

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P.613/2004

% Date of decision:31.01.2008

SMT.VANDANA GOSWAMI ...PETITIONER

*Through:*Mr.Anuj Soni, Advocate with  
petitioner in person.

*Versus*

THE STATE & ORS ...RESPONDENTS

*Through:*Mr. Pawan Sharma, APP for the  
State/R-1.  
Mr.Dhan Mohan, Advocate for  
respondents 2-7.

CORAM:  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers  
may be allowed to see the judgment? No
- 2.To be referred to Reporter or not? No
3. Whether the judgment should be  
reported in the Digest? No

SANJAY KISHAN KAUL, J. (ORAL)

- 1.The petitioner/complainant is aggrieved by the impugned  
judgment dated 7.8.2004 acquitting the accused of offences u/s  
498A/406/34 IPC.
- 2.The petitioner was married to accused no.1, Shri Adesh  
Goswami, on 1.12.1992 and a complaint was filed resulting in  
registration of FIR 534/1995 against the husband of the  
petitioner, Jeth, mother-in-law, wife of the Jeth, Nandoi and the

Nanad. The marriage between the two parties had been performed according to Arya Samaj rites and it was a love marriage. The allegation in the complaint was that the petitioner was made to sleep on the floor and taunted for dowry by the accused persons and the petitioner also received beatings at the hands of her husband and his mother.

3. The prosecution produced the complainant as a star witness who narrated the incident in her examination-in-chief. She admitted in the cross-examination that the two parties had relationship for two years prior to the date of marriage and the accused husband along with his family was residing in-front of the house of the complainant. The parties were living as husband and wife for a period of one year after the marriage. She also admitted that after about one month of marriage, she was provided jewellery by the accused persons without any occasion comprising of a gold set and was also given clothes. The complainant was also provided with a colour T.V., 2-in-1, crockery, bed sheets and other articles on the occasion of Lohri by her parents, though she did not know from where the articles were purchased. The main cause of quarrel between the husband and wife was that whenever she made a demand for money from her husband, he showed his inability to pay and she used to take money from her parents, including for her further education. It was also admitted that the accused Anil Goswami (Jeth) was leading an independent life along with his

family and had nothing to do with the family of the complainant. The factum of any assault was never disclosed by her to any neighbour or to the police prior to the complaint in question on which FIR was registered. The complainant admitted that she had told the doctors at the hospital that the injury received by her was due to broken glass. During the cross-examination also, the complainant admitted that the jewellery given to her was old used jewellery which was not purchased from anywhere.

4. Another material aspect which came out during her cross-examination was that the complainant had no knowledge qua the drafting of the complaint at CAW Cell on which the FIR was registered. The complaint was stated to be drafted by her father and the complainant professed lack of knowledge qua the facts written in the complaint as she was not present at the time of drafting of the complaint and had only signed the same. Not only that, she admitted that her husband never made any demand. Her Nandoi never made any demand directly to her and that the house of the Nandoi and the Nanad is about 15-20 Kms from her house and both the said persons are gainfully employed. The gold set given to her by her mother-in-law was alleged to have been taken back after the reception and the set which was given to her was stated to be possibly belonging to her mother-in-law.

5. Another important aspect is that the complainant has admitted

that the accused persons returned all her stridhan articles lying at her matrimonial home on her demand and she has never demanded any article back after leaving the matrimonial home. In view of the aforesaid evidence, the trial court found that the initiation of the complaint itself which resulted in the registration of the FIR was not at the instance of the complainant. She, in fact, had no knowledge of the contents of the complaint. The father of the complainant, of course, took a different stand attributing knowledge to the complainant, though it was admitted that the complaint had been prepared by the Advocate which had been filed. The father even denied knowledge of the factum of giving of jewellery to the complainant by her mother-in-law..

6. The trial court, thus, found contradictory statements being made by the complainant and her father.
7. Another subsequent development which took place is that the parties filed a petition for dissolution of marriage by mutual consent in May, 2001 and the marriage stands dissolved between the parties and both the parties are now married again. In this behalf, learned counsel for the petitioner submitted that though such an application was filed and the divorce granted, there were specific averments made therein that the petitioner would be entitled to pursue her claim for maintenance u/s 125 of the Cr.P.C. and there would be no waiver of the rights in respect of the case pending against her

husband and his family members.

8. On hearing learned counsel for the parties and perusing the impugned judgment, it is obvious that the case against the accused was not established beyond reasonable doubt. In fact, there were contradictory statements made. The complainant professed ignorance about the complaint. On one hand allegations of dowry have been made and on the other hand, it is admitted that jewellery and a gold set was given by the parents of her husband. The complainant was unaware even about the alleged purchases of different items by her parents. She never made a demand for return of the articles when she left the matrimonial home, but when such demand was made, the dowry items were returned.
9. The marriage between the parties was performed according to Arya Samaj rites and the parties lived opposite each other prior to marriage. It was a love marriage that apparently went sour after a short time. The parties are now separately married after divorce has been granted by mutual consent.
10. It cannot be lost sight of that this Court is exercising revisional jurisdiction and the parameters for exercising such jurisdiction u/s 397 r/w Section 401 Cr.P.C. against an acquittal order is limited. The law enunciated by the Supreme Court in Thankappan Nadar and Ors. Vs. Gopala Krishnan and Anr., (2002) 9 SCC 393 does not empower the Court exercising revisional jurisdiction to re-appreciate evidence. There has to

be a procedural illegality or manifest error of law for this Court to interfere. In fact, in the said judgment the Apex Court intervened when the High Court acted contrary to the said principle since it was not permissible while exercising the revisional jurisdiction at the instance of the de facto complaint against the order of acquittal to do so.

11. In view of the legal principles being applied to the present case, as enunciated aforesaid, there is no such procedural illegality or manifest error of law which require this Court to interfere in the impugned order. It is not possible to accept the submission of learned counsel for the petitioner that the evidence should be re-appreciated in terms of the findings of the trial court based on the conclusion that the complainant was really not even involved in the drafting of the complaint.

12. Dismissed.

JANUARY 31, 2008  
'sp'

SANJAY KISHAN KAUL, J.