

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.REV.P. 162/2020

Date of Decision: 29.09.2021

IN THE MATTER OF:

BALKISHAN GUPTA

..... Petitioner

Through: Mr. Brahmanand Gupta,
Advocate

Versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP for
State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present revision petition, filed under Sections 397/401 Cr.P.C., the petitioner has assailed the judgment dated 29.01.2020 passed by the learned Addl. Sessions Judge-03, North West District, Rohini, Delhi in Criminal Appeal No. 55/19, vide which the judgment on conviction dated 18.12.2018 and the order on sentence dated 08.02.2019 passed by the learned Metropolitan Magistrate-02 (Mahila Court), North-West, Rohini Courts, Delhi in FIR No. 276/2013 registered under Sections 354/323 IPC at Police Station Aman Vihar, Delhi, were upheld.

2. Vide judgment dated 18.12.2018, the petitioner was convicted for the offence punishable under Sections 354/323 IPC and by way of the order on

sentence, he was sentenced to undergo simple imprisonment for a period of three months for the offence punishable under Section 354 IPC alongwith payment of fine of Rs.500/- for the offence punishable under Section 323 IPC.

3. Briefly stated, the facts as mentioned in the impugned judgment dated 29.01.2020 are as under:-

“2. Brief facts of the case are that a PCR call was received on 06.07.2013 in PS Aman Vihar vide DD no.73 B. IO SI Karambeer on receipt of DD reached the spot where he met the complainant who gave her statement that accused / appellant who is her tenant came at her house and was hurling abuses in loud voice. He was saying that the house now belongs to him. He was abusing her and her husband who was out of the house for some work. On hearing the abuses, she came out of her room and objected. At the same time, appellant grabbed her hand and brought her out of the room into the gali and tore her suit and touched her chest and said that he will see as to who comes to save her. The complainant ran inside the house and called police at number 100. Earlier also on 16.06.2013, the appellant had quarrelled with her other tenant Manpal in which she had favoured Manpal. On this account, appellant on 06.07.2013, abused her and her husband.”

4. In the present case as well as before the Sessions Court, the petitioner has raised two contentions: firstly, that the complainant had lodged the complaint in conspiracy with another tenant *Manpal* to get the house vacated from the present petitioner, and secondly, that while convicting the petitioner, observations recorded in the MLC of the complainant were not duly appreciated by the concerned Court.

5. On the other hand, learned APP for the State has opposed the present petition and supported the impugned judgment, by submitting that the

complainant has reiterated the allegations made in the initial complaint during her examination before the Court. It is further submitted that the MLC of the complainant (*Ex.-PW2/A*) corroborates the allegations levelled, inasmuch as it is stated therein that there were fresh bruises over her left shoulder region. Lastly, it is submitted that in view of the concurrent findings recorded by the two Courts below, the prayer made in the present petition may not be considered.

6. I have heard learned counsel for the petitioner as well as learned APP for the State and also gone through the Trial Court Record.

7. Both the Courts below have noted that while the quarrel is stated to have taken place between the petitioner and another tenant *Manpal* on 16.06.2013, the incident in question took place on 06.07.2013. It was also noted that the petitioner had examined his wife *Smt. Neha* (DW-2), who in her cross-examination admitted that they had vacated the house belonging to the complainant in the month of June itself, and thus there could not have been any motive for the complainant to implicate the petitioner in a false case to have his house vacated. Further, the MLC of the complainant, exhibited as PW2/A, was noted as pointing towards fresh bruises on the left shoulder region.

8. Before rendering an opinion on the facts of the present case, I deem it apposite to recapitulate the scope of revisionary jurisdiction of this Court under Sections 397/401 Cr.P.C.

9. In connection with cases where lower Courts have rendered concurrent findings on facts, the Supreme Court in State represented by the Drugs Inspector v. Manimaran reported as (2019) 13 SCC 670, has noted thus:-

“16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.”

10. A Co-ordinate Bench of this Court in Taron Mohan v. State and Another reported as **2021 SCC OnLine Del 312** has opined on the same lines as follows:-

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

10. ...The object of Section 397 CrPC is to settle a patent defect or an error in exercising jurisdiction or if the order is perverse and no court would come to such a conclusion.”

