

HIGH COURT OF ALLAHABAD
Bench: Hon'ble Rajeev Misra, J.
Date of Decision: 9th May 2024

CASE NO.: CRIMINAL REVISION No. - 3175 of 2023

Revisionist: Smt. Kamla DeviRevisionist

Versus

State of U.P. and 2 Others Opposite Party

Legislation and Rules:

Sections 498-A, 323, 34 of the Indian Penal Code (IPC)

Sections 3, 4 of the Dowry Prohibition Act

Chapter XII of the Criminal Procedure Code (CrPC)

Section 173(2) of the CrPC

Subject: The criminal revision challenges the appellate judgment acquitting the accused of charges under Sections 498-A, 323/34 IPC, and Section 4 of the Dowry Prohibition Act, previously convicted by the trial court.

Headnotes:

Criminal Law - Dowry Prohibition - Revision against appellate court's acquittal in dowry-related charges - Revisionist challenged the appellate court's order setting aside trial court's conviction of accused for offences under Sections 498-A, 323/34 IPC, and Section 4 Dowry Prohibition Act - Appellate court found trial court's decision against weight of evidence - High Court upheld appellate court's decision, finding no illegality or perversity - Revisional court emphasized limited scope in interfering with acquittal - Held that appellate court's conclusion that prosecution failed to prove its case was neither illegal nor perverse - Prosecution unable to establish ownership or possession of the plot by the first informant crucial for the dowry demand allegations - Discrepancies in witness testimonies regarding assault and absence of medical reports noted - Trial court's judgment was found to be based on a misapprehension of evidence - Revision dismissed [Paras 1-12]

Evidence Evaluation – Appellate Court's Acquittal – Appellate court found prosecution's case unsubstantiated due to absence of evidence supporting dowry demand and absence of medical proof of injuries – High Court upheld appellate court's assessment, noting no manifest error in reappraisal of evidence – High Court emphasized limited revisional jurisdiction, affirming that appellate findings were not perverse or illegal [Paras 6-12].

Decision – Dismissal of Revision – Held – The revision is dismissed, affirming the appellate court's acquittal of the accused due to insufficient evidence of dowry harassment and physical assault – The findings of the appellate court were not found to be legally flawed or unreasonable, thus maintaining the acquittal [Paras 12-16].

Referred Cases:

- Deepak Kumar Vs. State of U.P. (Criminal Revision No.4257 of 2005), decided on 05.08.2016
- D. Stephens Vs. Nosibolla, AIR 1951 SC 196

- K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, AIR 1962 SC 1788
- Mahendra Pratap Singh Vs. Sarju Singh, AIR 1968 SC 707
- Duli Chand Vs. Delhi Administration, 1975(4) SCC 649
- Pathumma and another Vs. Muhammad, 1986(2) SCC 585
- Munna Devi Vs. State of Rajasthan and another, 2001(9) SCC 631
- Ram Briksh Singh and others Vs. Ambika Yadav and another, 2004(7) SCC 665

Representing Advocates:

Sudhanshu Singh for the revisionist

G.A., Pankaj Srivastava, and Prashant Kumar for the State-opposite party 1

Vijaya Shankar Shukla for opposite parties 2 and 3

Hon'ble Rajeev Misra, J.

Heard Mr. Sudhanshu Singh, the learned counsel for revisionist, Mr. Pankaj Srivastava, the learned A.G.A.-1st along with Mr. Prashant Kumar for State-opposite party 1 and Mr. Vijaya Shankar Shukla, the learned counsel representing opposite parties 2 and 3.

This criminal revision has been filed challenging the judgement and order dated 03.03.2023, passed by Additional Sessions Judge, Court No.1, Bareilly in Criminal Appeal No.157 of 2019 (Krishna Kumar and another Vs. State of U.P.), whereby court below has allowed aforementioned criminal appeal, set aside the judgement and order dated 06.07.2019, passed by the Chief Judicial Magistrate, Bareilly in Criminal Case No.6577 of 2009 (State Vs. Krishna Kumar and others), under Sections 498-A, 323/34 IPC and Section 3/4 Dowry Prohibition Act, police Station Mahila Thana, district Bareilly and acquitted the accused-opposite parties 2 and 3 of the charges under Sections 498-A, 323 read with Section 34 IPC and Section 4 Dowry Prohibition Act.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 05.06.2009, a prompt first information report dated 05.06.2009 was lodged by first informant, namely, Smt. Kamla Devi (mother of the victim) and was registered as Case Crime No.049 of 2009, under Sections 498-A, 323 IPC and Section 3/4 Dowry Prohibition Act, police station Mahila Thana, district Bareilly. In the aforesaid first information report, two persons namely, Krishna Kumar and Smt. Maya Devi have been nominated as named accused.

