

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.1570 of 2006

ORDER:

This Criminal Revision Case by the petitioner-accused under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 15.09.2006 in Criminal Appeal No.102 of 2004 on the file of the IV Additional Sessions Judge (II F.T.C.), Nalgonda (hereinafter referred to as 'the appellate Court'), whereby the learned Sessions Judge dismissed the appeal confirming the conviction and sentence recorded against the petitioner-accused in the Judgment dated 26.07.2004 in C.C. No.209 of 2002 on the file of the Special Judicial Magistrate of First Class (for Prohibition & Excise Offences), Nalgonda. (hereinafter referred to as 'the trial Court').

2. Case of the prosecution, in brief, is as follows:

Marriage of P.W.1 was performed with one Gundu Uppalaiah of Nemmikal village about 5 years prior to lodging the report, and they were blessed with a daughter. The petitioner-accused developed illicit intimacy with P.W.1 for two years prior to lodging the report induced her to perform marriage and cohabitated with her. On that, she took divorce from her husband. The accused took her to Adloor village of Mellacheruvu Mandal in search of a job, and with the help of P.W.4, he got a job in Raghuram Super Foods Mills at Bojjaguda Thanda of Kodad Mandal. Both P.W.1 and the petitioner-accused stayed at Kodad. P.W.4 provided shelter to them. P.W.1 begot a male child in cohabitation with the petitioner-accused. On 10.03.2002, the petitioner-accused left P.W.1 at Raghuram Mill without any information and returned to his village Chandanpally.

On coming to know about it, P.Ws.4, 5 and others sent P.W.1 to the said village through P.W.5 on 03.04.2002. The petitioner-accused refused to marry her. On a report lodged by P.W.1, police registered the case and on completion of investigation, laid charge sheet for the offences punishable under Sections 493 and 497 IPC.

3. The trial Court took cognizance of the case as C.C. No.209 of 2002 and framed charges for the offences punishable under Sections 493 and 497 IPC against the petitioner-accused. When the charges were read over and explained to him in Telugu, he pleaded not guilty and claimed to be tried.

4. To substantiate the case of prosecution, P.Ws.1 to 6 were examined and Exs.P1 to P5 were got marked

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating material found against him in the evidence of prosecution witnesses. He denied the same. No oral evidence or documentary evidence was adduced on behalf of the defence.

6. The trial Court after considering the evidence on record, found the accused not guilty of the offence punishable under Section 497 IPC and accordingly acquitted him of the said offence. However, the trial Court, found him guilty of the offence punishable under Section 493 IPC, accordingly convicted him of the said offence and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.100/- in default to suffer simple imprisonment for a further period of 15 days. Challenging the said conviction and sentence, the accused

preferred the appeal. The appellate Court, vide the impugned judgment, dismissed the appeal confirming the conviction and sentence recorded by the trial Court. Challenging the same, the present revision came to be filed by the accused.

7. Heard the learned counsel for the petitioner-accused, learned Assistant Public Prosecutor for respondent-State and perused the record.

8. Learned counsel for the petitioner-accused would contend that the ingredients constituting the offence punishable under Section 493 IPC are not made out; that the Courts below erred in appreciating the evidence on record and convicted the petitioner-accused of the offence punishable under Section 493 IPC; that the findings arrived at, by the Courts below are perverse, and ultimately prayed to set aside the conviction and sentence recorded against the petitioner-accused by the trial Court as confirmed by the appellate Court.

9. Per contra, the learned Assistant Public Prosecutor would submit that there is ample evidence to prove the guilt of the petitioner-accused for the offence punishable under Section 493 IPC; that both the Courts below considered the entire evidence on record in right perspective and rightly found the petitioner-accused guilty; that there is no infirmity in the concurrent findings arrived at, by both the Courts below, and there are no grounds to interfere with the same, and ultimately, prayed to dismiss the revision.

10. Now the point that arises for consideration is whether the Courts below properly appreciated the evidence on

record, and whether the conviction and sentence recorded by the trial Court as confirmed by the appellate Court are sustainable ?

11. Revisional jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the two Courts below. To know whether the findings are based on proper appreciation of the evidence on record, it is necessary to look into the evidence on record.

