

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.1456 of 2006

O R D E R:

This Criminal Revision Case is filed aggrieved by the Judgment of Acquittal dated 16.06.2006 in S.C.No.505 of 2004 on the file of the learned V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad wherein the respondents Nos.1 to 3 were found not guilty and acquitted for the offences under Sections 354, 324 read with Section 34 of Indian Penal Code.

02. There is no representation on behalf of the revision petitioner and respondent No.2 and 3. Heard Sri S. Ganesh, learned Assistant Public Prosecutor for the State/Respondent No.1 as well as Sri V. Surender Rao, learned counsel for the respondent No.4.

03. During the course of hearing, the learned counsel for the respondent No.4/accused No.3 submitted that the respondent No.4 has passed away on 01.07.2020 and to that effect he filed death certificate dated 17.06.2022.

04. The same is recorded and the case against the respondent No.4/accused No.3 is abated.

05. According to the case of the prosecution, on 07.07.2003 at about 10.30 AM., the petitioner herein who is de-facto complainant has complained orally at Chaderghat Police Station stating that on the same day i.e., on 07.07.2003 the MCH Town Planning Section Staff came to her house for demolition and she requested them to come after some time as her family members are not there. Subsequently, her parents have locked the doors of the house from outside and the demolition staff used a ladder and forcibly entered into her house and started demolishing the ventilators and she resisted but they continued. Later her father came there and showed the papers pertaining to the case against which they went in appeal in a case, even they continued to demolish. The neighbours of the complainant, accused No.1 and 2 came there and abused the complainant in filthy language and beat her with chappal. Accused No.3 who is brother of accused No.1 also came there and kicked her and her father and torned her dress and beat her.

06. On complaint of the petitioner herein, a case in Cr.No.334 of 2003 for the offence under Section 354 of Indian Penal Code was registered. After completion of investigation, charge sheet is filed alleging that the accused No.1 to 3 have committed offence punishable under Sections 354, 324 read with Section 34 of Indian Penal Code.

07. During the course of trial Court, the prosecution examined PW1 to PW15 and Exs.P1 to P9 and Mo.1. However, on behalf of the respondents/accused, Exs.D1 to D8 were marked. After full-fledged trial, the trial Court has found accused not guilty for the offences under Sections 354, 324 read with Section 34 of Indian Penal Code and they were acquitted.

08. Aggrieved by the same, though the prosecution has not preferred any appeal, the de-facto complainant herself filed the appeal against the respondents No.2 to 3/accused No.1 to 3 and also making the State as one of the respondent, and the petitioner has filed this Criminal Revision Case on following grounds:

i. The trial Court has arrived at an incorrect conclusion and failed to consider the gravity of the offences.

ii. The trial Court failed to consider the Judgment of different High Courts and Honouable Supreme Court of India, in similar circumstances.

09. This Criminal Revision Case has been posted today under the caption 'for Orders', in spite of it, no representation on behalf of the revision petitioner and respondent No.2 and 3. Sri S.Ganesh, learned Assistant Public Prosecutor for the State / Respondent No.1 as well as learned counsel for the respondent No.4 were present. Therefore, this Criminal Revision Case is disposed of on merits.

10. Now the point for determination is:

Whether the Judgment of Acquittal dated 16.06.2006 in S.C.No.505 of 2004 on the file of the learned V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad wherein the respondents Nos.1 to 3 were found not guilty and acquitted for the offences under Sections 354, 324 read with

Section 34 of Indian Penal Code, is liable to be set aside ?

P O I N T:

11. The Honourable Supreme Court of India in between **Joseph Stephen v. Santhanasamy**¹ wherein it was held that:

“In a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to reappraise the evidence in light of the observation of the Revisional Court and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the

¹ Criminal Appeal Nos.90-93 of 2002 decided on 25th January, 2022

evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.

