

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.1584 of 2018
Date of Decision : 08.09.2022**

Sanjay Kumar

.....Petitioner

versus

Mahima @ Deepa and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Parminder Singh, Advocate
for the petitioner.

PANKAJ JAIN, J.

This Revision Petition is directed against the order passed by Appellate Court, dated 10th of January, 2018 affirming the orders passed by the Trial Court, dated 30th of May, 2014 acquitting the respondents.

2. Ball was set rolling by the petitioner by filing a complaint against the respondents. On his complaint, FIR No.126 dated 24th of May, 2010 was registered, wherein it was alleged that respondent No.1 namely Mahima @ Deepa has a living spouse namely Satish Kumar at the time she got married to the complainant. It was alleged that complainant got married to respondent-Mahima on 23rd of July, 2008. She started misbehaving with the complainant and his mother and also raised demand of separate house. Mother of the complainant tried to pacify her but she remained adamant. The complainant averred that at the time of marriage, the accused persons neither disclose the fact of first marriage of accused no.1 with one Satish

Kumar son of Dewan Chand resident of NIT Campus, Kurukshetra, nor regarding her age. The accused persons with *mala fide* intention have suppressed the material facts from the complainant and his family members regarding the subsisting marriage of accused no.1 and have played fraud upon them which the complainant came to know on 01.09.2009. When the complainant visited the house of accused then they caught hold of the complainant and gave severe beatings with kick and fist blow to him and also threatened him with dire consequences. It is alleged that the accused no.2 has solemnized the second marriage of accused no.1 with the help, and by hatching conspiracy, with accused no.1 and 3, illegally and unlawfully without disclosing the real facts to the complainant and without getting divorce from the previous husband of accused no.1.

3. After analyzing whole evidence Trial Court found that there was no evidence on record to prove marriage of accused Mahima @ Deepa with Satish Kumar and, thus, offence punishable under Section 494 r/w Section 495 IPC was not made out. Trial Court held that apart from bald allegations of having been given slaps and beatings, prosecution has failed to produce any evidence to prove charges under Sections 323 IPC and 506 IPC against the accused. Thus, finding the evidence discrepant, Ld. Trial Court acquitted the respondents vide order dated 30th of May, 2014.

4. Judgment dated 30th of May, 2014 was taken in appeal. Appellate Court dismissed the appeal preferred by the petitioner holding that there are no compelling and substantial reasons to interfere in the

judgment of acquittal. It was held that there was nothing on record to show that the judgment under appeal is unreasonable and irrelevant thus, the appeal was adduced to be dismissed.

5. I have heard Ld. Counsel for the petitioner and have gone through records of the case.

6. The solitary argument raised by the petitioner is that in view of the admissions made by Mahima @ Deepa in proceedings under Section 125 Cr.P.C. and Section 9 of Hindu Marriage Act in the litigation initiated by her against Satish Kumar, the Courts below erred in holding that the offence under Section 394 IPC was not made out. Ld. Counsel for the petitioner submits that admission is the best piece of evidence. Thus, the aforesaid admissions made by none-else but accused herself ought not have been ignored. The main stay of the case of the prosecution hinges upon Exhibit PW-9/A and Exhibit PW-9/B which is a petition stated to have been filed by Mahima @ Deepa against Satish Kumar seeking Restitution of Conjugal Rights. She also filed Civil Suit against Satish Kumar seeking restrain against him from marrying any other lady. Copy of the Complaint is Exhibit PW6/H. In defence, copy of the Written Statement filed by Satish Kumar was tendered wherein he denied that he ever married Mahima. It is also not disputed that whole of the litigation initiated at the hand of Mahima @ Deepa claiming herself to be married to Satish Kumar was later on withdrawn. Thus, the questions are : *'Whether the documents produced by the prosecution ibid are sufficient to hold that they amount to admission*

on behalf of accused No.1?' ; 'Even if they are held to be admission on behalf of accused No.1 are they sufficient to prove marriage of accused No.1 with Satish Kumar to prove offence under Sections 494 and 495 IPC?'

The questions are no more *res integra*.

7. The best case of the petitioner is that the documents in form of different petitions filed by Mahima @ Deepa which stand exhibited on record shall amount to admission on her part. Even if for the sake of arguments, it is taken to be so, the same will not be sufficient to prove charge of Section 394 IPC in view of law laid down by Apex Court in **P. Satyanarayana vs. P. Mallaiah 1996 (6) SCC 122**.

8. In **Satyanarayana's** case (supra), Apex Court held that -

“In our view, the High Court was in error in upsetting the well-considered order of the Trial Magistrate requiring due ceremonies of the alleged second marriage being proved so as to satisfy the tests laid down by this Court in the afore-referred cases. The plea of guilt afore-referred to could at best be understood to mean that the first appellant had taken a wife, but that admission did not necessarily mean that he had taken the second wife after solemnizing a Hindu marriage with her after performing due ceremonies for the marriage. Such plea, which he need not have even entered upon, and which was ignorable by the Court, did not absolve the prosecution to otherwise prove its case, that the marriage in question was performed in a regular way so as to visit him with penal consequences. We therefore are of the view that a futile exercise has been enjoined Upon the Magistrate by the High Court in ordering a re-trial when the evidence, as it

was, had been discussed and rejected threadbare. For these reasons, we think that the orders of the High Court would need upsetting, which we hereby do.”

9. Otherwise also scope of revisional jurisdiction w.r.t. interference in the order of acquittal passed by the two Courts stands settled by the Apex Court in case of **Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907** wherein it has been held that -

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid subsection, 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 re-trial. 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. (See AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla; AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram; AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another and AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh). ”

10. Thus, taking into consideration the facts and circumstances of the case and in view of the ratio of law laid down by the Apex Court in **Bindeshwari Prasad Singh's** case (supra), no case for exercising revisional jurisdiction is made out.

11. Consequently, finding no merit in the present petition, the same is dismissed.

September 08, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No