

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE DR. JUSTICE G.RADHA RANI

CRIMINAL REVISION CASE No: 1074 OF 2016

Criminal Revision Case filed Under Sections 397 & 401 of Cr.P.C against the Order dated 18-02-2016 made in Crl.A.No. 890 of 2013 on the file of the Court of the III Additional Metropolitan Sessions Judge, Hyderabad, confirming the judgment dated:01-04-2013 made in C.C.No.1258 of 2010 on the file of the Court of the XV Additional Chief Metropolitan Magistrate, Hyderabad.

Between:

SHAKEERA BEGUM, W/o. Md. Habeebulah Khan Age: 33 years, Occ: Housewife R/o. 19-4-370/A/77/3, Chiragali Nagar, Bahudurpura, Hyderabad

...Defacto Complainant/Victim/Appellant/Petitioner

AND

1. Mohd. Habeedullah khan S/o. Mohd. Taher Khan, Aged about 39 years, Occ: Business,
2. Smt. Shahjahan Begum, W/o. Mohd. Taher Khan, Aged about 58 years, Occ: House wife,
3. Mohd. Taher Khan, S/o. Mohd. Habeebulah Khan, Aged about 39 years, Occ: Business,

All are R/o. Flat No. 15-100, Plot No. 8. New Mirjallaguda, Malkajgiri, Hyderabad

...Accused/Respondents/Respondents

4. State of Telangana, Rep., by its Public Prosecutor, High Court at Hyderabad.

CRLRCMP. NO: 1568 OF 2016

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to fix an early date for final hearing of the above Crl.RC pending disposal of the above Crl.RC.

Counsel for the Petitioner: SRI N.V. ANANTHA KRISHNA

Counsel for the Respondents No.1&2: MOHD ALEEMULLAH

Counsel for the Respondent No.3: None Appeared

Counsel for the Respondent No.4: PUBLIC PROSECUTOR

The Court made the following: ORDER

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No. 1074 of 2016

ORDER:

This Criminal Revision Case is filed by the petitioner/defacto-complaint/victim/appellant aggrieved by the judgment dated 18.02.2016 in Criminal Appeal No.890 of 2013 on the file of the III Additional Metropolitan Sessions Judge, Hyderabad, Nampally, confirming the judgment dated 01.04.2013 in C.C.No.1258 of 2010 on the file of the XV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

2. The case of the complainant was that she was married with the respondent No.1 on 15.07.2004 as per Islamic rites and customs. At the time of the marriage, the parents of the petitioner gave cash of Rs.1,00,000/-, 10 tulas of gold ornaments, 50 tulas of silver articles and jahez articles worth of Rs.2,00,000/- and Rs.50,000/- in cash for purchase of motor cycle. The respondent No.3 (accused No.3) acknowledged receiving Rs.1,00,000/- in cash and also acknowledged demanding Rs.5,00,000/- as dowry amount and agreed not to insist Rs.4,00,000/- as cash instead agreed to accept house of the same worth

in lieu of the cash. The respondent Nos.1 and 3 endorsed receiving furniture and other jahez articles. After marriage, the respondents started harassing her for payment of Rs.4,00,000/- in cash instead of house. Her parents conceded to the demand and paid Rs.4,00,000/- in cash. The respondent /accused No.1 used the said cash to open a general store. After payment of Rs.4,00,000/- in cash, it brought some peace. The complainant became pregnant. The respondent (accused No.1) sent the complainant to her parent's house during her seventh month of pregnancy. The entire delivery charges were borne by the parents of the complainant. At the time of cradle ceremony, the parents of the complainant were forced to spend Rs.50,000/- for dinner to friends and relatives of the respondents. Thereafter, they started demanded Rs.1,00,000/- on the ground of loss in business. The parents of the complainant once again conceded to their demand and paid Rs.1,00,000/- in cash, but stated that they could not meet such demands in future. Aggrieved by the said refusal to concede any demands in future, the accused persons tried to kill the complainant twice. Unable to bear their harassment, the complainant filed the complaint before the XIII Additional Chief Metropolitan Magistrate. The same was referred

to WPS, Ghanzi Bazar registered as Crime No.69 of 2006. Due to the intervention of well-wishers, a compromise deed was entered before the women police on 15.04.2006. The same was signed by the respondents (accused Nos.1 and 3). The respondents took the complainant to their house. On 15.01.2007, the respondent No.1 at the instigation by respondent Nos.2 and 3 sent the complainant to her parent's house and pronounced Talaq and got published the same in Munsif Daily, a Urdu daily in Hyderabad on 18.01.2007. The complainant was three months pregnant at that time. As per Mohammedan law, Talaq could not be pronounced without following the prescribed norms, without giving reasons and without seeking the explanation of the complainant. As such, she lodged the complaint.

