

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2019

PRONOUNCED ON : 24.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.679 of 2019

Vasanthi,
Impcops Hospital,
Secretary quarters,
34-37, Lattice Bridge Road,
Near Adyar Police Station,
Thiruvanmiyur, Chennai-41.

Petitioner

Vs.

1. K.Balasingh,
S/o.Krishnan,
12, Kathirvalen Nagar,
Tuticorin District.
2. The State represented by
Inspector of Police,
J2-Adyar Police Station,
Chennai.

... Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to call for records pertaining the judgment and order dated 10.04.2018 passed in C.C.No.6499 of 2010 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai, confirmed by the judgment and order dated 09.04.2019 passed in C.A.No.309 of 2019 on the file of the Principal Sessions Court, Chennai and convict the accused Balasingh based on the evidences as well as documents by allowing the Criminal Revision.

For Petitioner : Ms.P.Vasanthi - Party in Person

For R2 : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

O R D E R

This petition has been filed seeking to set aside the judgment and order dated 10.04.2018 passed in C.C.No.6499 of 2010 on the file of the IX Metropolitan Magistrate Court,

Saidapet, Chennai, confirmed by the judgment and order dated 09.04.2019 passed in C.A.No.309 of 2019 on the file of the Principal Sessions Court, Chennai.

2. The precis of the facts is as under:

2.1 It is the case of the prosecution that Vasanthi (de facto complainant) was married to Ponsingh and on account of marital discord, they got estranged; there is a case pending between the spouses in the Mahila Court, Chennai. While that being so, it is alleged that on 30.06.2008, around 7.00 p.m., Balasingh (accused herein), brother of Ponsingh, is said to have spat on the face of the de facto complainant, pushed her down and intimidated her to withdraw the case pending on the file of the Mahila Court, Chennai.

2.2 On the complaint lodged by the de facto complainant, the Sub-Inspector of Police, J2-Police Station, registered a case in Crime No.977 of 2008. After completing the investigation, the police filed final report in C.C.No.6499 of 2010 before the IX Judicial Magistrate Court, Saidapet, Chennai, against Balasingh for the offences under Sections 341, 323 and 506 (II) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

2.3 On the appearance of the accused, he was furnished with the relied upon documents under Section 207 Cr.P.C. and charges for the said offences were framed against him. When the accused was questioned, he pleaded "not guilty".

2.4 To prove its case, the prosecution examined ten witnesses and marked thirteen exhibits.

2.5 When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, no witness was examined nor any document marked.

2.6 After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 10.04.2018 in C.C.No.6499 of 2010, acquitted the accused of all the charges.

2.7 Challenging the acquittal, the de facto complainant filed an appeal in C.A.No.309 of 2018 under the proviso to Section 373 Cr.P.C. before the Court of Session, which has been dismissed on 09.04.2019, aggrieved by which, the de facto complainant is before this Court.

3. Heard Ms.P.Vasanthi (de facto complainant)- Party in Person, who, submitted that both the Courts below have failed to

appreciate the evidence on record in a proper perspective.

4. Per contra, the learned Government Advocate (Crl.Side) denied the submission made by the de facto complainant.

5. Before advertng to the rival submissions, it may be necessary to state here that, 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.¹:

"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

1 (2004) 7 SCC 659

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."

6. Further, in *Girish Kumar Suneja Vs CBI* [2017 (14) SCC 809], a three Judge Bench of the Supreme Court 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.

7. In this case, two alleged eye-witnesses viz., Anbu (PW6) and Uma Maheswari (PW9) have given contradictory versions about the alleged incident. Anbu (PW6), in his evidence, has stated that he saw the accused threatening the de facto complainant while sitting in the car, whereas, Uma Maheswari (PW9) has stated that she saw the accused walking towards the de facto complainant, pushed her down and abused her.

8. The Courts below have found on facts that the de facto complainant had a strong motive to falsely implicate the accused. When the Courts below have held that the accused is not guilty of the offence, it will be a travesty of justice to re-appreciate the evidence, in the absence of sound reasons for ordering re-trial, because, while exercising revisional jurisdiction, this Court cannot reverse the order of acquittal but can only order re-trial. Presumption of innocence is a human right, which cannot be dislodged easily.

In the result, this revision petition is dismissed as being devoid of merits.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

nsd

To

1. The IX Metropolitan Magistrate,
Saidapet, Chennai.
2. The Principal Sessions Judge,
Chennai.
3. The Public Prosecutor,
High Court, Madras
4. Inspector of Police,
J2-Adyar Police Station,
Chennai.

Crl.R.C.No.679 of 2019

PM(CO)
GMY(29/08/2019)



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