(emphasis added)

11. On a perusal of the judicial dicta on the subject, it is apparent that a High Court while dealing with a revision petition, shall only exercise its power where there is material error or defect in law or procedure, misconception or mis-reading of evidence. It is well settled that when there

are concurrent findings of fact by two Courts, the scope of revision under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow. In other words, revisional jurisdiction of this Court is only supervisory and is intended for correcting miscarriage of justice.

12. The exposition of law outlined above may however not be interpreted to mean that revisionary jurisdiction of High Courts may not be exercised at all when concurrent findings of fact have been recorded by subordinate Courts. A Bench of the Bombay High Court in Kisan Pandurang Pachange v. State of Maharashtra reported as **2003 SCC OnLine Bom 1071** through B.R. Gavai, J. (as His Lordship then was), while keeping in view the limited scope of the revisionary jurisdiction of High Courts, has illustrated in what situation it may be appropriate for a High Court to exercise revisionary jurisdiction and interfere with the order of a subordinate Court:-

“10. ...No doubt, that, the scope of interference by this Court in revisional jurisdiction, under Section 397 of Criminal Procedure Code, is limited. In its revisional jurisdiction, this Court, is not expected to sit as a Court of Appeal and reappreciate the evidence. However, when the findings of the Courts below, appear to have been recorded, on the basis of no evidence, or evidence which even if believed in entirety, cannot prove the guilt of the accused for the offences charged, this Court, would be justified, in exercising its jurisdiction, under Section 397 of the Code of Criminal Procedure.”

(emphasis added)

13. In the present case, after examining the testimonies of *Smt. Neha* (DW-2) and the complainant, it is evident that there was no occasion for the complainant to falsely implicate the petitioner to get the premises vacated since the petitioner, as per testimony of DW-2, had already vacated the

house of the complainant in June, prior to the incident in question which took place on 06.07.2013. From the testimony of *Dr. Gurdeep* (PW-2), who proved the MLC of the complainant, it is further apparent that the complainant had obtained injuries at the relevant time. It is worthwhile to note that the complainant has reiterated the allegations levelled in the initial complaint during her examination before the Court and her testimony could not be shaken during cross-examination. She also identified her torn clothes, which were seized by the police during investigation. Per contra, the petitioner examined two witnesses in support of his case, one of whom, i.e. DW-1, was not produced before the Court for cross-examination, and the other, i.e. *Smt. Neha* (DW-2), only baldly asserted that the petitioner had been falsely implicated in the molestation case. It is also noted that as per the arrest memo on record, the petitioner was arrested from the house of the complainant, even though it has come in the testimony of DW-2 that the petitioner and she had vacated the house of the complainant in June. Under these circumstances, non-examination of independent witnesses does not dent the prosecution case, more so, considering that the complainant's allegations are duly supported by her MLC, as per which there were fresh bruises on her left shoulder region.

14. After careful analysis of the facts and the records of the Trial Court, I find no illegality, perversity or infirmity in the impugned judgment dated 29.01.2020. Accordingly, the impugned judgment passed by the Sessions Court is upheld to the extent of conviction of the petitioner for the offence punishable under Sections 354/323 IPC.

15. During the course of submissions, learned counsel for the petitioner prayed that a lenient view on the petitioner's sentence may be taken as the

petitioner works in a factory and is the sole bread earner of his family, which comprises of his wife and three minor children. It was further submitted that he has no previous involvements. The Nominal Roll of the petitioner has also been placed on record. It is further informed that the petitioner has already vacated the tenanted accommodation.

16. Considering the fact that the petitioner has undergone a period of 01 month and 07 days in custody out of the total sentence, during which time his jail conduct is reported to have been satisfactory, the petitioner's sentence is modified to the period already undergone.

17. The revision petition is disposed of with the aforesaid modification in the order on sentence.

18. A copy of this order be communicated electronically to the concerned Jail Superintendent for information and necessary compliance.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 29, 2021

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Click here to check corrigendum, if any