

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.703 of 2019

Padmini

.. Petitioner/Complainant

Vs.

1. M.R.Shankar

2. E.Baskar

3. Rajagopal ... Respondents/Accused

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 13.12.2011 passed in C.C.No.5100 of 2009 on the file of the XIV Metropolitan Magistrate Court, Egmore, confirmed by judgment and order dated 08.03.2019 passed in C.A.No.229 of 2013 on the file of the III Additional Sessions Court, Chennai.

For Petitioner : Mr.V.K.Sathiamurthy

O R D E R

This petition has been filed seeking to set aside the judgment and order dated 13.12.2011 passed in C.C.No.5100 of 2009 on the file of the XIV Metropolitan Magistrate Court, Egmore, confirmed by judgment and order dated 08.03.2019 passed in C.A.No.229 of 2013 on the file of the III Additional Sessions Court, Chennai.

2. The long and short of the facts is as under:

2.1 The petitioner instituted a private complaint in C.C.No.5100 of 2009 before the XIV Metropolitan Magistrate Court, Egmore, Chennai, against the respondents herein, for the offences under Sections 341, 353 and 506 (II) IPC.

2.2 After full fledged trial, the Trial Court, by judgment and order dated 13.12.2011 in C.C.No.5100 of 2009, has acquitted the respondents of all the charges. Challenging the acquittal, the petitioner filed C.A.No.229 of 2013 under the proviso to Section 372 Cr.P.C., which has also been dismissed by the III Additional Sessions Court, Chennai, on 08.03.2019. Challenging the judgments and orders passed by the Courts below, the petitioner has preferred the present revision petition before this Court.

3. Heard Mr.V.K.Sathiamurthy, learned counsel for the petitioner, who submitted that both the Courts below had fallen in error by not properly appreciating the evidence of the petitioner/complainant and have sought corroboration when the very case of the petitioner is that the people around her were inimical to her.

4. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner.

5. Presumption of innocence is a human right which cannot be dislodged easily. The fact remains that the respondents have been acquitted by the Trial Court and the Appellate Court. A three Judge Bench of the Supreme Court, in *Girish Kumar Suneja Vs CBI*¹, has delineated the revisional jurisdiction as under:

"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 of the Cr.P.C."

6. That apart, in a revision against acquittal, this Court cannot reverse the acquittal and convict the accused. At the most, this Court can only order re-trial. 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 Kuldeep Singh Anand and Others, etc.²:

"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 (emphasis supplied) 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."

7. The aforesaid legal principle has also been reiterated very recently by the Supreme Court in *Bir Singh Vs. Mukesh Kumar*³, wherein, the following question of law was formulated:

"(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"

8. The answer of the Supreme Court to the aforesaid question of law 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."

In view of the foregoing discussion, this revision petition is dismissed as being devoid of merits.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

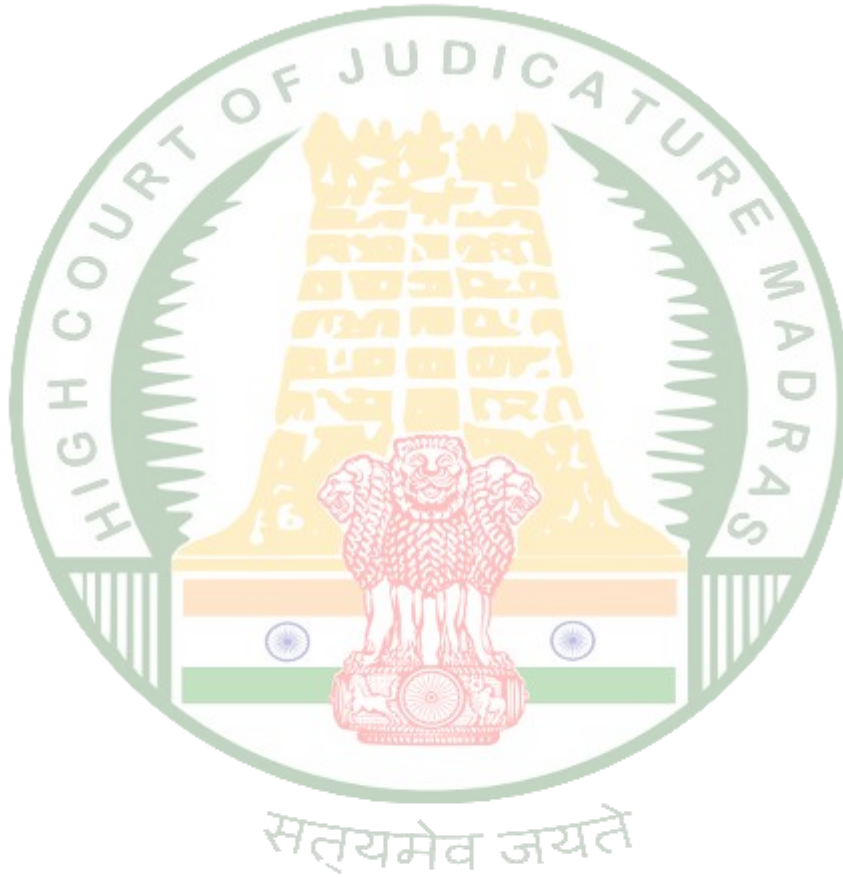
1. The XIV Metropolitan Magistrate,
Egmore.

2. The III Additional Sessions Judge,
Chennai.

+2ccs to Mr.C.Rajan , Advocate SR.No. 62101

Crl.R.C.No.703 of 2019

A.SK(28/08/2019)



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