

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE Nos.1506 AND 1519 OF 2018

COMMON ORDER:

Criminal Revision Case No.1506 of 2018 arises out of the judgment in Criminal Appeal No.633 of 2016 and Criminal Revision Case No.1519 of 2018 arises out of the judgment in Criminal Appeal No.798 of 2015, passed by the Court of Special Judge for Economic Offences – cum-VIII Additional Metropolitan Sessions Judge, Hyderabad, for the offences punishable under Sections 498-A, 323 and 506 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961.

2. Aggrieved by the judgment dated 10.07.2015 in C.C.No.322 of 2009 passed by the XIII Additional Chief Metropolitan Magistrate, Hyderabad, acquitting the accused A1 to A4 for the offences under Sections 498-A, 323, 406 and 506 r/w 34 IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961, the defacto complainant and the State have filed two criminal appeals viz., Criminal Appeal Nos.633 of 2016 and 798 of 2015 respectively and the learned Sessions Judge, has remanded both the matters to the trial court for consideration in respect of Point No.2 as to whether the accused voluntarily caused hurt to Smt.Katta Keerthi and thereby committed the offence under Section 323 IPC as contended by the prosecution and on other grounds.

3. Aggrieved by the above mentioned impugned orders passed by the appellate court remanding the matters to the trial courts for fresh disposal in accordance with law on the points considered by the appellate court, the revision petitioner has preferred above two revisions, which are coming up for hearing now.

4. Heard the arguments of the learned counsel for petitioner and learned public prosecutor, representing the State. Notices have been served to the defacto complainant in CrI.R.C.No.1506 of 2018 and none appeared on his behalf.

5. (a) The case of the prosecution is that the defacto complainant/victim Smt.Katta Keerthi, who is the wife of A1, gave a report to police alleging that her marriage was performed with A1 on 19.04.2008 at Sarath Palace, Kothaguda Junction, Kondapur, Hyderabad and at the time of marriage, on the demand of accused, her parents gave four lakhs rupees worth gold ornaments, four lakhs rupees in cash towards Adapaduchu Katnam and two lakhs rupees for purchase of cloths and the demand of car towards dowry was pacified with the intervention of elders.

(b) After marriage, she joined with her husband/A1 at her matrimonial house at Vijayawada. The defacto complainant and accused A1 to A4 were living together in the same house. The allegation of the defacto complainant is that A1 to A4

harassed her physically and mentally for additional dowry and they used to pass sarcastic comments against her parents for not giving sufficient dowry and also on her complexion, as she was not fair.

(c) In the first week of May, 2008, the defacto complainant/P.W.1 and A1 visited her parents house, where A1 demanded her father to give rupees five lakhs, so that he would take P.W.1 to U.S.A. to lead conjugal life. Her father provided rupees five lakhs, but, later A1 left alone for U.S.A. on 25.05.2008 leaving P.W.1 at her parents house. Thereafter, she joined with her husband at U.S.A. After ten days of her joining with A1, on the instigation of A2 to A4, who are parents and sister of A1, A1 harassed her physically and mentally for want of additional dowry and he used to beat her.

(d) On 02.11.2008, A1 beat his wife with glass due to non-fulfilling of his demand of dowry of Rs.2.5 crores and she received a cut injury over her lip and her teeth was broken. P.W.1 contacted her sister, who is staying at U.S.A. and narrated the incident to her. Her sister and her husband rushed to the house of P.W.1 and took her to their house and gave treatment in the hospital and informed the same to the police. The New Jersey police investigated the matter and her husband was charged for the offence of aggravated assault and he was arrested on 03.11.2008. On that her parents

contacted his parents through relatives and friends by name Sri N.Venkata Rao and Sri Srinivasa Rao, Hyderabad and in their presence, accused demanded Rs.2.5 crores as dowry and threatened her that if they do not provide the demanded dowry amount, they would get her husband remarried. Due to the unbearable ill-treatment and harassment meted out to her by the accused, she lodged a complaint against them for taking necessary action.

(e) Basing on the complaint, the police registered a case in Crime No.235 of 2009 for the offences under Sections 498-A, 323, 506 r/w 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961 and investigated the matter and filed charge sheet against the accused A1 to A4, showing A1 is absconding. According to the prosecution, accused have committed offences under Sections 498-A, 323, 506 r/w 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961. The trial court took cognizance against the accused for the above said offences and on appearance of A1 to A4, after following procedure under Section 207 Cr.P.C., they were examined under Section 239 Cr.P.C. and charges under Sections 498-A, 323, 506 r/w 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961 were framed and read over and explained to them and on that day, they pleaded not guilty and claimed to be tried.

(f) The prosecution examined the defacto complainant as P.W.1 and got marked Exs.P1 to P9. The father of the defacto complainant was examined as P.W.2. The maternal aunt of P.W.1 was examined as P.W.3 and one independent witness was examined as P.W.4. The investigating officers were examined as P.Ws.5 and 6 and through P.W.6, the original FIR was marked as Ex.P10. On completion of examination of the witnesses, the accused were examined under Section 313 Cr.P.C., on the incriminating material available on record and the accused denied the allegations and reported no defence evidence on their behalf.

