

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 CRIMINAL REVISION APPLICATION NO. 80 OF 2005

Manisha Rajesh Kedare
Age 25 years, Occ. Household
R/o. Shivaji Nagar, Jalgaon

...Applicant
(Ori. Complainant)

versus

1. Rajesh Pandit Kedare
Age 39 years, Occ. Services
2. Pandit Kisan Kedare
Age 60 years, Occ. Services
3. Sumanbai Pandit Kedare
Age 59 years, Occ. Services
4. Pramod Pandit Kedare
Age 32 years, Occ. Services
5. Pragati Vivek Bhalerao
Age 31 years, Occ. Household

All R/o. Nemade Colony,
Khadaka Road, Bhusawal
Tq. Bhusawal, District Jalgaon

(Ori. Accused)

6. The State of Maharashtra
Copy to be served on P.P.
High Court of Judicature at
Bombay, Bench at Aurangabad

...Respondents

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Advocate for Applicant : Mr. Pramod P Dhorde
Advocate for Respondents 1 to 5 : Mr. S.N. Boiwar h/f Mr. M.K. Deshpande
APP for Respondents: Mr. B.V. Virdhe

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CORAM : V. K. JADHAV, J.
DATED : 19th OCTOBER, 2018

ORAL JUDGMENT:-

1. This criminal revision is preferred against the judgment and order of acquittal dated 23.9.2004 passed by the learned Joint Judicial Magistrate, First Class, Bhusawal in R.C.C. No. 318 of 2001 for the offence punishable under Section 498-A r.w. 34 of I.P.C.

2. Brief facts giving rise to the present criminal revision application are as follows:-

The applicant is legally wedded wife of respondent-accused No.1. After the marriage, she was treated well till the birth of a female baby. The said female baby died in the month of February, 2001. Thereafter, the applicant was subjected to ill-treatment and harassment on account of giving birth to female baby and on account of death of said female baby subsequently. The applicant was finally driven out from the house and she had been to the house of her grandfather Mr. Wagh where from she telephonically informed her parents and accordingly lodged the complaint. On the basis of her complaint, crime came to be registered in the concerned police station and after due investigation, the investigating officer submitted the charge sheet against the respondent-accused persons. The charge was framed by the trial court. The prosecution has examined two witnesses and after recording statements of the accused persons

under Section 313 of Cr.P.C. the learned J.M.F.C. has acquitted the respondents-accused persons for the offences punishable under section 498-A r.w. 34 of I.P.C. Hence, this criminal revision application.

3. Learned counsel for the applicant submits that the trial court has not considered the evidence of P.W.1/present applicant. The applicant has deposed before the court that she was subjected to cruelty on account of giving birth to female baby and also thereafter when the said female baby died due to illness. Even the applicant was driven out from the house. Learned counsel submits that though the ingredients of Section 498-A of I.P.C. are proved and evidence of P.W. 1 is also corroborated by P.W.2, who is father, the trial court has not considered the same and acquitted the accused.

4. The learned A.P.P. submits that the prosecution has proved the case against the accused person beyond reasonable doubt even the trial court has acquitted the accused.

5. Learned counsel Mr. Boiwar h/f Mr. M.K. Deshpande, requests for adjournment. However, the request is refused, as the matter is of the year 2005.

6. The interference in the order of acquittal passed by the trial court, is limited only to the following exceptional cases:-

- i) order under revision suffers from glaring illegalities,
- ii) or has caused miscarriage of justice,
- iii) or when it is found that the trial court has no jurisdiction to try the case,
- iv) or where the trial court has illegally shut the evidence which otherwise ought to have been considered,
- v) or Where the material evidence which clinches the issue has been overlooked and
- vi) where the admissible evidence is wrongly brushed aside as inadmissible.

7. In the case of ***Vimal Singh vs. Khuman Singh and another***, reported in ***AIR 1998 SC 3380***, in para 7 of the judgment while coming to the ambit of power of the High Court under Section 401 of Cr.P.C., the Supreme Court has made the following observations:-

“7. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers

from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant under Section 304, Part - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal."

8. In the instant case, the applicant has deposed about ill-treatment being extended to her on account of giving birth of female child and also on the count that the female baby died subsequently. However, in terms of clause (a) of explanation to Section 498-A of I.P.C. the said willful conduct must be of such a nature as is likely to

drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. In the instant case, there is no evidence as to the manner in which the applicant was subjected to ill-treatment. Furthermore, P.W.2 has also exaggerated the things. Even though P.W.1/present applicant has not deposed about any incident of sustaining burns, P.W.2 father has deposed that the respondent-accused had tried to set the applicant on fire and in consequence thereof, the applicant has sustained burn injuries. There are material omissions and contradictions. The learned Judge of the trial court has thus rightly given benefit of doubt to the respondents-accused persons. I find no fault in the judgment and order of acquittal passed by the trial court. There is no substance in the criminal revision application. Hence, I proceed to pass the following order:-

O R D E R

- I) Criminal revision application is hereby rejected. Rule discharged.
- II) Criminal revision application is disposed of.

(V. K. JADHAV, J.)

rlj/