12. The view, which we have taken finds support from a decision of this Court in [Bindeshwari Prasad Singh v. State of Bihar](#) [(2002) 6 SCC 650: 2002 SCC (Cri) 1448], in which it has been held as follows: (SCC pp. 654- 55, para 12) “12. ... Sub-section (3) of [Section 401](#) in terms provides that nothing in [Section 401](#) shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub- section, which places a limitation on the powers of the Revisional Court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by [Section 401](#) of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the

prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under [Section 401](#) of the Code of Criminal Procedure in an appeal against acquittal by a private party.”

9. Applying the law laid down by this Court in the aforesaid decisions and on a plain reading of sub-section (3) of [Section 401](#) Cr.P.C., it has to be held that sub-section (3) of [Section 401](#) Cr.P.C. prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Though and as observed hereinabove, the High Court has revisional power to examine whether there is manifest error of law or procedure etc., however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial Court and/or the first appellate Court, as the case may be. As observed by this Court in the case of K. Chinnaswamy Reddy (supra), if the order of acquittal has been passed by the trial Court, the High Court may remit the matter to the trial Court and even direct retrial. However, if the

order of acquittal is passed by the first appellate court, in that case, the High Court has two options available, (i) to remit the matter to the first appellate Court to rehear the appeal; or (ii) in an appropriate case remit the matter to the trial Court for retrial and in such a situation the procedure as mentioned in paragraph 11 of the decision in K. Chinnaswamy Reddy (supra), referred to hereinabove, can be followed. Therefore, in the present case, the High Court has erred in quashing and setting aside the order of acquittal and reversing and/or converting a finding of acquittal into one of conviction and consequently convicted the accused, while exercising the powers under [Section 401](#) Cr.P.C. The order of conviction by the High Court, while exercising the revisional jurisdiction under [Section 401](#) Cr.P.C., is therefore unsustainable, beyond the scope and ambit of [Section 401](#) Cr.P.C., more particularly sub-section (3) of [Section 401](#) Cr.P.C.”

12. As seen from the Judgment of the trial Court, the trial Court has recorded lot of contradictions in the evidence of PW1 and other witnesses in respect of overtacts. So far as the issue of beating the de-facto complainant with chappal is concerned, the trial Court while considering the evidence has recorded that according to PW1, accused No.1 beat PW2, accused No.2 beat PW1. However, PW3 has deposed

otherwise. According to him, accused No.1 has beat PW1 and similarly PW5 also deposed that accused No.1 beat PW1. PW5 did not specify about the presence of accused No.2 and 3 at scene of offence.

13. The overtacts of PW1 to PW3 which were narrated as deposed by them in the Court are not found in 161 Cr.P.C. Statements. The trial Court has also recorded that other crucial witnesses did not support the prosecution case in respect of allegations levelled against the accused persons. The contents of the complaint under Ex.P1 do not speak about specific overtacts including the question who has beat her with chappal. In respect of issue of abusing her in filthy language also there are lot of contractions recorded by the trial Court.

14. According to the trial Court, the facts deposed in the Court are different and the facts narrated by the prosecution are totally different. While discussing the point No.3 in respect of offence under Section 354 of Indian Penal Code, the trial Court has clearly arrived at a conclusion that

there is no material to hold that the accused have committed the offence under Section 354 of Indian Penal Code.

15. Therefore, on perusal of the evidence recorded by the trial Court, and findings of the trial Court and also appraisal of facts of law, this Court is of the opinion that the trial Court has not committed any irregularity or illegality.

16. In view of the above discussion, the finding of the trial Court in Judgment of Acquittal dated 16.06.2006 in S.C.No.505 of 2004 on the file of the learned V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad wherein the respondents Nos.1 to 3 were found not guilty and acquitted for the offences under Sections 354, 324 read with Section 34 of Indian Penal Code, cannot be interfered with and this Criminal Revision case is liable to be dismissed.

17. Accordingly, this Criminal Revision Case is dismissed. The case in so far as against the respondent No.4/accused No.3 is abated. There shall be no order as to costs.

As a sequel, pending Miscellaneous Applications in this matter, if any, shall stand closed.

Date: 14-Nov-2022
KHRM

DR. D.NAGARJUN, J

THE HONOURABLE DR. JUSTICE D.NAGARJUN

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