(g) The trial court framed the following points for determination:

1. *“Whether the victim was subjected to cruelty and harassment both mentally and physically for want of additional dowry by the accused U/sec 498-A IPC as contended by the prosecution?”*
2. *Whether the accused voluntarily caused hurt to Smt.Katta Keerthi and thereby committed the offence U/sec. 323 of IPC as contended by the prosecution?*
3. *Whether the accused committed the criminal intimidation against Smt.Katta Keerthi for the offence U/sec.506 of IPC as contended by the prosecution?*
4. *Whether the accused demanded for dowry from the victim or her family members U/sec.4 of D.P.Act as contended by the prosecution?*
5. *Whether the accused received and retained the articles and amount towards dowry from the family members of the victim U/sec.6 of the D.P.Act as contended by the prosecution?”*

(h) On consideration of the evidence, the trial court came to the conclusion that the accused A1 to A4 were not guilty of the offences under Sections 498-A, 323, 506 r/w 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961 and acquitted them of all the charges. Aggrieved by the impugned order of acquittal, the defacto complainant and the State have filed separate appeals and the appellate court, on consideration of the material, has remanded the matter to the trial court for fresh disposal in accordance with law.

6. Learned counsel for the petitioner submits that the order of remand made by the appellate court is not in accordance with law. The accused were acquitted by the trial court of all the charges. The entire material was before the appellate court, even then, the appellate court has remanded the matter to the trial court. The appellate court observed that the trial court has not answered point No.2 with regard to the allegations made against the accused for the offence under Section 323 IPC and therefore, directed the trial court to dispose of the matter by considering the evidence again. Learned counsel for petitioner further submits that the trial court has answered point No.2 clearly in Paragraph No.45 of its judgment, which reads as under:

“45. Pw-1 further stated in her evidence that on 2-11-2008 that A-1 tortured her mentally and physically for additional dowry of Rs.2.5 crores. He beat her in the bedroom and dragged and pulled her out of the bedroom into the living room. She was completely worn out and in attempt to give her water,

A-1 threw the water on her face from the glass mug and he also hit her with the same on her face. She had a cut lip swollen and broken tooth and she was bleeding. A-1 did not call the doctor he and left the house, after throwing her out of the house. Then she called her sister over phone and her brother-in-law came during early hours and took her to the emergency ward Jersey City Hospital for treatment. At that time the police were called and taken her statement and filed a complaint and investigated the case and accused was arrested by New Jersey police. The said incident was taken place at U.S.A. and a case was registered against A-1. At that time the police were called and taken her statement and filed a complaint and investigated the case and accused was arrested by New Jersey police. A-1 was charged with Domestic Violence fourth degree Aggravated Assault and later placed on pre-trial intervention for a period of 18 months till July, 2010. After this incident she stayed with her sister, as she was in state of shock and trauma. On 14-11-2008, her father visited to her sister's house and met A-1 and counselled him, but A-1 abused her father in filthy language and insisted for additional dowry of Rs.2.5 crores. Later she living with her sister, A-1 used to call and abused her over the phone. Ex.P-2 is the investigation report of Jersey. Ex.P-3 is investigation report of River-dale police. Ex.P-4 is a complaint before the Jersey City police. Ex.P-5 Pre-trial intervention. Ex.P-7 DVC complaint at New Jersey USA and temporary restraining order. Counsel for the accused argued that in New Jersey Court gave a final order under Ex.D-2 and came to conclusion that they did not find any motivation on behalf of the plaintiff (Pw-1 herein), in which, she would filed this application to gain perhaps and advantage in either remaining in the USA or obtaining support while she is here-shot of diverse action. And dismissed the contentions of the Pw-1 herein. The alleged offence taken place at USA and the Court at USA already decided and gave a finding.”

7. In support of his submissions and contentions, learned counsel for petitioner placed reliance on the judgment of the Hon’ble Apex Court in **Ajay Kumar Ghoshal Etc. v. State of**

Bihar and Another¹, wherein at paragraph Nos.8 and 13, the Hon'ble Apex Court observed as follows:

“8. In para (29) of its judgment, the High Court pointed out certain lapses; but has not stated as to how such alleged lapses has resulted in miscarriage of justice necessitating retrial. Certain lapses either in the investigation or in the ‘conduct of trial’ are not sufficient to direct retrial. The High Court being the First Appellate Court is duty bound to examine the evidence and arrive at an independent finding based on appraisal of such evidence and examine whether such lapses actually affect the prosecution case; or such lapses have actually resulted in failure of justice. The circumstances that should exist for warranting retrial must be such that whether the trial was undertaken by the court having no jurisdiction or trial was vitiated by serious illegality or irregularity on account of misconception of nature of proceedings or that irregularity has resulted in miscarriage of justice.

