

(2008) 03 BOM CK 0018

In the Bombay High Court

Case No : Criminal Revision Application No. 106 of 1999

Smt. Reshmabai Govind Jadhav

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 325, 360, 374, 374(2), 374(3)
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2009) CriLJ 885

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : M.S. Karnik, for the Appellant; S.R. Borurkar, PP and M.M. Deshmukh, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—Heard.

2. By this revision application, applicant challenges the judgment and order dated 9th April 1999 passed by the Additional Sessions Judge Nashik, dismissing the Criminal Appeal No. 30 of 1998.

3. The applicant, who is the mother in law of Anita Raosaheb Jadhav (the deceased) is alleged to have committed offence punishable under Sections 498-A, 306 of the Indian Penal Code. According to the prosecution, on account of harassment at the hands of the applicant, Anita set herself ablaze, burnt herself alive and committed suicide. The applicant was arrested and was charged of the offence punishable under Sections 498-A and 306 of the Indian Penal Code. She was tried by the 4th Additional Sessions Judge Nasik, in Session Case No. 125 of 1997. After considering the evidence adduced on record, the 4th Additional Sessions Judge held that the prosecution had proved that Anita was subjected to cruelty by the applicant but had failed to prove that she had abetted her suicide. Accordingly, the 4th Additional Sessions Judge, Nasik, by his judgment and order dated 16th of March, 1998 acquitted the applicant of the offence punishable u/s

306 of the I.P.C. but convicted her of the offence punishable u/s 498-A and sentenced her to suffer simple imprisonment for one year and pay fine of Rs. 500/- and in default to suffer simple imprisonment for three months.

4. Aggrieved by the order of conviction and sentence, the applicant filed Criminal Appeal No. 30 of 1998 before the Sessions Judge, Nasik, who was pleased to assign it for hearing to the Additional Sessions Judge, Nasik. The Additional Sessions Judge, Nasik, by his judgment and order dated 9th April, 1999 dismissed the appeal and confirmed the conviction and sentence passed by the 4th Additional Sessions Judge Nasik. Aggrieved by the decision, the revision applicant has approached this Court in revision.

5. Learned Government Pleader appearing for the respondent State submitted that the appeal filed by the revision applicant before the Sessions Judge was Incompetent and not maintainable and was liable to be dismissed as not maintainable. Though the learned Sessions Judge has dismissed the appeal on merits, the final order of dismissal is right for different reason viz. that the appeal was liable to be dismissed as not maintainable.

6. Section 374 of the Code of Criminal Procedure (for short the "Code") makes provision for an appeal against an order of conviction, and reads as under:

374. Appeal from convictions-(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial may appeal to the High Court.

(3) Save as otherwise provided in Sub-section (2), any person-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced u/s 325, or

(c) in respect of whom an order has been made or a sentence has been passed u/s 360 by any Magistrate, may appeal to the Court of Session.

Sub-section (2) of Section 374 provides that any person convicted on trial held by the Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court. Sub-section (3) of Section 374 provides that save as other provided in Sub-section (2) any person convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or sentenced u/s 325, or in respect of whom an order has been made a sentence has been passed u/s 360 by any Magistrate, may appeal to the Court of

Session. Conjoint reading of Sub-sections (2) and (3) of Section 374 of the Code makes it clear that an appeal by any person convicted by the Sessions Judge or Additional Sessions Judge, shall lie to the High Court irrespective of the quantum of punishment. Now, even an appeal by a person convicted on a trial held by any Court other than Sessions Judge or Additional Sessions Judge would lie to the High Court if the sentence of imprisonment of more than seven years is imposed but would lie to the Court of Sessions if the sentence of imprisonment imposed on him or against any other person convicted at the same trial is seven years or less.

7. In the present case the appeal was filed in the Court of Session presuming that the appeal would lie to it as the sentence imposed was less than seven years. The revision applicant, however, lost sight of the fact that the trial was held by the Additional Sessions Judge be he the 4th Additional Sessions Judge. Since the trial was held by the Additional Sessions Judge, the appeal lay to the High Court irrespective of the period of sentence imposed i.e. irrespective of whether the sentence of imprisonment imposed was for more than seven years or not. In the circumstances, the appeal filed before the Court of Session, being Appeal No. 30 of 1998, by the revision applicant was clearly incompetent. Since the appeal was incompetent, the order passed by the Additional Sessions Judge is without jurisdiction and is liable to be set aside. The effect of this would be that the order passed by the 4th Additional Sessions Judge on 16th March, 1998 would stand inasmuch as appeal against it before the Court of Session was incompetent.

8. Mr. Karnik, learned Counsel for the applicant submitted that anomalous situation has arisen inasmuch as the order dated 9th April, 1999 passed by the Additional Sessions Judge confirming the order of conviction and sentence is set aside by this order and yet the order of conviction passed by the 4th Additional Sessions Judge stands. In my view there is no anomaly. The appeal before the Court of Session being incompetent, the order passed in appeal by the Additional Sessions Judge is set aside, not on merits but on account of lack of competence to hear the appeal. The situation has arisen purely on account of the fault of the revision applicant herself and she has to blame herself for this. It is however, clarified that the revision applicant may, if so advised, prefer an appeal against the original order, before the appropriate Court, subject to the law of limitation.

9. With this observation, the revision application is dismissed. Rule is discharged.