

(2024) 02 PAT CK 0081

In the Patna High Court

Case No : Criminal Revision No. 131, 133, 136, 137, 138 Of 2020

Aruna Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 2(wa), 372, 397, 401, 401(3)
Indian Penal Code, 1860 — Section 34, 44, 307, 323, 324, 341, 342, 494, 498A, 504, 506

Citation : (2024) 02 PAT CK 0081

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Ranjit Kumar, Ajay Kumar, Dronacharya, Anita Kumari Singh, Arbind Kumar Singh, Akhileshwar Dayal, Ranjit Kumar, Uday Chand Prasad

Final Decision : Disposed Of

Judgement

1. The legal issue involved in these batch of revisional applications is as to whether the complainant / informant is to be treated as "victim" within the definition of Section 2(wa) Cr.P.C. If so, whether the petitioners should file appeal under the proviso to Section 372 of the Cr.P.C. or the Revisional Application under Section 397 Cr.P.C., read with Section 401 of the Code of Criminal Procedure, is maintainable under the facts and circumstances of the case.

2. Criminal Revision No. 133 of 2020 has been filed, assailing the legality, validity and propriety of the judgement, dated 11th of September, 2019, passed in Sessions Trial No. 1586 of 2011 by the learned Additional Sessions Judge, Vth Court at Patna City in G.R. No. 1174 of 2010, corresponding to Trial No. 1586 of 2011, whereby and whereunder, the learned Judge, vide his judgement, dated 11th of September, 2019, recorded an order of acquittal in favour of Opposite Party Nos. 2 to 5 in a case under Sections 341, 342, 323, 324, 307, 506, 504 and 34 of the IPC.

3. The petitioner is the informant, who submitted a fradebyan before the S.H.O.,

Malsalami, Patna City Police Station, stating, inter alia, that her brother-in-law (elder brother of her husband) called her husband for amicable talk for partition of their house property. During such talk, the opposite parties caught hold of him, and Opposite Party Nos. 3 and 5 brought Chewaniya and Hasua. Opposite Party No. 5 gave a blow with the help of Chewaniya to Parmeshwari Prasad (husband of the de facto complainant). He was also hit by Chewaniya on his hand. As a result of such assault, Parmeshwari Prasad fell down. Hearing hue and cry, local people along with the informant, came to the spot. The opposite parties fled away. The husband of the informant was taken to the hospital and he was admitted to the hospital. Surgery was done on his chest and his wound was repaired by 30 stitches.

4. On the basis of the said information, police registered Malsalami P.S. Case No. 103 of 2010 and on completion of investigation, charge-sheet was filed against the opposite parties.

5. The opposite parties faced trial and on conclusion of trial, the learned Additional Sessions Judge by his judgement, dated 11th of September, 2019, recorded an order of acquittal against the opposite parties.

6. Criminal Revision No. 137 of 2020 is an application under Section 397 read with Section 401 of the Cr.P.C., filed by one Chandam Kumar Soni, the informant of Nabinnagar P.S Case No. 28 of 2009 (G.R. No 488 of 2009) under Sections 341, 323, 504 and 34 of the IPC, in which police submitted charge-sheet against the Opposite Party Nos. 2 to 4 for committing offence under Sections 341, 323, 504 and 34 of the I.P.C. The said case was registered as G.R. Case No. 488 of 2009 and the learned A.C.J.M, VIIth Court at Aurangabad on conclusion of trial recorded an order of acquittal in favour of Opposite Party Nos. 2 to 4. The said order was challenged by the de facto complainant in Criminal Appeal No. 72 of 2017 before the learned Additional Sessions Judge, Vth Court at Aurganabad. The appeal was dismissed and the order of the learned A.C.J.M was affirmed. The petitioner has filed the instant Revision against the order passed by the Appellate Court, assailing legality, validity and propriety of the impugned order.

