

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.875 of 2005

JUDGMENT:

The present Criminal Revision Case is preferred by the revision petitioner/*de facto* complainant/P.W.1 aggrieved over the order of acquittal, dated 28.09.2004, recorded by the IV-Additional Sessions Judge, Warangal, in Criminal Appeal No.52 of 2003.

2. The learned I-Additional Judicial Magistrate of First Class, Warangal, in C.C. No.143 of 2000, tried the 1st respondent for the offence punishable under Section 498-A of I.P.C., and by his order, dated 20.03.2003, recorded conviction under Section 248 (2) of the Criminal Procedure Code, 1973 (for short, 'the Code') and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/- (Rupees One thousand only), in default to undergo simple imprisonment for three months.

3. Before the learned Magistrate, prosecution examined P.Ws.1 to 4 and marked Exs.P1 to P10. No witnesses were examined and no documents were marked on defence side.

4. The learned trial Judge on over all appreciation of the evidence on record and relying on the decision of Bombay High Court in **Sarojakshan Shankaran Nayar and others v. State of Maharashtra** [1995 (4) Bombay 371] where the term 'cruelty' was explained, examined the fact-situation and evidence let in by the prosecution on the anvil of expression of the word 'cruelty' and convinced himself with the evidence on record that it would prove

cruelty on the part of the 1st respondent/accused No.1 and he is liable to be convicted, and, accordingly, convicted him under Section 248 (2) of Cr.P.C. for the offence punishable under Section 498-A of I.P.C. Of course, he opined that the prosecution failed to prove the said charge against A-2 to A-4 and thereby acquitted them under Section 248 (1) of Cr.P.C. Concerning the offences punishable under Sections 3 and 4 of Dowry Prohibition Act, referring to Ex.P8-List of Jahaz articles signed by the father of the 1st respondent herein and Exs.P-2 to P-7 held that the prosecution failed to prove the said offences and thereby acquitted all the accused i.e., A-1 to A-4, under Section 248 (1) of Cr.P.C.

5. Challenging the conviction recorded and sentence of imprisonment and fine imposed by the learned Magistrate, the 1st accused preferred Criminal Appeal No.52 of 2003 on the file of IV-Additional Sessions Judge, Warangal. The learned Sessions Judge has elaborately dealt with the evidence on record with a fresh outlook. The learned Sessions Judge would observe in paragraph-28 that neither Ex.P1-complaint nor evidence of P.W.1 would make out that the 1st respondent/1st accused made demand for a particular amount, and, only, one such instance is to be found in the evidence of P.W.1 when the 1st respondent/appellant apparently had represented to her that he would have got more than Rs.1,00,000/- as dowry had he married another woman. Again, the learned Additional Sessions Judge would observe that even that statement deposed by P.W.1 does

not find any corroboration from other witnesses. Thus, the evidence of P.W.2 was referred to in the context of her assertion that the 1st respondent made a demand for payment of Rs.35,000/- towards 'additional dowry'. But, once again, the learned Judge would refer that there is no other material on record or corroboration supporting it. According to him, certain omnibus allegations have been made in regard to the demand of additional dowry as spoken to by P.W.3 in not permitting P.W.1 to spend her money out of her salary. The learned Judge would observe that the evidence of P.W.1 is not trustworthy in the said context, and much credence cannot be given to the evidence of P.Ws.2 and 3.

6. On the aspect, whether the learned Magistrate was right in recording the findings, the learned Judge has observed that the learned Magistrate in paragraph-14 of his judgment mentioned that the evidence on record goes to show that it is a mere case of harassment of P.W.1 for other reasons than for additional dowry. The learned Sessions Judge further observed that the learned Magistrate in paragraph-14 viewed that it was a case of harassment for other reasons, such as the character and chastity of P.W.1. Then, the learned Judge commented on the finding, mentioning the evidence, in making the observation in paragraph-17 by the learned Magistrate. Then, the learned Magistrate opining that the evidence of P.W.2 that the demand of Rs.35,000/- by the 1st respondent from the retrial benefits of P.W.2, to be given to him does not amount to causing

harassment within the fold of Section 498-A of IPC. Therefore, he records that the findings recorded by the learned Magistrate in paragraph-17 of his judgment is inconsistent with the observations. Thus, he took a view that when the evidence of P.W.2 also scored out nothing remained on record to hold that the prosecution could prove the alleged harassment by the 1st respondent.