3. The said complaint was referred to police and the same was registered as Crime No.50 of 2007 under Sections 498-A, 406, 417, 506, 120-B of IPC read with Section 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act.

4. The complaint was filed against nine accused persons. But the charge sheet was filed by the Police against the respondents/

accused Nos.1 to 3 by deleting the names of the other accused persons.

The case was taken cognizance by the XV Additional Chief Metropolitan Magistrate and trial was conducted by the said court.

5. During the course of trial, the prosecution examined PWs.1 to 3 and got marked Exs.P1 to P5. No defence witnesses were examined and no documents were marked on behalf of the accused.

6. On considering the oral and documentary evidence on record, the trial court found the accused 'not guilty' for the offences punishable under Sections 498-A, 406, 417, 506 read with Section 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act and acquitted the accused.

7. Aggrieved by such acquittal, the complainant preferred the appeal. The Appeal was heard by the III Additional Metropolitan Sessions Judge, Hyderabad, Nampally. *Vide* judgment dated 18.02.2016 in Criminal Appeal No.890 of 2013, the lower appellate court dismissed the appeal confirming the judgment dated 01.04.2013 in C.C.No.1258

of 2010 passed by the XV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

8. Aggrieved by the said dismissal, the complainant preferred this revision contending that the courts below did not marshal the evidence on record in a proper perspective. The courts below failed to see that minor inconsistencies should not wash away the material evidence. The courts below erred in not considering the fact that the uncontested version should be treated as proved and ignored the same and ought to have seen that erroneous investigation if any, should not be to the detriment of the victim. The Hon'ble Apex Court time and again held that even solitary evidence of the victim was sufficient to bring home the guilt of the accused. The courts below erred in not seeing that 'cruelty' as defined under Section 498-A of IPC was sufficiently proved. The judgments of the Courts below were unsustainable and prayed to allow the revision by setting aside the judgments of the courts below.

9. Heard the learned counsel for the revision petitioner. Respondent Nos.1 and 2 received notices and a vakalat was also filed

on their behalf, but there is no representation for them. Notice was not served on respondent No.3, who was also residing in the same house along with respondent Nos.1 and 2. As such, this Court proceeded to decide the matter on merits.

10. Revisional jurisdiction is one of the modes of exercising the powers conferred by the statute on a superior court. An applicant invoking the revisional jurisdiction of the High Court must not only show that there is a jurisdictional error but also that the interests of justice call for interference. The conferment of revisional jurisdiction is to keep subordinate courts within the limits of their jurisdiction and to act according to the procedure established by law. 'Revision' means the action of revising, especially critical or careful examination with a view to correcting or improving.

11. In the light of the scope of the revision, the evidence of the witnesses need to be looked into. There were only three witnesses examined by the prosecution. PW.1 was the complainant, PW.2 was her brother and PW.3 was the Investigating Officer. PW.1 in her evidence stated that the accused Nos.1 to 3 demanded

Rs.5,00,000/- as dowry. Her parents gave Rs.1,00,000/- cash and promised to give Rs.4,00,000/- worth house. Her parents gave 4 tulas of gold, all the house-hold articles and furniture. The jahez list was prepared and accused No.3, her father-in-law signed the said list. After the marriage, the accused started quarrelling stating that the articles that were given were not good. They demanded Rs.4,00,000/- in cash instead of house. Her parents gave Rs.4,00,000/- in cash instead of the house for the purpose of business of her husband. Even after giving Rs.4,00,000/-, they again demanded to give Rs.1,00,000/- for the purpose of business. Her parents gave Rs.1,00,000/- Even then, the accused quarreled with her, beat her and did not provide food. Accused Nos.1 to 3 locked her in the house by keeping her in a room so that she would not disclose their harassment to anyone. She filed a dowry case in the Women Police Station. A compromise was reached by the Women Police. She was taken back by the accused to their house. After nine months they again started harassing her with a demand to get money. They abused her. Her husband beat her. On 15.01.2007, her husband left her at her parent's house and did not return. Her brother took her

to the house of the accused but the house was found locked and they were not in the house, thereafter she lodged the complaint. Later, through the newspaper she came to know that the accused gave divorce to her. She further stated that all her jahez articles and furniture were with the accused.

