

(2012) 03 DEL CK 0633

In the Delhi High Court

Case No : Criminal Revision Petition No. 238 of 2004

Narinder Pal Kaur Chawla

APPELLANT

Vs

S. Manjeet Singh Chawla and Another

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 401, 401(3)

Hindu Adoptions and Maintenance Act, 1956 — Section 18

Penal Code, 1860 (IPC) — Section 120B, 493, 494, 495, 496

Citation : (2012) 2 JCC 1166

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Anurag Jain, Advocate and Ms. Rajdipa Behura, APP for State/R-2, for the Respondent

Judgement

Suresh Kait, J.—The instant petition is being filed while challenging the sentence awarded by learned Addl. Sessions Judge in CrI. Appeal No. 30/2003 vide judgment and order dated 14.01.2004, whereby the sentence of three years RI imposed by the trial court was reduced to mere 14 days SI for committing offence punishable u/s 494 read with Sec. 495 of Indian Penal Code, 1860. and fine of Rs. 5000/- imposed by the trial court has been increased to Rs. 10,000/-. The petitioner filed a complaint for committing offences punishable under Sections 493/494/495/496/497 of Indian Penal Code, 1860 read with Section 120-B of Indian Penal Code, 1860 against the respondent No. 1 and his father SGS Chawla. During pendency of the complaint, the father of respondent no. 1 passed away and therefore, only respondent No. 1 was left to face the trial.

2. Vide trial court judgment dated 17.09.2002, respondent No. 1 was convicted for offences punishable under Sections 494/495 of Indian Penal Code, 1860 and sentenced to undergo RI for three years with fine of Rs. 5000/- and in default of payment, thereof, further SI for three months. The trial court further ordered respondent No. 1 to pay Rs. 1 Lac as compensation to the petitioner.

3. Being aggrieved, respondent no. 1 challenged the same by filing vide Crl. Appeal No. 30/03, before the court of Sessions. The same was disposed of vide judgment dated 14.01.2004 while maintaining conviction of respondent no. 1, the appellate court reduced the sentence from three years RI to 14 days SI and the fine amount was increased from Rs. 5000/- to Rs. 10,000/-.

4. The petitioner who is appearing in person filed the instant petition on the ground amongst others that the appellate court committed serious error in drastically reducing the sentence from three years RI to 14 days SI even while noticing that the respondent No. 1 cheated the petitioner in marrying with her while his first wife was alive.

5. The petitioner in person has submitted that despite the facts mentioned above the appellate court also noticed that respondent no. 1 and his father succeeded in keeping secret from the petitioner that respondent no. 1 was already married before marrying with the petitioner.

6. The other ground she has taken that the appellate court committed serious error in finding that the respondent no. 1 provided accommodation to the petitioner for comfortably living on the second floor of the house. On the contrary, respondent No. 1 was making all possible efforts to throw out the petitioner from the accommodation.

7. She further submitted that he declined to pay any maintenance to her for which she had to approach the court. Her application under Sec.125 Cr.P.C was dismissed on the ground that the maintenance is not admissible to Second wife. The petitioner was thus driven to file the application seeking maintenance under Sec. 18 of the Hindu Adoptions and Maintenance Act 1956, accordingly, the trial court granted Rs. 400/- per month.

8. Being aggrieved whereof the petitioner preferred appeal whereby it was enhanced to Rs. 700 per month by this Court. Being dissatisfied on the quantum of maintenance, the petitioner approached the Hon"ble Supreme Court which is pending for adjudication.

9. Thus, the respondent no. 1 driven the petitioner from pillar to the post to secure her livelihood/survival. She was not allowed to enter the house of her father in law on her return from Punjab in 1991.

10. The petitioner pointed out serious error in finding of the learned Addl. Sessions Judge that the respondent was to maintain two daughters and his old mother, whereas, both the daughters are financially independent in as much as both of them are working. The elder daughter is in the business of garments export and is settled in Calcutta, whereas the younger one is running a gym in South Delhi having rich and elite clientele. More so, while opposing maintenance claim, the respondent no. 1 admitted that his mother receiving rent from the tenant on the ground floor tenant (Rs. 3,000/- per month), therefore, the finding recorded by the appellate court are wholly erroneous to reduce sentence from 3

years RI to 14 days SI.

11. She further submitted that the sentence should have been deterrent and eye-opener for the like minded members of the society. By committing the heinous offence as the respondent no. 1 has ruined entire life of the petitioner, her dreams of happy married life have been shattered by respondent No. 1 by cheating her in getting married with her while already having been married.

12. Further it is submitted that drastically reducing of sentence has no correlation with gravity of offence committed by respondent no. 1. The serious offences pertaining to bodily injury or even in murder cases, time proves to be great healer to the victim or their survival. In case of offence such like punishable under Sec. 494/495 of Indian Penal Code, 1860, even the time fails to heal the wounds of emotions. It remains fresh throughout the life. Female who is cheated like in the instant case continues to reel under trauma throughout her life besides being looked down in a male dominated society.

