

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.2243 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order of acquittal of the respondents 1 to 5 in C.C.No.125 of 2001, dated 27.09.2001 wherein the respondents 1 to 5 were acquitted for the offence punishable under Section 498-A IPC and Section 4 of D.P. Act which is the subject matter of Crime No.21 of 2001.

2. The respondents 1 to 5 herein are the accused being the husband and relatives of the de facto complainant, the petitioner herein was allegedly subjected to cruelty both physically and mentally demanding additional of Rs.50,000/- in addition to Rs.35,000/- already received by the respondents. The petitioner lodged a complaint with the police, in turn the police registered a case in Crime No.21 of 2001 for the offence punishable under Section 498-A IPC and Section 4 of D.P. Act and after completion of investigation, filed charge sheet before the Judicial Magistrate of First Class, at Gajwel who in turn took the cognisance of the offence against the respondents herein punishable under Section 498-A IPC and Section 4 of D.P. Act. After securing the presence of the accused, he framed charges for the offences under Section 498-A IPC and Section 4 of D.P. Act, read over and explained the gist of charges to the accused/respondents herein who pleaded not guilty and claimed to be tried. During trial, PWs.1 to 6 were examined and marked Exs:P-1 to P-9. On behalf of the respondents herein, DWs.1 and 2 were examined but no documents were marked.

3. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating circumstances that

appeared in the evidence of prosecution witnesses, they denied the same and reported no defence.

4. Upon hearing arguments of both counsel, the trial court found the accused/respondents not guilty and acquitted them for the offence punishable under Section 498-A IPC and Section 4 of D.P. Act.

5. Aggrieved by the acquittal of the respondents under impugned calendar and judgment, dt.27.09.2005 in C.C.No.125 of 2001, the present revision is filed under Section 397 and 401 Cr.P.C. on various grounds mainly on the ground that the oral evidence on record was not appreciated and ignoring Exs:P-3 and P-4 documentary evidence was not considered by the trial Court in proper perspective and that apart PW-1 spoke about the demand of additional dowry of Rs.50,000/- and corroborated the evidence of other witnesses PWs.2 and 3, but the trial court did not take into consideration the evidence available on record and committed a serious error in acquitting the accused for the offences mentioned supra.

6. None appeared for the petitioner and respondents during hearing, despite serving notice on the respondents and therefore, this court cannot dismiss the revision for default and this court is competent to verify the record and pass appropriate orders.

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

8. [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.

9. 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.

10. 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.

11. 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.

12. 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. 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

¹ (1964) 1 Cr.L.J. 443 (SC)

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.

13. 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. LAXMAN³.

14. In cases of acquittal, this court cannot interfere with the acquittal based on fact findings recorded by the trial Court while exercising power under Section 401 Cr.P.C. though it is open to the 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 to 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 fragrant miscarriage of justice as held by the Apex Court in CHAGANTI KOTAIAH v. GOGINENI VENKATESHWARA⁴.

² 48, Cr.L.J 173, 174 (Pat)

³ (1986) 3 SCC 445

⁴ 1973 SC 1274

14. Ordinarily, High Court does not interfere against an order of acquittal passed by lower court as held by Apex Court in CHINNASWAMY v. STATE OF A.P.⁵ observed as follows:

“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.”

15. The High Court ought not to exercise its powers under Section 401Cr.P.C. to interfere with an acquittal by adopting an indirect method of order of trial. The High Court has jurisdiction to interfere with an order of acquittal in revision and direct retrial of the accused on graver offence.

⁵ 1962 SC 1788

The High Court can set aside the acquittal in revision either suo motu or on being moved by any other person.

16. The High Court will not exercise jurisdiction under Section 401 Cr.P.C if there has been no failure of justice even though the proceedings of the lower Court suffers from irregularity or impropriety. When the Court finds that an order of conviction has been based on no legal evidence or the findings are illegal, unreasonable or perverse, the revisional court can correct the wrong or injustice done to the accused by setting aside an order of conviction. But this power is hedged by Sub Section 3 of Section 401, which clearly says that the Section shall not deemed to authorize the high Court to convert a finding of acquittal into one of conviction. Thus, absolutely no power is conferred on this Court to convert an acquittal into conviction, in view of the bar under Clause 3 of Section 401 Cr.P.C. 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 by 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 the Apex Court in *S.P.S. Jayam and company V. Nehrusadan*⁶.

17. Here, the fact findings have been recorded, but what are the rarest circumstances to exercise power is not contemplated anywhere. If the Court finds that the finding of the trial Court is manifestly perverse or patently erroneous, the Court can interfere with a fact finding recorded by the trial Court. But here, no such perversity or manifest perversity or patent error is brought to the notice of this Court in appreciation of evidence. That apart, the trial Court considered the evidence and acquitted the accused for the offences for which they were charged.

⁶ 1977 SC 1621

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*⁷

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*⁸.

20. Therefore, in view of the limited powers conferred on 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 Court 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 supra.

21. In the present case on hand, the trial court based on the evidence available on record on proper appreciation, found the accused not guilty. The trial court pointed out certain inconsistencies in the evidence with regard to payment and demand of dowry and demand of additional dowry and improvement in the evidence of prosecution case and disbelieved the testimony of PWs.1 to 3 and the evidence of PWs.1 to 3 who are related to one another is exaggerated version of the prosecution and improving suddenly during evidence made trial court to discredit the testimony of PWs.1 to 3. Therefore, such fact finding cannot

⁷ 1951 SC 316

⁸ 1962 SC 1788.

be interfered by this Court while exercising power under Section 401 Cr.P.C. Therefore, keeping in mind the limited jurisdiction of this court under Section 397 and 401 Cr.P.C., I am not inclined to order for retrial of the case in view of specific bar under Section 397 and 401 Cr.P.C.

22. On perusal of entire material available on record I find no illegality or impropriety in the order passed by the trial court warranting interference by this court. Therefore, the revision is devoid of merits and liable to be dismissed.

23. In the result, the criminal revision is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this revision case shall stand closed.

DATE: 16-08-2017
ccm

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRLRC. NO.2243 OF 2005

Date:16.08.2017

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