12. Section 493 IPC deals with 'Cohabitation caused by a man deceitfully inducing a belief of lawful marriage'. Under this Section, every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or having sexual intercourse with him in that belief, is punishable. The essential ingredients are (a) deceit causing a false belief in the existence of a lawful marriage; and (b) cohabitation or sexual intercourse with the person causing such belief.

13. P.W.1 is the victim in this case. She deposed that she was given in marriage to one Uppalaiah of Nemmikall village and they were blessed with a daughter; that she lived with him for 6 years and thereafter due to some differences arose between them, she took divorce from him. It is her further evidence that when she was staying with her parents at Chandanpally village, the petitioner-accused developed illegal intimacy with her making a promise that he would marry her, took her to Kodada where they worked

at Raghuram Rice Mill for 10 months and the petitioner-accused also tied a pusthe to her at Mysamma Temple situated in the premises of the said rice mill, and that they lived as wife and husband at Kodada and were blessed with a male child. It is her further evidence that after birth of the child, parents and brother of petitioner-accused came to Kodada to take back the petitioner-accused from her. The petitioner-accused did not go with them, but 10 days thereafter, he left for fetching provisions and did not return. As the parents of petitioner-accused did not allow her into their house, she lodged the report to police.

14. P.W.1 is the material witness in this case. She deposed about the circumstances that led to lodging the present report against the petitioner-accused. In her evidence, there is no mention of any deceitful means to make her to believe that she was lawfully married to the petitioner-accused. It is her evidence that the petitioner-accused also tied pusthe and they begot a male child. P.W.1-victim was already a divorcee at the time of the incident. Having sex with a woman without there being a proper marriage, does not constitute the offence punishable under Section 493 IPC. There is no mention even in the evidence that the petitioner-accused by deceitful means caused P.W.1 to believe that she is lawfully wedded wife and under that guise, he subjected her to sexual intercourse. The evidence on record does not satisfy the requirements of the offence punishable under Section 493 IPC. Both the Courts below misread the evidence and have not appreciated the evidence on record in right perspective. The findings arrived at, by both the Courts below are perverse. If the impugned judgment is allowed to stand, it results in miscarriage of justice to the petitioner-accused.

Therefore, the petitioner-accused is entitled to benefit of doubt.

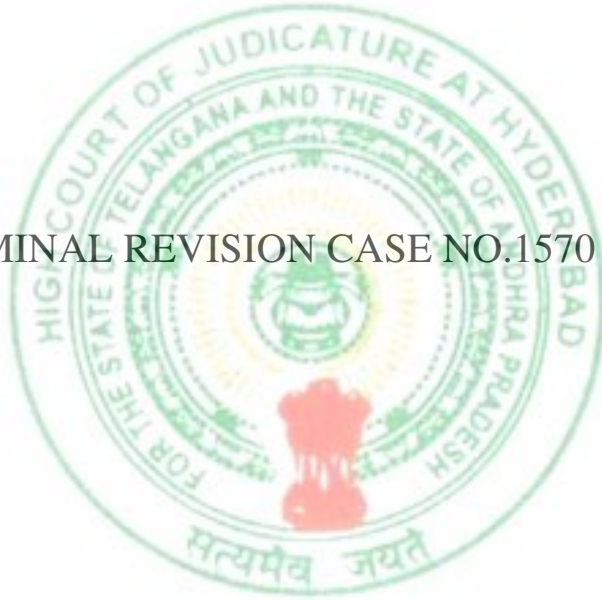
15. In the result, the Criminal Revision Case is allowed. The conviction and sentence recorded against the petitioner-accused in the Judgment dated 26.07.2004 in C.C. No.209 of 2002 on the file of the Special Judicial Magistrate of First Class (for Prohibition & Excise Offences), Nalgonda as confirmed in the judgment dated 15.09.2006 in Criminal Appeal No.102 of 2004 on the file of the IV Additional Sessions Judge (II F.T.C.), Nalgonda are set aside. The petitioner-accused is found not guilty of the offence punishable under Section 493 IPC, accordingly, he is acquitted of the said offence. The bail bonds of the petitioner-accused shall stand cancelled. Fine amount, if any, paid by the petitioner-accused shall be returned to him.

(Dr. Shameem Akther, J)

12.04.2018
DRK

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