

Sr. 27  
**16-06-2021**  
Subha.  
Court no. 34

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE  
( Via Video Conference )**

**CRR 2766 of 2007**

In Re : **Smt. Anjanarani Kirtonia**

.....Petitioner.

In the matter of : An application under Sections 401/482 of  
the Code of Criminal Procedure, 1973.

Mr. Arijit Ganguly  
Mr. Sanjib Kumar Dan

...for the State.

None appears on behalf of the petitioner.

Mr. Arijit Ganguly, learned advocate appears on  
behalf of the State along with Mr. Sanjib Kumar Dan, learned  
advocate.

The revisional application has been preferred against  
the judgement and order of acquittal dated 30.03.2007 passed  
by the learned Additional Sessions Judge, 2<sup>nd</sup> court, Burdwan  
in connection with Sessions Trial No. 03 of 2006 (Sessions  
Case No. 273 of 2006), wherein the learned trial court was  
pleased to acquit the accused persons from the charges under  
Sections 498A/406/313 read with Section 34 of the Indian  
Penal Code.

It has been alleged in the First Information Report that the accused Nepal Kirtonia (petitioner no. 1 herein) was married to Anjana Kirtonia on or about 9<sup>th</sup> January, 1991 by suppressing his first marriage with Madhuri Kirtonia (petitioner no. 2 herein). The accused/petitioner no. 1 and the complainant resided within the jurisdiction of Swarupnagar Police Station and out of the said wedlock a daughter was born in the year 1992. The complainant in course of time found that the petitioner no.1 was having a relationship with the petitioner no. 2 and two children were born out of the said relationship. Subsequently, she came to know that the petitioner no. 2 was the first wife of the petitioner no. 1.

It has further been alleged that the accused tortured the complainant both physically and mentally and she subsequently was driven out of the house at the instance of the petitioner no. 2. Additionally, it has been alleged that the accused persons sold the de facto complainant's ornaments in order to purchase lands and thereafter, she was assaulted and as a result of which there was a miscarriage for which she was treated in a nursing home at Madhyamgram. Subsequently, she was driven out of the house by the accused persons. On completion of the investigation, charge-sheet was submitted under sections 498A/313/406/34 of the Indian Penal Code and subsequently, the learned trial court was pleased to frame charges under Section 498A/406 I.P.C and under Section 313 read with Section 34 of the Indian Penal Code. The charge was read over and explained to the accused

persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 10 witnesses while the defence examined none. The learned trial court on an appreciation of the evidence of the witnesses firstly came to the conclusion that P.W.2 was a married wife and the said marriage was subsisting and was not dissolved. On completion of the investigation a complaint was filed before the court leading to initiation of the F.I.R. The learned court also analysed the evidence of P. W.3 (Avijit Mukhejee), Medical Officer who specifically observed that although the uterus was bulky and anteverted, but there was no evidence disclosing any injury on Anjana Kirtonia's abdomen.

Certain documents to that effect were also tendered before the court. The learned court on appreciation of oral evidence, documentary evidence and after scrutinising and appreciating the evidence tendered by the prosecution came to the conclusion that the prosecution could not prove the ingredients of section 498A or section 406 or section 313 of the Indian Penal Code beyond any reasonable doubt and as such acquitted the accused/petitioners from the charges levelled against them.

I have considered the reasons assigned by the learned trial court and also taken into account the settled principles of law which states that if two views are possible, one in favour of acquitting the accused and the other for the purpose of

convicting the accused, the higher court while exercising its revisional jurisdiction should not substitute the alternate view until and unless there has been gross abuse of law or gross miscarriage of justice.

Having regard to the aforesaid principle and the reasons assigned by the learned trial court, I am of the view that the order of acquittal so passed by the learned trial court in its judgement and order dated 30.3. 2007 do not call for any interference.

Accordingly, CRR No.2766 of 2007 along with all connected applications, if any, is dismissed.

LCR, if any, be sent down to the learned court below.

All parties are to act on the server copy of this order downloaded from the official website of this court.

**( Tirthankar Ghosh, J. )**