13. This Court, while dealing with the question whether the High Court should have quashed the trial proceedings only on account of declaration of the legal position made by the Supreme Court concerning the procedural aspect about the cases involving offences under the SC/ST Act, this Court stated, “a de novo trial should be the last resort and that too only when such a course becomes so desperately indispensable; it should be limited to the extreme exigency to avert ‘a failure of justice’. Observing that any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial”. In State of M.P. vs. Bhooraji and Ors. (2001) 7 SCC 679, the Court went on to say further as follows:

“8....This is because the appellate court has plenary powers for revaluating and reappraising the

¹ 2015 SCC Online Pat 7163

evidence and even to take additional evidence by the appellate court itself or to direct such additional evidence to be collected by the trial court. But to replay the whole laborious exercise after erasing the bulky records relating to the earlier proceedings, by bringing down all the persons to the court once again for repeating the whole depositions would be a sheer waste of time, energy and costs unless there is miscarriage of justice otherwise. Hence, the said course can be resorted to when it becomes unpreventable for the purpose of averting “a failure of justice”. The superior court which orders a de novo trial cannot afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all the trouble to reach the court and deposed their versions in the very same case. To them and the public the re-enactment of the whole labour might give the impression that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation.”

8. The learned public prosecutor fairly submitted that the trial court has considered point No.2 and answered it and therefore, there is no need to remand the matter back to the trial court on that point.

9. Admittedly, the case of the prosecution is that, the accused/A1 has harassed P.W.1 for additional dowry and beat her with a glass and defacto complaint has received injury on her lip and this incident has occurred in U.S.A.

A complaint was lodged before U.S.A. police and the trial was conducted and the U.S.A. court has given its verdict, which was marked as Ex.D2 before the trial court. The contention of the accused before the trial court was that the New Jersey Court gave a final order under Ex.D2 by coming to the conclusion that they did not find any motivation on behalf of plaintiff/P.W.1 herein, in which, she would file this application to gain perhaps and advantage in either remaining in the U.S.A. or obtaining support while she was there and dismissed the contentions of the P.W.1 herein. It is also obvious that the alleged offence of Section 323 IPC in this case took place at U.S.A. and the court at U.S.A. had already decided the said issue and gave a clear verdict in that regard. The appellate court, instead of appreciating the evidence produced by the accused under Ex.D2, has found fault with the trial court that it has placed reliance on the Foreign Court judgement, marked as Ex.D2 and came to the wrong conclusion and remanded the matter to the trial court for fresh disposal. The remand order passed by the appellate court, as far as this issue is concerned, is not in accordance with law. Admittedly, the incident took place in U.S.A. and a complaint was lodged before U.S.A. Court and the court had decided the issue and gave finding against the P.W.1 holding that they did not find any motivation on behalf of the plaintiff/P.W.1 and dismissed her contention. There is no wrong in placing reliance on the judgments of the foreign

courts as the alleged incident had occurred in a foreign country at U.S.A. Therefore, this is not a valid ground to remand the matter to the trial court for fresh disposal of the same in accordance with law.

10. As can be seen from the judgment of the trial court, it has discussed the evidence of all the witnesses at length and arrived at a conclusion that no offence is made out against the accused A1 to A4. There are no grounds to interfere with the judgment rendered by the trial court in acquitting the accused A1 to A4 for the offences under Sections 498-A, 323, 506 r/w 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961.

11. On the other hand, while considering the judgment of acquittal, the courts have to take into consideration the two presumptions in favour of the accused. The first presumption is that the innocence of the accused and the second presumption is that the judgment of acquittal in their favour. Unless there is a substantial evidence to set aside the judgment of the acquittal, the appellate court cannot lightly set aside the judgment of acquittal. In fact, the appellate court, in this case, has not gone into the merits of the case, but, simply remanded the matter to the trial court for consideration on point No.2 and conduct a fresh trial. The order of acquittal loses its significance by remand of the matter without giving any clear and cogent findings for

remanding of the matter for fresh trial. The point considered by the appellate court that the trial court has placed its findings on the judgment of the foreign court is not in accordance with law for the reasons stated above.

12. As per the principle enunciated by the Hon'ble Apex Court in ***Ajay Kumar Ghoshal Etc. v. State of Bihar & Another (supra 1)***, unless there is failure of justice, a *de novo trial* cannot be ordered and it should be limited to extreme exigency to avert 'a failure of justice'. In the instant case, there is no failure of justice and the trial court has properly appreciated the evidence on record and came to the right conclusion and therefore, the judgment of the trial does not require interference for conducting *de novo trial* in this matter.

13. Accordingly, these criminal revision cases are allowed and the orders of the appellate court in Criminal Appeal Nos.633 of 2016 and 798 of 2015 passed by the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Hyderabad, are set aside.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

17.12.2018
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