13. She further submitted that drastic reduction in sentence is nothing but yet another demonstration of male chauvinism, treating female as a second fiddle and insignificant in the society. Therefore, grim committed by respondent No. 1 is more heinous than to any other crime. He should not have been let off so leniently by the appellate court.

14. She has further submitted that the trial court while considering all aspects has rightly imposed three years RI to respondent no. 1. For the offence punishable under Sec. 494, provision of punishment is for 7 years maximum imprisonment and for offence punishable under Sec. 495, provision of punishment is for 10 years imprisonment. As per the procedure, learned Metropolitan Magistrate has power for three years" imprisonment only whereas the Sessions Court has power to award imprisonment for 7 years, but he decreased to only 14 days without any cogent reasons.

15. On the other hand, Mr. Anurag Jain, Learned Counsel appearing for respondent No. 1 submitted that the petitioner filed a private complaint under Sec. 493/495/496/497 and 120-B of Indian Penal Code, 1860, against respondent No. 1 and his father alleging that she got married to respondent No. 1 on 11.12.1977 as per Sikh rites at Gurdwara Singh Sabha, Pakka Bagh, Jalandhar. Two daughters were born out of the said wedlock on 18.2.1981 and 31.5.1983. It was further alleged that the married life could not run smoothly between the petitioner and respondent No. 1, therefore, in April, 1991, the petitioner went to Phagwara, Punjab to take her B.A. Examinations and when she came back on 13.06.1991 she was not allowed to enter in the matrimonial house and therefore, the litigation started between the parties.

16. It is further alleged that during the litigation between the parties, the petitioner came to know that respondent No. 1 was already married to with another lady. In this background, respondent No. 1 was summoned by learned Metropolitan Magistrate vide its order dated 24.7.1993 and thereafter he was

ordered to be charged under Sections 494/495 of Indian Penal Code, 1860 vide order dated 6.6.1997 to which respondent No. 1 pleaded not guilty and claimed trial.

17. Learned Counsel further submitted that after the complete court, learned MM convicted the respondent No. 1 for the offences punishable u/s 494/495 IPC vide its judgment dated 11.09.2002 and sentenced to undergo three years RI with fine of Rs. 5000/-. Also directed him to pay compensation of Rs. 1 Lac to the petitioner vide its order dated 17.09.2002. The fine amount imposed and the compensation was deposited by respondent No. 1 in the Court on the same day.

18. Feeling aggrieved by the judgment and order of conviction passed by the learned MM, respondent No. 1 preferred an appeal vide CrI. A. 30/2002 before the learned Sessions Court. The same was disposed of vide order dated 14.1.2004 whereby the learned Addl. Sessions Judge upheld the order of conviction as penned down by the learned MM by modifying the order on sentence thereby reduced the substantive sentence of three years to only 14 days and enhanced the fine amount of Rs. 5000/- to Rs. 10,000/- and also sustained the order of compensation, for the reasons recorded in Para 14 of the judgment. Learned Counsel has asserted that there is no illegality or impropriety in the order passed by the learned ASJ while exercising appellate jurisdiction. Therefore, he has not committed any error of law and/or jurisdiction. He has further submitted that the appellate court has given a very cogent and justified reasons while modifying the order on sentence as under:-

14. Now coming to the point of sentence, the offence U/s 495 of IPC is punishable with the imprisonment of 10 years. The appellant is awarded RI for 3 years and fine of Rs. 5000/- besides the compensation of Rs. 1 lakh u/s 397(Sic) of CrPC. The appellant is aged about 56 to 57 years and has marriageable daughters and aged mother. The complainant is given the portion of the house of the appellant to live comfortably. The maximum part of life has been passed. The court cannot lose sight of one important fact that the complainant got married on 11.12.1977 and lived upto April 1990 for about 13 years as a happy married life with the appellant and was blessed with two children. The problem began when she returned home in July 1990 and was not allowed by her father-in-law to enter the house. The parties reached the court and subsequently in 1991 the fact for the first time of the first marriage revealed to the complainant. Although earlier both the parties have lived happily but tension crept by litigation. The fuel to fire was added by the knowledge of first marriage, otherwise there was no such problem because this kind of tensions arise in large number of single and ordinary marriages. On the intervening of the court or other authorities or otherwise the complainant is living in the house of the appellant, in which the appellant is also living. The appellant is taking care of his daughters too. The complainant though woke up after 14 to 15 years, she has been compensated by the award of compensation of Rs. 1 lakh which has been deposited. Truly, the love of centuries is forgotten on a hatred of moment. The 13 years love and

affection dispelled by single gust of wind. What is left is claim and claims. Have the laws been enacted unconsciously or thoughtlessly? No, it is not. Particularly penal laws are of social good at large. Legal sanction is not to imbalance the social order, it administration has to be proportional. Thus the justice is for just and not for unjust. The principle of sympathy and antipathy is subject to the principle of utility. The appellant has faced long ordeal of trial and at this fake (Sic) end of his life, when he has one aged mother to maintain and two marriageable daughters to marry and full shelter provided to the complainant, he deserved for reduction of substantive sentence.