7. Criminal Revision No. 136 of 2020 has been filed by the informant of Madhubani Town P.S. Case No. 314 of 2000. It is alleged by the complainant that her marriage was solemnized about 7 years ago from the date of lodging the complaint with Opposite Party No. 1, as per Mohammedan Customary Rituals. At the time of marriage, Den-Mohar was fixed at Rs. 16,786/-. The family members of the complainant gave ornaments, utensils, clothes, furniture and other items worth Rs. 75,000/-. After marriage, the petitioner went to her matrimonial home and was living happily with her husband and other matrimonial relations. However, after some days, her husband and the relatives of her husband started torturing her, giving allegation that she was not capable to procreate child. They also started demanding money from her parental home and on her failure to bring money from her parental home, the petitioner was subjected to physical and mental torture and eventually she was ousted from her matrimonial home in

a single cloth.

8. On completion of the investigation, police submitted charge-sheet under Sections 323, 498A and 34 of the I.P.C. The Trial Court recorded an order of acquittal against the opposite parties. The petitioner preferred an appeal being Criminal Appeal No. 48 of 2013 which was also dismissed on 4th of December of 2019. Hence, the instant Revision.

9. Criminal Revision No. 131 of 2020 is again filed by the complainant on the allegation that her marriage was solemnized with one Nawal Kishore in the year 1981. In the said wedlock, she gave birth to one son and three daughters. It is alleged by the complainant that she was subjected to mental and physical torture and harassment by her matrimonial relations as well as her husband after her son's death. The husband of the complainant has married to another woman. During the subsistence of marriage with the complainant, the second wife of the husband of the petitioner gave birth to a child and he lives with the second wife in Delhi.

10. On the basis of a complaint submitted by the petitioner, police registered Naubatpur P.S. Case No. 119 of 2002, dated 1st of July, 2002, under Sections 498A, 494 and 341 of the I.P.C. The husband of Kiran Kumari was convicted for the offence committed under Section 498A of the I.P.C. and was sentenced to undergo rigorous imprisonment for two years and also to pay fine of Rs. 10,000/- by the learned S.D.J.M., Danapur, (Patna) in G.R. No. 1014 of 2002, vide judgement and order of conviction and sentence, dated 19th of July, 2010.

11. During the trial of the case, the said Kiran Kumari (informant) expired. The Opposite Party No. 2 challenged the judgement passed by the learned S.D.J.M., Danapur (Patna), in G.R. No. 1014 of 2002 in appeal before the learned Additional Sessions Judge, 1st Court at Danapur, by filing Criminal Appeal No. 178 of 2010. The Appellate Court modified the order of sentence by imposing imprisonment passed against the appellant/opposite party for the period which was already undergone by the appellant and the fine amount was also reduced to Rs. 5,000/-. The instant Revision is filed by the daughters of the original informant, Kiran Kumari, since deceased, ascertaining themselves as the victims of the incident along with their mother, since deceased.

12. Criminal Revision No. 138 of 2020 was filed by one Jyoti Kumari and two others being the daughters of Kiran Kumari since deceased, challenging the legality and propriety of the judgement and order, dated 3rd of February, 2019, passed by the learned Additional Sessions Judge, 1st Court at Danapur in Criminal Appeal No. 206 of 2011, by which the learned Court of Appeal dismissed the appeal, thereby confirming the order of acquittal, dated 19th of July, 2010, passed by the learned S.D.J.M., Danapur in connection with T.R. No. 846 of 2010, arising out of Naubatpur. P.S. Case No. 119 of 2002, dated 1st of July, 2002, under Sections 498A, 494 and 34 of the I.P.C., recording an order of acquittal against the Opposite Party Nos. 3 and 4 of the charges under Sections 498A and

34 of the I.P.C. and also recording order of acquittal against the Respondent Nos. 2 to 4 of the charges under Section 494 of the I.P.C.

13. Under the factual backdrop, the above legal issue cropped up for adjudication with regard to the maintainability of the above-mentioned revisions because of the fact that though an informant should have moved the High Court under Sections 397 and 401 of the Code against an order of acquittal, such right was not available to the victim if he was not the informant of the case. Sub-Section (3) of Section 401 restricts the High Court to exercise its revisional jurisdiction to convert a finding of acquittal into one of conviction. Furthermore, Revisional Court can correct an error committed by a Court subordinate to it while passing an order of acquittal, but it cannot ordinarily interfere with a finding of acquittal unless there has been apparent error of law or procedure or unless the finding is perverse or suffers from manifest illegality or has caused gross miscarriage of justice. An order of acquittal can be challenged by way of revision under Sections 397 and 401 of the Code to the High Court, but such challenge would be restricted to judging of the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such Inferior Court.