The gravamen of the allegations made in the first information report is to the effect that marriage of Santosh Kumar, the daughter of first informant, was solemnized with Krishna Kumar in accordance with Hindu rites and custom.

At the time of marriage, sufficient amount of dowry and goods were given. However, the son-in-law of the first informant, namely, Krishna Kumar and his other family members were dissatisfied with the same. The first information report further records that after expiry of a period of one year from the date of marriage, pressure was exerted upon first informant to give the plot belonging to the first informant. When the aforesaid demand was not fulfilled, cruelty was committed upon the daughter of first informant on account of which she fell ill. Ultimately, the first information report concludes with the recital that the named accused exerted pressure upon the first informant to immediately transfer the plot belonging to her failing which her daughter shall be put to death.

After above-mentioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. He recorded the statement of the first informant and other witnesses under Section 161 CrPC. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that criminality alleged against named accused is established. He, accordingly, submitted the police report in terms of Section 173 (2) CrPC.

Upon submission of police report, cognizance was taken upon the same by concerned Magistrate and the charge-sheeted accused, namely, Krishna Kumar, Subedar and Smt. Maya Devi were summoned by the court below to face trial. Charges were framed against charge-sheeted accused, who denied the same and pleaded innocence. Accordingly, the trial procedure commenced.

The trial court i.e. Chief Judicial Magistrate, Bareilly upon appraisal and appreciation of the evidence on record came to the conclusion that charge-sheeted accused are guilty of having committed an offence punishable under Sections 498-A, 323 IPC and Section 4 Dowry Prohibition Act. Accordingly, Chief Judicial Magistrate, Bareilly vide judgement and order dated 06.07.2019 convicted the charge-sheeted accused under Section 498-A IPC and consequently sentenced them to three years imprisonment along with fine of Rs.5,000/- each, under Section 323 read with Section 34 IPC to six months simple imprisonment and under Section 4 Dowry Prohibition Act to one year simple imprisonment along with fine of Rs.5,000/- each. In case of default in the payment of fine as noted above, the accused were to undergo two months additional imprisonment each.

Feeling aggrieved by the judgement and order dated 06.07.2019, passed by

Chief Judicial Magistrate, Bareilly, two of the convicted accused preferred an appeal before the Additional Sessions Judge, Bareilly. The same was registered as Criminal Appeal No.157 of 2019 (Krishna Kumar and another Vs. State of U.P.).

The appellate court upon re-appraisal and re-appreciation of the evidence on record came to the conclusion that conviction and sentence awarded by the court below against appellants/charge-sheeted accused is against the weight of evidence on record and, therefore, by means of judgement and order dated 03.03.2023 allowed the appeal, set aside the judgement and order dated 06.07.2019, passed by the trial court and acquitted the accused of the charges framed against them.

Thus feeling aggrieved by the aforementioned judgement and order dated 03.03.2023, the first informant/revisionist has now approached this Court by means of present criminal revision.

Learned counsel for revisionist contends that the order impugned dated 03.03.2023 passed by court below is manifestly illegal. The same is unsustainable in law and fact and, therefore, liable to be set aside by this Court. It is an undisputed fact that the charge-sheeted accused were convicted by the trial court by means of judgement and order dated 06.07.2019. The appellate court has set aside the conviction and sentence awarded by the trial court to the charge-sheeted accused simply on ground that appellate court has another view of the matter. No finding has been returned by the court below showing that the findings returned by the trial court in support of the conclusion drawn is either based on no evidence or is otherwise illegal, perverse or erroneous. Once a finding recorded by the trial court could not be dislodged on any of the aforementioned ground then conclusion drawn by the trial court could not have been altered. It is well settled that the judgement of the trial court cannot be set aside simply on the ground that appellate court has another view of the matter. On the above conspectus, it is thus urged by the learned counsel for revisionist that the order impugned cannot be sustained and is therefore liable to be set aside. Per contra, the learned A.G.A. for State and the learned counsel representing opposite parties 2 and 3 have vehemently opposed this criminal revision. They submit that the order impugned in present criminal revision is perfectly just and legal therefore, the same is not liable to be interfered with. Court below has set aside the judgement and order dated 06.07.2019 passed by the trial court on the short ground that the ground which was pleaded by the first informant before the court below that cruelty was committed upon her