19. Learned Counsel further submitted that the order passed by the appellate Court on the point of sentence is speaking, well reasoned and justified in the facts and circumstances of the present case and to meet the ends of justice.

20. Learned Counsel has relied upon a case of Sheetala Prasad and Others Vs. Sri Kant and Another, . While discussing the scope of criminal revision in paragraph 9 of the judgment, the Hon"ble Supreme Court observed that:

The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused., (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice...

21. Learned Counsel has also submitted that the petitioner has failed to make out an exceptional case to exercise the power under Sec. 397/401 of Cr.P.C. of this Court. In Raj Kumar Khemka v. State of UP reported as 2008 17 SCC 662, the Hon"ble Supreme Court has held that exceptional circumstances and compelling grounds are required to exercise to invoke revisional jurisdiction at the instance of a private prosecutor.

22. Further he has referred to a case of Kishan Lal Vs. Dharmendra Bafna and Another, wherein the Hon"ble Supreme Court has held that "It is correct that the revisional court should not interfere with the discretionary jurisdiction exercised

by the learned Magistrate unless a jurisdictional error or an error of law is noticed."

23. Learned Counsel further submitted that powers of revisional courts are limited. To strengthen his arguments, he has relied upon a case of State of Maharashtra Vs. Sujay Mangesh Poyarekar, where it was held that powers of the revisional courts are very limited and the revisional court should not interfere unless there is a jurisdictional error or an error of law is noticed.

24. Learned Counsel has further submitted that the marriage with the petitioner took place on 11.12.1977 and she lived with respondent up to April, 1990 for about 13 years. In this period of their marriage, they lived together happily and also blessed with two children. The problem begins when she returned home in June, 1991 and was not allowed by her father-in-law to enter in the matrimonial house.

25. The appellate court has sustained the conviction against respondent no. 1, however observed that petitioner/complainant got married on 11.12.1977 and lived up to April, 1990 i.e. for about 13 years happy married life with respondent no. 1 and also blessed with two children. The problems began, when she returned home in June, 1991 and was not allowed by her father-in-law to enter in the house. Thus the petitioner/complainant approached the court and subsequently in the year 1991, the fact of first marriage of respondent no. 1 revealed to the petitioner.

26. It is further observed that although, earlier both the parties lived happily but tension crept by litigation. The fuel to fire was added by the knowledge of first marriage, otherwise there was no such problem because this kind of tensions arise in large number of single and ordinary marriages.

27. It is further observed that respondent no. 1 is taking care of his two daughters too. The complainant woke up after 14 to 15 years, however, has been compensated by the award of compensation of Rs. 1 Lac which has been deposited by respondent no. 1.

28. Ld. Appellate Court while observing the age of respondent no. 1 i.e. about 56 to 57 years and his marriageable daughters and aged mother, reduced the sentenced from RI 3 years to SI 14 days and increased the fine amount from Rs. 5,000 to Rs. 10,000/-.

29. I heard both the parties. The position would have been different if the appellate court find some evidence which create doubts on the offence committed, whereas in the case in hand, while maintaining the conviction has reduced the sentence drastically from 3 years to 14 days only.

30. It is not in dispute that Ld. Appellate Court had no jurisdiction. However, while showing the sympathy and dealing with the leniency, the Court has to see the equity.

31. On the one hand, respondent no. 1 by concealing the fact of being married before consummating in marriage with petitioner and continued to conceal this fact for about 13 years. When the petitioner came to know this fact, at that point of time, she had a total dark life. The petitioner might have now reconciled and settled in the life, however, the pain, embarrassment and humiliation faced by her since that point of time, cannot be compensated in any manner.

32. If, even after the offence being proved proportionate punishment to the offence committed is not given, then it will be a greater injustice to the petitioner and such people like respondent no. 1 get the encouragement by committing such type of offence.

33. Law is settled that the powers under Revision can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice.

34. In my considered opinion, the instant case comes under the exceptional cases where the interest of public justice require to prevent the gross miscarriage of justice.

35 By committing the offence, respondent no. 1 has undoubtedly ruined the remaining life of the petitioner. Her dreams of happy married life have been shattered by respondent no. 1 by marrying with her while already having been married.

36. In view of the above, I am of the considered opinion that the judgment dated 17.09.2002 passed by Id. Trial Judge is proper. Therefore, I set aside the appellate judgment/order dated 14.01.2004 passed by the appellate court and modify the same to the extent that respondent no. 1 shall undergo SI for a period of 1 year.

37. Accordingly, respondent no. 1 is directed to surrender before the Court of Id. Trial Judge within two weeks from today and complete the remaining sentence.

38. Crl. Rev. P. 238/2004 stands disposed of on the above terms.

39. Since the main petition is allowed Crl. M.A. 16881/2010 & Crl. M.A. 12731/2010 do not require further adjudication and disposed of accordingly. No order as to costs.