14. In *Johar & Ors. Vs. Mangal Prasad & Anr.*, reported in AIR 2008 SC 1165, it is observed by the Hon'ble Supreme Court that the jurisdiction of the High Court to entertain revision against acquittal is not barred, but is severely restricted. The High Court, in its revisional power, would not ordinarily interfere with the judgement of acquittal passed by the Trial Court unless there has been apparent error of law or procedure or where the public justice requires interference for correction of manifest illegality or prevention of gross miscarriage of justice.

15. Moreover, the exercise of power of revision is limited and confined within parameters permitted by the provisions of Sections 397 and 401 of the Code. It is narrower in its ambit and scope in comparison to the power of appeal which permits examination of both fact and law.

16. Bearing in mind the scope and ambit of the power of the Revisional Court, let me discuss the issue as to whether the petitioners of the above-mentioned revisions in hand can be held to be "victim" within the definition of Section 2 (wa) of the Code. Section 2(wa) runs thus;-

"victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."

17. The full Bench of Delhi High Court in *Ram Phal vs. State and Ors.*, reported in 2015 CrI 3220 (FB) held that a plain reading of the definition of "victim" suggests that there has to be a relationship between the injury and the person who suffered it, i.e., the "victim". Consequently, the injury (to the victim who suffers it) has to be proximate; it cannot be remote. At the same time, given the nature of what is "injury" as defined in Section 44 IPC, the enquiry of proximity

would be fact dependent. Courts would assess the issues, based on established principles and balancing the facts on a case to case basis. Thus, it is held that where the victim is unable to make a choice of preferring an appeal by reason of trauma, shock or other disability, those who are in a position to do so on her or his behalf - such as relatives, foster children, guardians, etc., can maintain an appeal under the proviso to Section 372.

18. On careful analysis of the term "victim", it denotes two parts. In the first part "victim" means a person who has suffered any loss or injury caused by reasons of the act or omission for which the accused persons has been charged. The definition goes on to latter stage including legal heirs who suffers harm due to the injury caused by the victim.

19. In Criminal Revision No. 131 of 2020 and Cr. Revision No. 138 of 2020, the daughters of the original informant who was treated with cruelty by her husband, eventually driven out from her matrimonial home and the husband had solemnized a second marriage are obviously the victims of the harm and injury caused to their mother. Therefore, they can very well file revision against the order passed by Appellate Court as victims. Similarly, in Criminal Revision 136 of 2020 and Cr. Revision No. 137 of 2020, the petitioners are victims having directly come within the definition of Section 2(wa) of the Cr.P.C.

20. With regard to Criminal Revision No. 133 of 2020, the petitioner shall be treated as victim of the alleged incident because of the fact that she suffered mental trauma, agony and injury on her husband's receiving injury in the hands of the opposite parties. However, the accused persons / Opposite Party Nos. 2 to 5 were acquitted under various charges of the I.P.C including 307 of the I.P.C. which is absolutely sessions triable case by the learned Additional Sessions Judge Vth Court at Patna City.

21. The informant being "victim" within the meaning Section 2(wa) of the Cr.P.C. and in view of my discussion recorded above relying on the decision of the Division Bench in this Court in 2015 2 PLJR 798 and also in 2015 CrIj 3220, this Court of the view that the victim informant is entitled to file an appeal under the proviso to Section 372 of the Cr.P.C. against the order of acquittal passed against the Opposite Parties.

22. In view of the above discussions, this Court holds that Criminal Revision No. 133 of 2020 is not maintainable because the impugned order is appealable and the informant being the victim can prefer an appeal before the competent Court. Accordingly, the instant revision stands disposed of.

23. Other Revisions are maintainable before this Court because in all the said four revisions, the judgement and order of acquittal or modification of sentence, passed by the Appellate Court was challenged by the victim under Section 397 and 401 of the Cr.P.C.

24. Therefore, the office is directed to fix Criminal Revision No. 131 of 2020,

Criminal Revision No. 136 of 2020, Criminal Revision No. 137 of 2020 and Criminal Revision No. 138 of 2020 for hearing on merit.