

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2019

PRONOUNCED ON : 06.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.961 of 2018

Dhanalakshmi

.. Petitioner

Vs

1.The Station House Officer,
Grand Bazar Police Station,
Puducherry,
Cr.No.95/2015

2.Dilbet Saravanacoumar

.. Respondent

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the judgment dated 11.06.2018 passed in Crl.A.No.27 of 2017 on the file of the Principal Sessions Judge, Puducherry confirming the order dated 11.08.2017 passed in C.C.No.13 of 2016 on the file of the Chief Judicial Magistrate, Puducherry.

For Petitioner : Mr.Prakash Adiapadam

For R1 : Mr.Bharatha Chakravarthy,
Public Prosecutor, Puducherry

For R2 : Mr.AR.M.Arunachalam

O R D E R

This Criminal Revision Petition has been preferred to set aside the judgment and order dated 11.06.2018 passed in Crl.A.No.27 of 2017 by the Principal Sessions Judge, Puducherry confirming the order dated 11.08.2017 passed in C.C.No.13 of 2016 by the Chief Judicial Magistrate, Puducherry.

2. For the sake of convenience, the parties will be referred to by their name.

3. It is the case of Dhanalakshmi that she got married to Dilbet Saravanacoumar and went to France with him, but returned to India on 01.05.2016, due to marital discord and was staying in her father-in-law's house. It is the further allegation that on 22.05.2015 around 04.30 p.m., she had an altercation with her husband, in which, he is said to have slapped her, assaulted her on her stomach with stick and dashed her head on the wall. She got herself admitted in the Government Hospital, Puducherry. On 25.05.2015, she gave a written complaint to the police, based on which, a case in Crime No.95 of 2015 was registered on 25.05.2015 under Sections 323, 324 and 506 (II) IPC against Dilbet Saravanacoumar. After completing the investigation, the police filed a final report before the Chief Judicial Magistrate, Puducherry, which was taken on file as C.C.No.13 of 2016 and charges for the offences under Sections 323, 324 and 506(II) IPC were framed against Dilbet Saravanacoumar.

3.1. To prove the case, the prosecution examined 6 witnesses, marked 9 exhibits and 1 material object. In the cross-examination of the prosecution witnesses, the defence marked 1 exhibit (Ex.D1). After considering the evidence on record, the trial Court by judgment and order dated 11.08.2016 in C.C.No.13 of 2016, acquitted Dilbet Saravanacoumar of the charges. Challenging the acquittal, Dhanalakshmi preferred an appeal in C.A.No.27 of 2017 under the Proviso to Section 372 Cr.P.C., which has been dismissed by the Principal Sessions Court, Puducherry on 11.06.2018. Challenging the judgments and orders of acquittal passed by the two Courts below, Dhanalakshmi has filed the present revision petition under Section 397 r/w 401 Cr.P.C.

4. Heard Mr.Prakash Adiapadam, learned counsel for Dhanalakshmi and Mr.AR.M.Arunachalam, learned counsel for Dilbet Saravanacoumar.

5. Learned counsel for Dhanalakshmi submitted that both the Courts have failed to appreciate the evidence of Dhanalakshmi in the proper perspective and have given undue importance to irrelevant facts for acquitting the accused. Learned counsel further submitted that the delay in registration of the F.I.R. and the absence of independent witness for an incident that had been taken place inside the house of the accused cannot be a good reason to acquit the accused.

6. Per contra, learned counsel for Dilbet Saravanacoumar refuted the contentions.

7. This Court gave its anxious consideration to the rival submissions.

8. Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in *Girish Kumar Suneja Vs. CBI* [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder :

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

1 8.1. While exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in *State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others*, etc. [(2004) 7 SCC 659]:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

8.2. This legal principle has been reiterated very recently by the Supreme Court in Bir Singh Vs Mukesh Kumar [(2019) 4 SCC 197], wherein, the Supreme Court formulated the following question of law :

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"19.It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [(2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

9. In this case, Dhanalakshmi has alleged that her husband Dilbet Saravanacoumar was having illicit intimacy with his brother's wife and that was the cause for the altercation which ensued on 22.05.2015. This allegation was strongly denied by Dilbet Saravanacoumar and it his case that Dhanalakshmi was making a wild allegation.

10. Learned counsel for Dilbet Saravanacoumar drew the attention of this Court to the property search and seizure form (Ex.P2) to show that, at the instance of Dhanalakshmi, the police had seized Dilbet Saravanacoumar's passport and had also given a requisition to the Chief Immigration Officer (vide Ex.P8) to freeze his passport. All these clearly show that Dhanalakshmi, with the help of the local police, had done everything possible to economically stifle Dilbet Saravanacoumar.

11. This Court carefully perused the evidence of the witnesses and the prosecution exhibits. According to Dhanalakshmi, Dilbet Saravanacoumar slapped her on her face, assaulted her on stomach with a stick and dashed her head on the wall, on account of which, she suffered bleeding injuries on her head. Whereas, Dr.Yashwin (PW3), who examined Dhanalakshmi immediately after the incident in the Government Hospital, Puducherry, has clearly stated that there was no external injuries found on her. The abdomen scan of her would also show that there was no injury in the stomach region. Though there would not have been any evidence to corroborate the testimony of Dhanalakshmi as the incident had allegedly taken place in the house of Dilbet Saravanacoumar, the medical evidence does not support her version.

12. The incident had taken place on 22.05.2015, but Dhanalakshmi had given the complaint only on 25.05.2015, for which, she has stated that she discussed with her relatives and thereafter, lodged the complaint on 25.05.2015 after getting discharged from the hospital. She has also stated that while she was in the hospital, the police came there and recorded her statement. Had that been true, F.I.R. would have been registered on her statement and not on the complaint given by her on the 25th, after her discharge from the hospital. All these facts have been considered in detail by the trial Court and the appellate Court and hence, this Court does not find any illegality or perversity in the judgments and orders passed by the two Courts below warranting interference.

In the result, this petition is dismissed being devoid of merits. The trial Court and the police are directed to immediately handover the passport of Dilbet Saravanacoumar to him and recall the Look Out Circular issued against him, if he is not required in any other criminal case.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Puducherry.

2.The Chief Judicial Magistrate,
Puducherry.

3.The Station House Officer,
Grand Bazar Police Station,
Puducherry.

4.The Public Prosecutor (Puducherry),
High Court, Madras.

+1 cc to M/s.AR.M.Arunachalam, Advocate, S.R.No.77010

+1 cc to the Public Prosecutor for Pondicherry, S.R.No.77151

CRL.R.C.No.961 of 2018

BP(CO)
SSM(10/09/2019)