

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Revision Application No. 367 / 2004

Asha W/o Vishnu Gitte
Age 27 years, Occu. Household,
R/o. Sangam, Tq. Parali Vaijinath,
District Beed.

...Applicant

Versus

1. Vishnu S/o Janardhan Gitte
Age : 36 years, Occu. : Agril,
R/o. Waghbet, Tq. Parali Vaijinath,
District Beed.
2. Janardhan S/o Jairam Gitte,
Age : 60 years, Occu. : Agril,
R/o. Waghbet, Tq. Parali Vaijinath,
District Beed.
3. The State of Maharashtra,
Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.

...Respondents

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Mr. S. B. Bhapkar, Advocate for the Applicant
Mr. R. T. Nagargoje, Advocate for Respondent No.1 & 2
Mrs. P. V. Diggikar, APP for Respondent No.3/State.
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CORAM : BHARAT P. DESHPANDE, J.
RESERVED ON : 3rd AUGUST, 2022.
PRONOUNCED ON : 10th AUGUST, 2022.

JUDGMENT :

1. This is Revision Application filed by the Wife against the judgment passed by the learned Additional Sessions Judge, Ambajogai dated 01.04.2004, whereby conviction order passed by the learned Judicial Magistrate First Class, Parali dated 05.04.1994 by Respondent No.1 and 2 was quashed and set aside.

2. Vide order dated 13.04.2006, rule was issued. The Respondents appeared and contested the matter. Record and proceedings were called.

3. Heard. Mr. Bhapkar, learned Counsel for the Applicant, Mr. Nagargoje, learned Counsel for Respondent No.1 and 2 and Mrs. Diggikar, learned APP for State. With the assistance of learned Counsel for the parties, I have perused entire record.

4. In nutshell, it is the contention of the Applicant

that Additional Sessions Judge, while acquitting Respondent No.1 and 2 committed patent illegality and thereby caused miscarriage of justice. It is stated that findings of the learned Additional Sessions Judge in Criminal Appeal No. 10/1994, while acquitting Accused No.1 and 2 are perverse.

5. The learned Counsel appearing for Respondent No.1 and 2 forcefully submitted that reasons disclosed in the impugned judgment of the Additional Sessions Judge are not at all perverse, but by rightly appreciating evidence produced before the learned Magistrate. He submitted that while considering Revision Application, the jurisdiction of this Court is vary limited and more particularly this Court cannot re-appreciate evidence as required to be considered by the Appellate Court while deciding appeal. Therefore, his contention is that Revision is of no substance and needs to be rejected.

6. The learned APP appearing for the State submitted that findings of the Additional Sessions Judge are not

at all perverse and the same are illegal on the basis of material placed on record.

7. The Applicant herein is the Wife, whereas Respondent No.1 is her husband. Respondent No.2 is the father-in-law. Marriage of Applicant with Respondent No.1 was performed somewhere in the year 1988 and thereafter she started cohabiting with Respondent No.1 in the matrimonial house at Waghbet. For about five to six months, she was treated properly. However, thereafter present Respondent No.1 and 2 and two others started ill-treating her. The said Respondents started demanding dowry in the form of Rs.10,000/- in cash or five tolas of gold for the purpose of securing job for Respondent No.1. When she failed to comply with such demand, she was abused, assaulted and was not provided with food. When she went to her parent's house during Diwali of 1991, she narrated this fact to her parents. No one from the family of Respondent No.1 came to fetch her and she remained therefore around two months. Subsequently, she went to the house of Respondent No.1

alongwith her relatives, but at that time she was not permitted to enter the house and was asked as to whether she brought the cash or gold ornaments. Thereafter again the demand was made on behalf of the family of Respondent No.1 and when she went and started residing with the Respondent No.1, the ill-treatment continued. Finally, she lodged the complaint, which resulted in registering the FIR for the offence punishable under Section 498-A read with 34 of the Indian Penal Code against all the accused persons.

8. The learned Magistrate before whom trial commenced, recorded evidence after framing of charges and then found that Respondent No.1 and 2 guilty of the offence punishable under Section 498-A and accordingly both of them were sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/- each in default to undergo S.I. for three months.

9. The Respondent No.1 and 2 being dissatisfied, preferred appeal bearing Criminal Appeal No.10/1994.

The Additional Sessions Judge at Ambajogai vide its judgment dated 01.04.2004 found that the evidence of the Applicant and her witnesses is not trustworthy and accordingly acquitted both the Respondents for the offence punishable under Section 498-A of IPC.

10. The learned Counsel for the Applicant while arguing the matter tried to submit that findings of the First Appellate Court are perverse as contrary findings are recorded as that of learned Magistrate. He invited attention of this Court to the depositions of Applicant and her witnesses and claimed that such evidence has not been properly appreciated while deciding appeal.

11. First of all, it has to be kept in mind that jurisdiction of this Court while entertaining Revision is very limited and it is settled proposition of law that while entertaining such Revision, re-appreciation of evidence is not permissible. Keeping in mind above settled proposition, Revision Application and grounds mentioned therein needs to be assessed. On perusal of

the grounds mentioned in the Revision Application, it is clear that all these grounds are clearly dealing with re-appreciation of evidence.

12. On perusal of the record and findings of the Court below, one thing is clear and so called demand of dowry as mentioned in the FIR, deposition of the Applicant and her witnesses is for the purpose of securing job for Respondent No.1/husband. The learned Additional Sessions Judge found that Respondent No.1 was not educated and he was supposed to appear for his examination on the day of his marriage itself. Similarly, the family of Respondent No.1 and 2 are Agriculturist. They are having sufficient land, which is under cultivation. Respondent No.1 himself was doing Agriculture and therefore there was no question of seeking job by Respondent No.1 elsewhere. The learned Additional Sessions Judge also observed that the Applicant and her witnesses nowhere mentioned about the type of job, which Respondent No.1 was trying to obtain for himself on the basis of alleged demand from the Applicant and her

family members. On the basis, the learned Additional Sessions Judge observed that so called demand of dowry by Respondent No.1 and 2 is fictitious and not for the purpose of securing any job. It is further observed that the Applicant is cultivating sugar cane crop in their land and thus there was no need for him to secure any job.

13. The learned Additional Sessions Judge on the basis of material placed during trial also observed that deposition of Applicant and her witnesses with regard to alleged demand of dowry is not inspiring confidence. Such findings are on the basis of cross-examination of the witnesses. On perusal of such cross-examination, it clearly goes to show that such findings cannot be termed as perverse or illegal.

14. The witnesses examined on behalf of Applicant and more specifically PW-4 is also not inspiring confidence due to the fact that his cross-examination speaks for itself and this witness tried to improvise aspects,

which are not claimed or stated by the Applicant and her father. Similarly, the evidence of PW-5 is on the heresy basis. Therefore such findings of the learned Additional Sessions Judge in no way could be termed as perverse. No doubt another view is possible, however when re-appreciation of evidence is not permissible, while exercising revisional jurisdiction, even if another view is possible, the same cannot be replaced, while considering Revision against the impugned order.

15. In sum and substance, grounds raised in the Revision Application are therefore devoid of merits. Hence, I passed the following order.

O R D E R

- (i) The Criminal Revision Application stands rejected.
- (ii) Rule stands discharged.
- (iii) Party shall bear their own costs.

[BHARAT P. DESHPANDE, J.]