12. PW.2, the brother of PW.1 stated that at the time of marriage, cash of Rs.1,00,000/-, 10 tulas of gold and 50 tulas of silver, furniture worth of Rs.2,00,000/- and Rs.50,000/- cash for two-wheeler motor cycle were given by his parents. Accused Nos.1 to 3 demanded Rs.1,00,000/- to develop the general store business. He and his brother went to their house and gave Rs.1,00,000/- to them but they did not develop their business. At the time of marriage, on the demand of the accused, his father agreed to give a house worth of Rs.4,00,000/-. After marriage accused Nos.1 to 3 demanded cash of Rs.4,00,000/- instead of house, for which their father gave cash of Rs.4,00,000/- to accused. Again they demanded Rs.1,00,000/- to clear their dues and started harassing PW.1. Accused No.1 brought PW.1 to his house and left her at their house

and went away. After three days he went along with PW.1 to the house of the accused but no one was present in the house. After fifteen days they went again, but found the house locked. Finally, his sister lodged a complaint, Ex.P1.

13. Exs.P1 to P5 were marked on behalf of the complainant. Ex.P1 is the complaint filed before the Court, Ex.P2 is the bill for the purchase of gold jewellery at Saudi Arabia together with English translation, Ex.P3 is the list of jahez articles together with English translation. Ex.P4 is the acknowledgment signed by accused Nos.1 and 3 for receipt of Rs.1,00,000/- and agreeing to take the balance dowry amount of Rs.4,00,000/- as a house after the marriage. Ex.P5 is the First Information Report in Crime No.50 of 2007 of WPS, South Zone, Hyderabad.

14. The trial court disbelief the evidence of PWs.1 and 2 observing that there were contradictions in their evidence with regard to the dowry paid at the time of marriage. The trial court observed that when PW.1 stated that 4 tulas of gold, house-hold articles and furniture were given by her parents, PW.2 stated that 10

tulas of gold and 50 tulas of silver were given and the statement of PW.1 was silent with regard to the cash that was given for the purchase of motor cycle. PW.2 deposed about giving cash of Rs.50,000/- to the accused but no documents were filed in support of the said payment. The trial court also disbelieved Ex.P2 as it was in the name of Mohd. Hussain who was stated to be the cousin brother of PW.1 and the bill was showing purchase of one chain, finger ring, ear tops and gold haar weighing about 15.02 grams which was not corroborating either with the evidence of PW.1 or PW.2 that the gold given at the time of marriage was either 4 tulas or 10 tulas as stated by them. The trial court observed that Ex.P3 jahez list was not tallying with the evidence of PWs.1 and 2 as it would not contain the cash that was given for the purchase of vehicle. Ex.P4 was disbelieved by the trial court as the witness Ibrahim, who signed on Ex.P4, cousin brother of PW.1 was not examined and the defence contended that Ex.P4 was obtained on a white paper by force by the police at the time of entering into compromise in Crime No.69 of 2006. The trial court as well as the lower appellate court considered that the complaint was filed by the

complainant as a counter blast to the divorce pronounced by the accused No.1, as accused No.1 pronounced Talaq on 15.01.2007 and the complaint was filed before the court on 15.02.2007. The trial court disbelieved the evidence of PWs.1 and 2 observing that they were self-serving statements basing on which accused Nos.1 to 3 could not be found guilty.

15. The lower appellate court also observed that except the evidence of PWs.1 and 2 there was no other evidence with regard to the alleged harassment and cruelty. The specific instances of harassment and cruelty were not stated by complainant. The evidence of PW.2 was in contradiction with the evidence of PW.1 with regard to giving the dowry.

16. Both the courts below failed to observe that in a case of dowry harassment, particularly which would be committed within the four walls of the house, there could be no evidence other than the evidence of the victim or her family members. As observed by the trial court, in the case of Muslims, a jahez list would be prepared and would be signed by the parties receiving it.

In the present case also a jahez list was prepared and marked as Ex.P3. The original of Ex.P3 is in Urdu and its English translation was also filed. The trial court observing that as the English translation was not containing the signature of accused No.3 disbelieved it, but failed to note that the original document in Urdu was signed by PW.3 who had not denied his signature on the said document. The trial court also noted that the list of jahez articles included gold ornaments of 4 tulas and silver of 20 tulas as stated by PW.1. When the documentary evidence marked under Ex.P3 is also corroborating with the evidence of PW.1, the trial court disbelieving it on the ground that there were contradictions in the evidence of PWs.1 and 2 with regard to the gold and silver presented at the time of marriage does not appear to be proper. If the list was not containing about the cash that was given for the purchase of vehicle, the same could be disbelieved by the court, but disbelieving the entire list which was signed by accused No.3 and which was not even denied by the defence is perverse.