7. Concerning Sections 3 and 4 of Dowry Prohibition Act, 1961, the learned Sessions Judge referring to what Section 4 of the D.P. Act contemplates, observes that when the learned Magistrate had chosen to exonerate the appellant/1st respondent of the said charge the appellant/1st respondent could not have been found guilty in respect of the charge under Section 498-A of IPC. Thus, the findings recorded by the learned Magistrate on the premise that P.W.1 was harassed for not bringing the additional dowry of Rs.35,000/- out of retrial benefits of her mother would not constitute a ground for harassment, and, in fact, the said charge sets out against the appellant was not to that effect specifically. These are the main findings recorded by the lower Appellate Court.

8. Then, the lower Appellate Court would refer to the evidence of P.W.2 in the context of two instances. First instance was dealt with by him in paragraph-36, and second, in paragraph-37. So far as second instance is concerned, in paragraph-37, he would refer to the evidence of P.Ws.1 and 2 in regard to particular instance that the 1st respondent/appellant had quarrelled with P.W.1 and beat her black

and blue at the house of P.W.2 and she was saved by P.W.2 and the sister of P.W.1, whereas P.W.1's evidence is to the effect that the 1st respondent had also quarrelled with her mother and sister on that occasion and finds that there was inconsistency in the statements of P.Ws.1 and 2 which would account for inconsistency in the testimony of prosecution to prove the offence under Section 498-A of IPC. Thus, quoting two instances, the learned Sessions Judge would opine that P.W.1 was prone to give false evidence, attributing cruelty to her husband. These have been the main findings recorded by the learned IV-Additional Sessions Judge, Warangal.

9. Turning to the present Criminal Revision Case, in the Grounds of Appeal, she would point out that the appellate Court went wrong by misconstruing her evidence as P.W.1 and the evidence of other witnesses would completely corroborate her evidence, besides the complaint averments in Ex.P1, as to the 1st respondent subjecting her to harassment to bring money from her mother's residence. That has been the main ground agitated. She would submit that the evidence of P.W.3, who is an elderly person, ought not to have been excluded by the learned Magistrate.

10. The present Criminal Revision Case is filed in the year 2005 and admitted on 27.6.2005. Later, when on 17.8.2017 it was listed, a request was made for adjournment, and, accordingly, adjourned to 8.11.2017. Again, at the request of the learned counsel for the petitioner, it was adjourned to 16.11.2017. Today, there is no representation though, the present Criminal Revision Case was listed

in the advance list and re-notifying it in the today's present list. Even then, there was no representation for the petitioner.

11. The question is, whether there has been any error crept in the findings recorded by the learned Appellate Court?

12. The grounds agitated in the grounds of Revision are not specific. When revision case is filed against the acquittal order, the revision petitioner is duty-bound to project where the appellate Court went wrong and recorded the perverse finding deviating from the finding recorded by the trial Court. But, the grounds are very vague, which are mentioned in paragraph Nos.3 and 4 by the revision petitioner. In fact, from a thorough scanning of the judgment of the learned Appellate Judge, as referred to in the above, certainly, it cannot be said that the findings recorded by him are tainted with any legal infirmity accounting for patent illegality, warranting interference.

13. Therefore, there is no merit in the present Criminal Revision Case as the findings recorded by the lower Appellate Court are based on proper appreciation of evidence on record.

14. Accordingly, the Criminal Revision Case fails, and, the same is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Revision Case, shall stand closed.

A. SHANKAR NARAYANA

Dt.16.11.2017
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