daughter, inasmuch as, the plot belonging to her was not transferred in favour of the in-laws' of daughter of first informant itself could not be established by the first informant before the court below. No documentary evidence was filed by the first informant before the trial court showing her right, title and interest in the alleged plot. In the absence of any documentary evidence to show that first informant was in possession of plot, the allegations made in the first information report were itself baseless. As such, the allegations regarding demand of dowry does not stand proved. In short, the very basis of the first information report is conspicuous by it's absence. Apart from above, PW-2, the wife, in her deposition before court below has categorically stated that she was never assaulted by her husband i.e. Krishna Kumar. There is no medical examination report on record to show that the wife sustained any injury. Apart from above, once the basis of the prosecution case goes, then the only conclusion that can be drawn is that the prosecution itself failed to establish the very story which it set out to prove against the accused. On the above premise, they therefore contend that no illegality has been committed by the court below in reversing the judgement of conviction and sentence awarded by the trial court against the charge-sheeted accused. On the above premise, they therefore submit that no illegality has been committed by the appellate court in passing the order impugned. The present criminal revision is concluded by findings of fact which findings cannot be said to be illegal, perverse or erroneous. Once the findings recorded by court below remain intact, the conclusion cannot be altered. As such, the present criminal revision is liable to be dismissed by this Court.

Having heard the learned counsel for revisionist, the learned A.G.A. for State-opposite party 1, the learned counsel representing opposite parties 2 and 3 and upon perusal of record this Court finds that the issue involved in present criminal revision is whether the finding returned by the court below "that there was no basis to allege that on account of non-transfer of the plot by the first informant in favour of charge-sheeted accused, cruelty was committed upon the daughter of the first informant, inasmuch as, first informant herself failed to prove before the trial court that she is in possession of any plot" is a finding sustainable in law or not. The appellate court has reversed the judgement and order passed by the trial court. On the above finding meaning thereby that the prosecution failed to establish the very story which it set out to prove. This finding recorded by the court below cannot be said to be illegal, perverse or erroneous.

Apart from above, parameters regarding exercise of jurisdiction by a

revisional court against the judgement of acquittal stands crystalized by virtue of the judgement delivered by a learned single Judge of this Court in Deepak Kumar Vs. State of U.P. (Criminal Revision No.4257 of 2005), decided on 05.08.2016. Paragraphs 6, 7, 8, 9, 10, 11 and 12 of aforesaid judgement, are relevant of the issue in hand and are accordingly are extracted herein-below :

"6. Construing old Section 439 of Criminal Procedure Code, 1898, pertaining to revisional jurisdiction, the Court in D. Stephens Vs. Nosibolla, AIR 1951 SC 196 said that revisional jurisdiction under Section 439 of the Code ought not to be exercised lightly particularly when it is invoked by private complainant against an order of acquittal which could have been appealed against by the Government under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. In other words, the revisional jurisdiction of the High Court cannot be invoked merely because the lower court has taken a wrong view of law or misappreciated the evidence on record.

7. In K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, AIR 1962 SC 1788 it was held that revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in flagrant miscarriage of justice. However, this was also a case in which revisional jurisdiction was invoked against an order of acquittal. If the Court lacks jurisdiction or has excluded evidence which was admissible or relied on inadmissible evidence or material evidence has been overlooked etc., then only this Court would be justified in exercising revisional power and not otherwise.

8. The above view has been reiterated in Mahendra Pratap Singh Vs. Sarju Singh, AIR 1968 SC 707; Khetrabasi Samal Vs. State of Orissa, AIR 1970 SC 272; Satyendra Nath Dutta and another Vs. Ram Narain, AIR 1975 SC 580; Jagannath Choudhary and others Vs. Ramayan Singh and another, 2002(5) SCC 659; and, Johar and others Vs. Mandal Prasad and another, 2008 Cr.L.J. 1627 (S.C.).

9. In Duli Chand Vs. Delhi Administration, 1975(4) SCC 649 the Court reminded that jurisdiction of High Court in criminal revision is severely restricted and it cannot embark upon a re-appreciation of evidence. While exercising supervisory jurisdiction in revision the Court would be justified in refusing to re-appreciate evidence for determining whether the concurrent findings of fact reached by learned Magistrate and Sessions Judge was

correct.

10. In Pathumma and another Vs. Muhammad, 1986(2) SCC 585 reiterating the above view the Court said that in revisional jurisdiction the High Court would not be justified in substituting its own view for that of a Magistrate on a question of fact.

11. In Munna Devi Vs. State of Rajasthan and another, 2001(9) SCC 631 the Court said:

"The revision power under the Code of Criminal procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the First Information Report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

12. In Ram Briksh Singh and others Vs. Ambika Yadav and another, 2004(7) SCC 665, in a matter again arising from the judgment of acquittal, the revisional power of High Court was examined and the Court said:

"4. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice."

When the order impugned is examined in the light of above, this Court finds that the reasoning recorded by the court below that the conclusion drawn by the trial court is against the weight of evidence on record does not suffer from any illegality or perversity.

In view of above, the present criminal revision fails and is liable to be dismissed.

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