17. Likewise, Ex.P4 is the document signed by the accused No.3 wherein he admitted receipt of Rs.1,00,000/- in cash from the brother of the complainant by name, Hafeez Ayub Ali towards dowry at the time of marriage of his son Mohd. Habeebullah Khan. The document also would disclose that he agreed to take the balance dowry amount of Rs.4,00,000/- after the marriage and to take the same as house instead of cash. The brother of the complainant, Mohd. Ayub Ali also agreed to give the house in the name of bride Shakeera Begum after the marriage for an amount of Rs.4,00,000/-, in the area/locality as they like. The said document was signed by two witnesses and the accused Nos.1 and 3. The cross-examination of PWs.1 and 2 would not disclose that the above documents Exs.P2 and P4 were denied by the accused. It was only suggested in the cross-examination of PWs.1 and 2 that at the time of compromise in Women Police Station, South Zone in Crime No.69 of 2006, the signatures of the accused were taken on white papers by force. But it was not even suggested that Ex.P4 was obtained by force. Ex.P4 was a document signed on 08.07.2004. The compromise was entered in the year 2006 but not

in the year 2004. The trial court and the lower appellate court disbelieving these documents marked under Exs.P2 and P4 which were not even denied by the witnesses and acquitting the accused disbelieving the evidence of witnesses is nothing but perversity. Both the courts below failed to consider that the documentary evidence would prevail over the oral evidence and minor inconsistencies in the evidence of the witnesses could not be a ground for acquittal. As the evidence was recorded in the year 2012, after lodging the complaint in the year 2007, there could be some minor inconsistencies with regard to the payment of dowry in the evidence of PWs.1 and 2. But when there is documentary evidence on record signed by the accused persons, supported by the evidence of PW.1, both the courts below erred in not appreciating the same in proper perspective. No evidence was adduced by the defence to show that their signatures were obtained by force on Exs.P2 and P4. The courts below believing the suggestions which were denied by the witnesses and recording the acquittal basing on them is perverse.

18. However, considering the judgment of the Hon'ble Apex Court in **Joseph Stephen and others Vs. Santhanasamy and others**¹ decided on 25.01.2022 by Hon'ble justices M.R.Shah and B.V.Nagarathna, wherein it was held that:

"9. Applying the law laid down by this Court in the aforesaid decisions and on a plain reading of sub-section (3) of Section 401 Cr.P.C., it has to be held that sub-section (3) of Section 401 Cr.P.C. prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Though and as observed hereinabove, the High Court has revisional power to examine whether there is manifest error of law or procedure etc., however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial Court and/or the first appellate Court, as the case may be. As observed by this Court in the case of K. Chinnaswamy Reddy (supra), if the order of acquittal has been passed by the trial Court, the High Court may remit the matter to the trial Court and even direct retrial. However, if the order of acquittal is passed by the first appellate court, in that case, the High Court has two options available, (i) to remit the matter to the first appellate Court to rehear the appeal; or (ii) in an appropriate case remit the matter to the trial Court for retrial and in such a situation the procedure as mentioned in paragraph 11 of the decision in K. Chinnaswamy Reddy (supra), referred to hereinabove, can be followed. Therefore, in the present case, the High Court has erred in quashing and setting aside the order of acquittal and reversing and/or converting a finding of acquittal into one of conviction and consequently convicted the accused, while exercising the powers under Section 401 Cr.P.C. The order of conviction by the High Court, while exercising the revisional jurisdiction under Section 401 Cr.P.C., is therefore unsustainable, beyond the scope and ambit of

¹ <https://indiankanoon.org/doc/192873758/>

Section 401 Cr.P.C., more particularly sub-section (3) of Section 401 Cr.P.C. Issue no.1 is answered accordingly."

19. Hence, it is considered fit to remand the matter to the trial court as the order of acquittal suffers from glaring illegality resulting in miscarriage of justice and to dispose of the matter afresh on merits by re-appraising the evidence and to take an independent view uninfluenced by any of the observations of this Court on the merits of the case.

20. In the result, the Criminal Revision Case is allowed setting aside the judgment of acquittal recorded by the courts below and the matter is remanded to the trial court to dispose it afresh on merits within two months from the date of receipt of a copy of this order, after summoning the accused and giving them due opportunity to contest the matter, in accordance with law.

Miscellaneous petitions pending, if any, shall stand closed.

Sd/- K.SHYLESHI
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The III Additional Metropolitan Sessions Judge, Hyderabad (with records if any)
2. The XV Additional Chief Metropolitan Magistrate, Hyderabad. (with records if any)
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad.(OUT)
4. One CC to SRI. N.V. ANANTHA KRISHNA, Advocate [OPUC]
5. One CC to SRI. MOHD ALEEMULLAH, Advocate [OPUC]
6. Two CD Copies

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V.J.S.

DR

HIGH COURT

DATED:28/02/2023

ORDER

CRLRC.No.1074 of 2016



THE CRIMINAL REVISION
CASE IS ALLOWED

28 VLV
18/3/23