

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2504 of 2017

ORDER:

This Revision, under Sections 397 and 401 Cr.P.C. is filed questioning the propriety and legality of the Judgment Dt.09.08.2017 in C.A.No.436 of 2014 passed by the Judge, Family Court-cum-XII Additional District and Sessions Judge, Guntur, confirming the acquittal of the accused for the offence punishable under Section 323 r/w 34 IPC by the trial Court.

The petitioner herein is the *de facto* complainant and Pw.1 before II Additional Junior Civil Judge, Sathenapalli, who lodged a complaint against respondents herein/A.1 to A.3 with Amaravathi Police, which was registered as a case in Cr.No.183 of 2014 for the offences punishable under Sections 498-A and 323 IPC.

The case of the prosecution in brief is that the marriage of the petitioner herein was performed with A.1 on 01.03.2012 in the temple of Lord Lakshmi Narasimha Swamy of Yadagirigutta and by that time, A.1 was working as Police Constable in Nagarjuna Sagar Police Station. After three months, as A.1 was transferred to Atchampet Police Station, he shifted the family to Atchampet and they lived happily for six months at Atchampet. Thereafter, the petitioner herein came to know that A.1 is having illicit relationship with another woman even prior to their marriage and thus, A.1 subjected the petitioner to untold harassment with a view to send her to her parents house. In the meanwhile, the *de facto* complainant intimated the same to her parents, who are residing at Hyderabad, who inturn came to Atchampet and discussed with A.1 about his illicit relationship, for which, A.1 did not allow Pw.1 to stay with him. Thereupon, Pw.1

joined with her parents and left to Hyderabad. After one year, the elders pacified the dispute between the petitioner and A.1 and they arrived to compromise to lead happy marital life in the house of A.2. Thereafter, the petitioner rejoined with her husband. However, within one month, A.1 to A.3 started ill-treating Pw.1 to leave the house, so that A.1 can bring the lady, with whom he has physical relationship. Again the matter was referred to elders, but finally PW.1 lodged a complaint with Police on 17.08.2014 as she was subjected to cruelty by all the respondents. After completion of investigation, the Police filed charge sheet against the respondents herein for the offences punishable under Sections 498-A and 323 r/w 34 IPC before the concerned Magistrate, who took the case on file.

After securing the presence of the accused and serving copies of documents under Section 207 Cr.P.C., the accused were examined under Section 251 Cr.P.C. explaining the gist of accusation levelled against them in Telugu, for the offence punishable under Section 323 r/w 34 IPC, they pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, Pws. 1 to 8 were examined and Exs. P.1 to P.8 were marked. 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 prosecution witnesses, they denied the same and reported no defence.

Upon hearing both the counsel, the trial Court found all the accused not guilty and acquitted for the offence under Section 323 r/w 34 IPC by exercising power under Section 255(1) Cr.P.C.

Aggrieved by the Acquittal of all the accused/R.1 to R.3, the petitioner herein preferred an appeal in Criminal Appeal No.144 of 2016, which ended in dismissal by Calendar and Judgment dt. 09.08.2017, confirming the acquittal of the accused passed in C.C.No.436 of 2014, recording its specific reasons.

Aggrieved by the confirmation of Acquittal in the Appeal by the Judge, Family Court-cum-XII Additional District and Sessions Judge, Guntur, the present Revision is filed raising several contentions, mainly on the ground that the Courts below did not appreciate the evidence and ignored the testimony of Pws.1 to 4, whose testimony is credible and finding the accused not guilty for the offence punishable under Sections 323 r/w 34 IPC is erroneous on the face of the record.

It is also contended that no charge was framed for the offence punishable under Section 498-A IPC though sufficient material is available on record, which is a serious illegality in the judgment of Courts below and requested this Court to set aside the acquittal of the accused for the offence under Section 323 r/w 34 IPC and convict them for the said offences.

Heard learned counsel for the petitioner and the learned Public Prosecutor for the State of Andhra Pradesh.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is limited. 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 the other 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.

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

¹ (1964) 1 Cr.L.J.443 (SC)

² 48, Cr.L.J.173,174(pat)

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*³.

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.

When both the Courts recorded a concurrent fact finding, this Court cannot interfere, except, where the findings are manifestly perverse or apparently erroneous on the face of the record.

It is the case of the petitioner herein that the accused caused hurt her, voluntarily. But, as seen from the findings of the trial Court, affirmed by the Appellate Court, that the Doctor, who treated Pw.1 found an injury on the left side of the face of Pw.1. But as per the evidence of Pw.1, she sustained injury on her right side of her face as A.1 allegedly slapped her. The medical evidence is against the ocular testimony. Therefore, the evidence of Pw.1 cannot be believed since the Doctor did not find any injury on the right side of her face and the Doctor even failed to mention the age, colour and size of the injuries of Pws. 1 to 3 in Exs. P.6 to P.8-Would Certificates. Thus, a doubt arise about sustaining of injury by Pw.1 If really, the Doctor found any injury either on the left or right side of the cheeks of petitioner, he would have mentioned the age, size and cause of injury, in the wound certificate. Therefore, the trial Court rightly disbelieved the evidence of Pw.1 about causing injuries on the body of Pws. 1 to 3, in view of the material inconsistencies between ocular testimony and medical

³ 1977 SC 1621

⁴ (1986) 3 SCC 445

evidence. The Appellate Court also confirmed the same assigning its specific reasons that there was nothing on record to establish that the accused caused hurt voluntarily on the body of Pws. 1 to 3 while confirming the findings recorded by the trial Court.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is limited and Clause 1 and 2 of Section 401 Cr.P.C. do not authorise the revisional Court to convert acquittal into conviction while exercising power under Sections 397 and 401 Cr.P.C. Therefore, this Court cannot record conviction of the accused while deciding a revision under Sections 397 and 401 Cr.P.C. and at best, the Court can order re-trial if the Court finds exceptional circumstances. Therefore, I find no ground to interfere with the acquittal of the accused/respondents for the offence under Section 323 r/w 34 IPC.

The other ground raised before this Court is that no charge was framed for the offence under Section 498-A IPC during trial. At this stage, such question cannot be raised in view of the limited jurisdiction of this Court under Sections 397 and 401 Cr.P.C. since the jurisdiction of this Court is mostly limited to question of law, but not question of fact.

In view of my foregoing discussion, I find no illegality and irregularity in the findings recorded by the trial Court, affirmed by the Appellate Court, warranting interference of this Court while exercising power under Sections 397 and 401 Cr.P.C. and therefore, the Criminal Revision is liable to be dismissed.

Accordingly, this Criminal Revision Case is dismissed at the stage of admission.

Consequently, miscellaneous applications pending, if any,
shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:11.10.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.2504 of 2017

Dt. 11-10-2017

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