
(2014) 02 RAJ CK 0135

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 202 of 2001

Smt. Kamla

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397 401
Penal Code, 1860 (IPC) — Section 406 498A

Citation : (2014) 2 Crimes 86

Hon'ble Judges : Amitava Roy, C.J

Bench : Single Bench

Advocate : M.K. Garg, for the Appellant; J.P.S. Choudhary, Public Prosecutor and Mr. B.P. Mathur, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—Heard Mr. M.K. Garg, learned counsel for the petitioner, Mr. J.P.S. Choudhary, learned Public Prosecutor, Rajasthan and Mr. B.P. Mathur, Amicus Curiae. The judgment and order dated 10.1.2001 passed by the learned Chief Judicial Magistrate, Sri Ganganagar in criminal case no. 285/91 acquitting the respondents no. 2 to 5 of the charges under sections 406 and 498A IPC constitutes the subject matter of challenge in the instant petition u/s 397/401 of the Code of Criminal Procedure (for short, hereafter referred to as "Cr.P.C.").

2. The prosecution case is traceable to a complaint filed by the petitioner, on which eventually a case was registered with the Police Station, Chunawad. It was alleged in the complaint that the informant had been married to respondent no. 2 Nandram on 23.2.1988 and on that occasion sufficient dowry had been given by her parents. She alleged that her in-laws" however were not satisfied with the endowments and started subjecting her to cruelty which included physical assaults. It was alleged that the respondents no. 2 to 5 demanded a motor cycle for which her father provided an amount of Rs. 10,000/-. It was alleged that her in-laws" even contemplated to get the respondent no. 2 remarried on the

imputation that she was mentally ill. That she was eventually left at her parent's house was averred as well. The complaint disclosed further that a written notice had been given by her demanding back her stridhan and also requiring the respondents no. 2 to 5 to desist from resorting to the second marriage as proposed. That some of the articles were recovered during investigation was mentioned as well.

3. After completion of investigation, a charge-sheet was laid against the respondents no. 2 to 5 under sections 406 and 498A IPC. They denied the charges and trial followed. The prosecution examined five witnesses including the informant. The investigating officer, however, could not be examined by the prosecution. The records reveal that after the closure of the evidence of the prosecution witnesses, an application was moved on behalf of the prosecution on 19.10.2000 insisting on the examination of the investigating officer, on which, the learned trial court vide order dated 20.10.2000 directed issuance of summon to him. However, as till 17.11.2000, the summons on the investigating officer could not be served, the evidence of the prosecution was finally closed on that date i.e. 17.11.2000. According to the prosecution, though thereafter, on 27.11.2000 the learned trial court was informed that meanwhile summons had been served on the investigating officer, the said submission was not acted upon and eventually, at the end of the trial, by the impugned judgment and order, the respondents no. 2 to 5 were acquitted of both the charges.

4. It has been principally urged on behalf of the petitioner that the acquittal being based wholly on the factum of non-examination of the investigating officer, the impugned judgment and order is patently illegal and is liable to be interfered with. Mr. Garg has urged further that it being evident from the testimony of PW1, PW2, PW3, PW4 and PW5 that all ingredients of the offences under sections 406 and 498A IPC had been proved, the finding to the contrary is apparently perverse vitiating the acquittal.

5. In response, it has been urged that not only the lodging of the written report after 3 years of the marriage alleging dowry demands per se renders the prosecution case untrustworthy, the order of acquittal having been passed on an elaborate analysis of the evidence on record, this Court in exercise of its revisional jurisdiction would not lightly interfere therewith.

6. I have considered the materials on record and also the rival arguments.

7. That the scope of scrutiny of an order of acquittal recorded in a criminal trial in the exercise of the revisional jurisdiction is severely constricted is no longer res integra. Interference is permissible and justified only if the order of acquittal is afflicted by an incurable error on a fundamental principle of law or the finding leading thereto is palpably wrong or absurd resulting in gross injustice. As a corollary, the evidence to the extent permissible in the exercise of the revisional jurisdiction has to be adjudged on this touch stone while examining the challenge to the order of acquittal. It is too primary to state as well that while exercising

revisional jurisdiction, the forum concerned is not required to re-appreciate the evidence on record. Be that as it may, as the impugned order would reveal, the learned trial court formulated two points for determination namely, (i) whether the accused persons between 23.2.1988 and 5.7.1991 had demanded by way of dowry a motor cycle etc. and in connection therewith had subjected Kamla to cruelty including physical assaults and (ii) whether on 23.2.1988, the father of Kamla at the time of her marriage had entrusted the goods as detailed in para no. 1 of the complaint to the accused persons in the nature of stridhan and whether inspite of her demand to be returned the same, they with dishonest intention did not do so and instead appropriated the same to their use.

