

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.724 of 2019
and Crl.M.P.Nos.10100 & 10099 of 2019

Andrews

.. Petitioner/Accused

Vs

State rep. by
The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai-101. ... Respondent/Complainant

Criminal revision preferred under Section 397 read with Section 401 of Cr.P.C. to revise the judgment dated 12.09.2017 passed by the XV Additional Sessions Judge, Chennai in C.A.No.160 of 2017 partly confirming the judgment dated 26.05.2017 passed by the Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.16335 of 2008.

For Petitioner : Mr.A.Jotheeswaran
For Respondent : Mrs.P.Kritika Kamal,
GA (Crl. Side)

O R D E R

This Criminal Revision has been preferred to set aside the judgment dated 12.09.2017 passed by the XV Additional Sessions Judge, Chennai in C.A.No.160 of 2017 partly confirming the judgment dated 26.05.2017 passed by the Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.16335 of 2008.

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

3.Margret @ Manju/de facto complainant got married to Andrewes (A1)/petitioner herein on 19.02.2006 and due to matrimonial discord, they got estranged. On the complaint lodged by the de facto complainant, the first respondent police registered a case in Crime No.4 of 2008 and after completing the investigation, filed final report in C.C.No.16335 of 2008 before the Chief Metropolitan Magistrate, Egmore, Chennai for the offences under Sections 417, 495, 498-A, and 506(II) IPC and

Section 4 of the Dowry Prohibition Act, 1961 against Androwes (A1) and his mother Delsi (A2).

4. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and charges for the said offences were framed against them. When questioned, they pleaded 'not guilty'.

5. To prove the case, the prosecution examined nine witnesses and marked Ex.P1 to Ex.P4. No witness was examined nor any document marked on behalf of the accused.

6. After considering the evidence on record and on hearing either side, the trial Court, by judgment and order dated 26.05.2017 in C.C.No.16335 of 2008, acquitted Delsi (A2), but convicted Androwes (A1) as under :

Provision under which convicted	Sentence
Section 498-A IPC	One year rigorous imprisonment and to pay fine of Rs.1000/- in default, to undergo one month simple imprisonment
Section 495 IPC	Three years imprisonment and to pay fine of Rs.1000/- in default, to undergo one month simple imprisonment

Challenging the said conviction and sentence, Androwes (A1) preferred C.A.No.160 of 2017, in which, the learned XV Assistant Sessions Judge, Chennai, acquitted him of the charge under Section 498-A IPC, but sustained the conviction and sentence under Section 495 IPC imposed by the trial Court. Pursuant to the appellate Court's order, Androwes (A1) was taken into custody on 30.11.2017 and has been undergoing sentence since then. Challenging the conviction and sentence imposed by the Courts below, Androwes (A1) filed the present revision petition with a delay of 577 days, to condone which, he filed CrI.M.P.No.9708 of 2019 under Section 5 of the Limitation Act, 1963. This Court, by order dated 19.07.2019, allowed CrI.M.P.No.9708 of 2019 and condoned the delay, pursuant to which, the revision petition has been numbered and posted for hearing.

7. Heard Mr.A.Jotheeswaran, learned counsel for Androwes (A1)/ petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (CrI. Side) appearing for the State.

8.Learned counsel for Androwes submitted that both the Courts below have failed to appreciate the evidence on record in the right perspective and that had resulted in miscarriage of justice.

9.Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

10.Before adverting 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. [(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."

11. 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."

12. It is the specific case of the prosecution that during the subsistence of the marriage of Androwes (A1) with Sathyavani (PW4), he got married to Margret @ Manju by suppressing the earlier marriage. In this regard, the evidence of Margret @ Manju (PW1) and the evidence of Sathyavani (PW4) are indeed very limpid. The defence was not able to make any dent in their evidence. The appellate Court has placed reliance on the judgment of the Supreme Court in *A. Subash Babu Vs. State of Andhra Pradesh* and another [(2011) 7 SCC 616] and has given the

following finding :

"Thus the suppression of the earlier marriage registered between the accused and PW4 is a material fact amounting to fraud. In this regard, the Hon'ble Apex Court in (2011) 7 Supreme Court Cases 616 - A.Subash Babu Vs. State of Andhra Pradesh and another, held as follows :

"Where the second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married to another lady and the factum of the first marriage was concealed from her, the second wife would be an "aggrieved person" within the meaning of Section 198 CrPC."

"the appellant having a living wife, married Respondent 2 herein by concealing from her the fact of former marriage and therefore her complaint against the appellant for commission of offence punishable under Sections 494 and 495 IPC is maintainable."

"Where case involves at least one cognizable offence along with non-cognizable offences it should not be treated as a non-cognizable case for purpose of S.155(2) Cr.P.C. and this is manifested in S.155(4) Cr.P.C. Therefore, bar under S.198 Cr.P.C. would not be applicable in such a case involving at least one cognizable offence. Thus, Ss.420 and 498-A IPC being cognizable offence, argument that Magistrate could not have taken cognizance of offences punishable under Ss.494 and 495 IPC merely on basis of submission of charge-sheet by police, rejected ... "

"A married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law and therefore severe punishment is provided in Section 495 IPC..."

The above finding of the appellate Court cannot be said to be incorrect or perverse warranting interference by this Court. However, this Court is of the view that interests of justice will be served, if the sentence imposed on the petitioner by the Courts below is reduced to the period already undergone.

In the result, this revision petition is partly allowed. The conviction and sentence of imprisonment of three years imposed by the Courts below is reduced to the period already undergone. The petitioner shall be released forthwith, unless his presence is required in connection with any other case. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The XV Additional Sessions Judge,
Chennai.

2.The Chief Metropolitan Magistrate,
Egmore, Chennai

3.The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai-101.

4. The Superintendent , Central Prison, Puzhal, Chennai

5.The Public Prosecutor,
High Court, Madras.

6.The Section officer
Criminal Section
High Court, Madras 104

+1 CC to Mr.A.Jotheeswaran, Advocate sr 63130.

NRJK(CO)
SP(29/08/2019)

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