

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 192 OF 2005

Mrs. Hemlata Ramchandra Kulthe,
age 31 yrs, Occ. Household, r/o 67,
Baliram Peth, Near R.S.S. Office,
Jalgaon Road, At post Tq. Dist Jalgaon.

...Petitioner...
(orig. complainant.)

VERSUS

1. Ramchandra Waman Kulthe,
age 37 yrs, R/o Shivaji Nagar,
Toar Fail, At post Lal Baugh (Burhanpur)
Tq. & Dist Burhanpur, Madhya Pradesh.

2. The State of Maharashtra,

...Respondents...
(Orig accused.)

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Advocate for Applicants : Mr P P Dhorde
Advocate for Respondent 1 : Mr M M Bhokarikar
APP for Respondent 2 : Mr V M Kagne.

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CORAM : V.K. JADHAV, J.

Dated: October 26, 2018

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JUDGMENT :-

1. By way of this criminal revision application, the applicant/original informant has challenged the order of acquittal passed by the Jt. Judicial Magistrate First Class,

Jalgaon in RCC No.189/2004 for the offence punishable under section 498-A of the Indian Penal Code.

2. Learned counsel for the applicant submits that, the complainant is the legally wedded wife of the respondent/accused and their marriage was solemnized in the year 2002. The applicant was treated well for about 3 to 4 months after the marriage, however, there after subjected to ill-treatment on account of demand of Rs.50,000/- for purchase of rickshaw. Respondent/accused used to beat her under the influence of alcohol on account of non-fulfillment of the said demand. On 17.1.2014 the respondent/accused had consumed alcohol, extended beating to her. Due to said beating the applicant had suffered bleeding injury to her ear. Evidence of the complainant is reliable, trust worthy and consistent. She has examined in all three witnesses including her brother Ambadas, who has corroborated her version. Learned counsel submits that, the learned Judge of the trial court has not considered the same and

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erroneously acquitted the respondent/accused.

3. Learned counsel for the applicant in order to substantiate his contentions placed reliance on following judgments :-

I. Vimal Singh Vs. Khuman Singh reported in 1998 AIR (SC) 3380.

II. Sheetala Prasad and others Vs. Sri Kant and another reported in 2010 AIR (SC) 1140.

4. Learned counsel for respondent no.1/accused submits that, defence of the respondent no.1/accused was that there was no facility of electricity in his house and the complainant was insisting him to reside at Jalgaon and on refusal, she used to threat him to commit suicide and ultimately she left his house. Respondent has been falsely implicated in the case. Learned counsel submits that, the learned Judge of the trial court has considered the cross examination and observed that, the mother of the complainant got job on compassionate ground in the Animal Husbandry Department and she has no landed

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property or plot. The learned Judge, has, therefore, observed that, there is no likely hood of making a demand of Rs.50,000/- from the mother of the complainant knowing fully well her financial position for purchase of the auto rickshaw. So far as the incident dated 17.1.2004 is concerned, there is no medical evidence placed on record to substantiate the said allegations wherein the informant allegedly sustained injury on her ear. Learned counsel submits that, there is no evidence to the effect that the informant was subjected to harassment continuously with a view to coercing/forcing her to meet unlawful demand of the property or cash amount.

5. Learned counsel further submits that there is considerable delay in lodging the complaint for which no explanation has been tendered. Learned counsel submits that, so far as revision against the acquittal is concerned, when the trial court has considered the entire evidence, no interference is required with the order of acquittal in revision.

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6. Learned counsel for respondent no.1/accused in order to substantiate his contentions placed reliance on following judgments :-

- i. **Venkatesan Vs. Rani and another reported in 2013 ALL SCR 3071.**
- ii. **Suryakant Dadasaheb Bitale Vs. Dilip Bajrang Kale and another reported in AIR 2014 SC (Supp) 1346.**

7. It is well settled that interference with 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. *where the trial court has illegally shut the evidence which otherwise ought to have been considered.*
- v. *where the material evidence which clinches the issue has been overlooked.*
- vi. *where the admissible evidence is wrongly brushed aside as inadmissible.*

8. In the case of **Vimal Singh vs. Khuman Singh**, reported in **1998 (7) SCC 223** the Supreme Court, while discussing the power of High Court in the matter of interference with the order of acquittal, by referring the decision of the Supreme Court in the case of **K. Chinnaswamy Reddy vs. State of Andhra Pradesh**, reported in **AIR 1962 SC 1788**, in para nos. 8 and 9 of the judgment, has made the following observations:-

“8. The legal position as to the powers of the High Court in revision in the matter of interference with the order of acquittal is no longer res integra, as the law in this regard is very well settled. Suffice it to refer to in this regard a decision of this Court in K. Chinnaswamy Reddy vs. State of Andhra Pradesh (AIR) 1962 SC 1788) wherein it was held, thus :

“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 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 Section 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 the a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.....

Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised - after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also".

9. *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 judgment 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."

9. In the case of **Sheetala Prasad and others vs. Sri Kant and Anr.** reported in **AIR 2010 SC 1140**, the Supreme Court in para 9 has made the following

observations: -

“9. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered.”

10. In a case *Suryakant Dadasaheb Bitale Vs. Dilip Bajrang Kale* (supra) relied upon by the learned counsel for respondent no.1/accused wherein the Supreme Court in

paragraph no.20 of the Judgment has made observations that the High Court was not justified in interfering with the order of acquittal in revision.

11. In the instant case, though there are allegations about the demand, there is no evidence that the complainant was subjected to ill treatment or coercion for non-fulfillment of the said demand. The complainant has only quoted one incident dated 17.1.2004 wherein she had suffered bleeding injury to her ear. There is no medical evidence to that effect. Her brother PW 2 Ambadas has also heard information about the said incident. Thus, considering the entire aspect of the case, the learned Judge of the trial court has rightly acquitted the accused. No interference is required. I do not find any glaring illegality in the order of acquittal passed by the Court. The trial court has considered the entire evidence and I do not think that the learned judge of the trial court has brushed aside the admissible evidence as inadmissible. Thus, considering the ratio laid down by the Supreme Court, I

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pass following order.

ORDER

1. Criminal Revision Application is hereby dismissed.
Rule discharged.
2. Criminal Revision Application is accordingly
disposed off.

(V.K. JADHAV, J.)

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