8. While dealing with point no. 1, the learned trial court examined the testimony of the informant PW1 Kamla, PW2 Bhagirath, PW4 Kurdaram and PW5 Dhanraj. It noted the statement of the informant that for two years after the marriage every thing was normal and that dowry demands started surfacing thereafter. It noticed as well from the evidence of the other witnesses chiefly PW5 Dhanraj that the respondent no. 2 was contemplating to contract a second marriage with his (PW5's daughter) contending that informant-Kamla was amongst others mentally imbalanced. It recorded as well the admission of the complainant that before her marriage, she had been subjected to treatment for her ailing mental state.

9. The learned trial court, on an assessment of the evidence on record, concluded that the possible reason of the confrontation was the contemplated second marriage and not the alleged demand of dowry as levelled against the accused persons. That the complainant had admitted as well that the complaint had been drawn up by her father Bhagirath and that her signature only thereon was taken, was noted as well. The contradictions by way of omission in her statement in course of the investigation and at the trial with regard to the demand of motor cycle and cash and also contemplated second marriage were noticed. The learned trial court recorded as well that the testimony of PW2 Bhagirath, father of the informant, suffers from various contradictions qua his version before the investigating agency pertaining to the alleged harassment meted out by the in-laws' demand of dowry before Panchayat as well as the second marriage. Referring to PD2 containing his statement before the investigating agency, the learned trial court also observed absence of reference of Badri and Ganpat as witnesses at the Panchayat though claimed by this witness. The evidence of PW3-Krishnlal at the Panchayat has been doubted as his presence had not been confirmed by other witnesses. Similarly, the contradictions by way of omission of PW4-Kurdaram and PW5-Dhanraj between their evidence at the trial and their statement before the investigating agency were also taken note of by the learned trial court to eventually conclude that the charge u/s 498A against the respondents no. 2 to 5 had remained unproved.

10. Qua point no. 2, the learned trial court took note of the statement of the complainant that goods and other valuables given to her at the time of marriage

and which constitute stridhan had remained in her in-laws" place. She referred also to Advocate's notice demanding return thereof, which, the learned trial court held, had not been proved in accordance with law. Though she claimed to have mentioned about this fact before the investigating agency and also in complaint, the learned trial court observed that there was no reference thereof either in PD1 or the complaint Ex. P/1. The statement of PW2 Bhagirath that he did not accept the goods when returned as those were in worn off condition, was recorded by the learned trial court. The statement of PW5-Dhanraj that he was not present when the police had recovered some of the stridhan articles was also taken on record. The learned trial court, on an evaluation of the evidence of the prosecution witnesses on this aspect, thus returned a finding that no such article had been recovered from the accused persons. In view of the absence of the investigating officer, it held that it was not proved that even if anything had been recovered as claimed, the same were the goods/articles given at the time of marriage by the parents of the complainant.

11. On a totality of the considerations as above, as is evident on the face of the impugned judgment and order, the learned trial court acquitted the respondents no. 2 to 5 of both the charges.

12. Having regard to the factual background as outlined in the evidence of the prosecution witnesses, the delay in filing the written report, if reckoned from the date of marriage alleging harassment on account of demands of dowry and the facet of contemplated second marriage on the ground of mental imbalance of the complainant, the conclusions recorded by the learned trial court can by no means be said to be wholly implausible. Having regard to the analysis of the evidence made, the findings based thereon, in the opinion of this Court, do constitute a plausible view and thus, cannot be repudiated to be perverse and patently illegal warranting interference therewith in the exercise of the revisional jurisdiction of this Court. No patent illegality or error on any fundamental principle of law or absurdity in approach in the ultimate determination of the points formulated is discernible. The revision petition therefore, lacks in merit and is dismissed.