 498-A, 307 r/w 34 IPC, 201 and 406 IPC, so also under Sections 3(1) and 4 of D.P. Act.

2. The petitioner is the de facto complainant and wife of A-2. She lodged a complaint with the police against the respondents 1 and 2 herein making serious allegations while alleging that she is the legally wedded wife of second respondent and their marriage was performed on 1.3.1991 and first respondent is the mother of A-2 and mother-in-law of de facto complainant. At the time of marriage, the parents of petitioner paid Rs.40,000/- towards dowry besides presenting gold ring, watch, hero honda motorcycle and Rs.10,000/- towards lanchanams, Rs.2500/- towards adapaduchu katnam and also paid Rs.10,000/- towards sare articles to the petitioner, who blessed with child on 31.8.1993 and they lived amicably till the birth of female child and that he did not take petitioner and her daughter to the house as his demand was not complied with and 9 months after the birth of daughter, the parents of petitioner gave Rs.15,000/- and half tola of gold bangles to the second respondent and sent the petitioner and her daughter to her in-law's house and thereafter the respondents 1,2 and brother of second respondent beat and abused the petitioner demanding to bring an amount of Rs.25,000/- and threatened to kill her by harassing physically and mentally. On 2.8.1997 the first respondent poured kerosene oil on petitioner and set her ablaze with match stick and in spite of shouting to put off the flames, the first respondent did not extinguish the

flames and on hearing the cries of petitioner, PW-4, a neighbour came to the house and informed the second respondent about the incident and the second respondent admitted the petitioner in the hospital and she regained her consciousness, at that time the respondents, brother and sister of second respondent who were present in the hospital, requested the petitioner not to lodge any report with the police and file any case against them as her husband may lose his job, assured and promised the petitioner to look after her properly.

3. It is the further case of the prosecution that the petitioner underwent medical treatment for about six months including plastic surgery on her body and due to the burn injuries she was unable to move out till the year 1999 and not in a position to wear clothes. The petitioner wrote letters to her husband to take her back, but he did not turn up to take her back to resume conjugal life. The petitioner filed petition under Section 9 of Hindu Marriage Act against second respondent for restitution of conjugal rights besides filing maintenance petition under Section 125 Cr.P.C. The second respondent filed divorce petition against the petitioner. Finally, the petitioner lodged a report with the police.

4. On the strength of the report, the police registered a case in Crime No.109 of 2000 against the respondents, issued F.I.R., took up investigation and filed charge sheet against the respondents for the offences mentioned supra.

5. The learned Magistrate after taking cognizance of the offences against the respondents 1 and 2 and after following procedure under Section 209 Cr.P.C. committed the case to the Sessions Division as it is exclusively triable by the Court of Session and in turn, the Sessions Judge made over the matter to the Sessions Judge, Mahila Court, Visakhapatnam.

6. After securing the presence of the accused, the Sessions Judge framed charges against the respondents 1 and 2 for the offences punishable under Sections 498-A, 307, 307 r/w 34, 201, 406 IPC, Sections 3(1) and 4 of D.P. Act,

read over and explained to them, they pleaded not guilty and claimed to be tried. During trial, on behalf of the prosecution, PWs.1 to 17 were examined and marked Exs.P-1 to P-24.

7. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against them in the testimony of PWs.1 to 17, they denied the same and reported no defence.

8. Upon hearing argument of both the counsel, the trial court found the accused not guilty of the offences mentioned supra and acquitted them under Section 235(1) Cr.P.C.

9. Aggrieved by the acquittal, the present revision is filed by the de facto complainant under Section 397 and 401 Cr.P.C. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

10. [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.

11. 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.

12. 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 this 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.

14. Section 401 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. TULSIDAS¹. 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 misdirections as must have occasioned a failure of justice as held in PRAHLAD v. EMPORER². 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.

15. 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 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.

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

16. Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. 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 do justice, though the power should be rarely exercised, as held by Apex Court in *S.P.S. JAYAM & CO. v. NEHRUSADAN*³.

17. 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*⁴.

18. 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*⁵

19. 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*⁶.

20. In the present case on hand, the trial court after elaborate consideration of entire evidence, more particularly on the ground of delay in lodging the complaint, the respondents 1 and 2 were acquitted. In para 34 of the judgment, the Sessions Judge discussed about delay. The offence allegedly occurred on 2.8.1997, but the complaint was lodged in the month of May, 2000

³ 1977 Cr.L.J. 1101

⁴ (1986) 3 SCC 445

⁵ 1951 SC 316

⁶ 1962 SC 1788.

i.e. almost after more than 2 ½ years. No doubt, the delay alone itself is not a ground to disbelieve the case of the prosecution, if it is satisfactorily explained by the prosecution. But, the trial court concluded that no satisfactory explanation was given to accept the delay in lodging the complaint i.e. when the delay is abnormal and fatal to the prosecution case, as there is possibility of false implication due to consultations. Apart from that, the material on record before the trial court disclosed that petitions under Section 9 of Hindu Marriage Act for restitution of conjugal rights and for maintenance under Section 125 Cr.P.C. were also filed. But, no such complaint was lodged in the year 1999 itself though petitions under Sections 9 of H.M. Act and 125 Cr.P.C. were filed, but conveniently filed a complaint with the police after termination of proceedings under Sections 9 of H.M. Act and 125 Cr.P.C. In as much as the delay is fatal to the case of the prosecution and the trial court placed reliance on the judgment in CH. NARENDER REDDY v. STATE OF A.P.⁷ wherein this court held that the limitation for taking cognizance of offence under Section 498-A IPC and when the complaint was forwarded to police under Section 156(3) Cr.P.C. and charge sheet was filed and cognizance taken after four years is barred by limitation under Section 468 of Limitation Act. Since the trial court disbelieved the evidence of prosecution as there is possibility of filing false case and implicating the accused, this court cannot interfere with such finding while exercising power under Section 397 and 401 Cr.P.C.

21. Therefore, in view of the limited powers conferred of this Court and the bar contained in Sub Section 3 of Section 401 CR.P.C., I am not inclined to interfere with the fact finding recorded by the trial Court as I find no manifest perversity or apparent error in appreciation of evidence by the Courts while recording fact findings and that apart, the bar under Sub Section 3 of Section 401 Cr.P.C. does not permit this Court to convert the finding of acquittal into conviction, by applying the principles laid down by the Apex Court referred to

⁷ 2000(2) A.L.T. (Cri.) 409

supra. Hence, this Criminal Revision Petition deserves to be dismissed as it is devoid of merits.

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

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

M.SATYANARAYANA MURTHY,J

DATE:17-08-2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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