SUPREME COURT OF INDIA

MD.Shakeel

Vs.

State Police Thr.P.S. Hanmakonda

Crl.A.No.197 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

06.11.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the Andhra Pradesh High Court dismissing the application filed by the appellant in terms of section 397 read with Section 401 of the *Code of Criminal Procedure, 1973* (in short 'Code'). The appellant who was accused No. 1 was convicted for offence punishable under Section 304 Part-II of the *Indian Penal Code, 1860* (in short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act (in short 'Act'). The allegation against the appellant was that he and two others were responsible for the suicide of Farzana (hereinafter referred to as the 'deceased') who was the wife of the appellant. The occurrence purportedly took place on 21.10.1998. 13 witnesses were examined before the learned Principle Sessions Judge, Warangal. It needs to be noted that after the report was lodged, investigation was done and charge sheet was filed. Since the accused persons pleaded innocence, they are put on trial. The trial court found that the appellant and two other accused were guilty of the charges levelled against them. They were convicted and sentenced. The appellant was convicted for offence punishable under Section 304-B IPC and was sentenced to undergo rigorous imprisonment for a period of seven years and further he was also sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for three months for the offence under Section 498-A IPC and further sentenced to undergo rigorous imprisonment for a period of one year and also pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for three months for the offence under Section 4 of the Act. Other two co-accused were sentenced to undergo rigorous imprisonment for a period of one year each and also pay a fine of Rs.1,000/- in default to suffer simple imprisonment for three months each for the offence under Section 498-A IPC and further convicted and sentenced to undergo R.I. for a period of one year and pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for three months each for the offence under Section 4 of the Act. The appellant preferred an appeal before the First Appellate Authority i.e. learned Vth Additional Sessions Judge, Warangal. The First Appellate Authority held that the conviction and sentence as imposed so far as the appellant is concerned do not warrant interference. However, the co-

accused persons were acquitted. The order of the First Appellate Authority was challenged before the High Court by filing a revision petition as noted above. The same has been dismissed by the impugned order.

2. In support of the appeal, learned counsel for the appellant submitted that no reason has been indicated by the High Court while dismissing the revision petition. Learned counsel for the respondent- State supported the judgment of the High court.

3. It is to be noted that the High Court has not indicated any basis or reason as to why the revision petition filed by the appellant was without any substance. Strong reliance is placed by learned counsel for the appellant on a dying declaration purported to have been recorded on 21.10.1998 at about 5.50 P.M. which does not, according to him, implicate the appellant. We find that the High court has referred to the factual scenario for a major part of the judgment. It, however, came to an abrupt conclusion that the revision was without any merit. It also did not analyze various stands of the appellant. The way the High Court has disposed of the petition is not the correct way to dispose of the revision petition. It is not that no arguable point was involved. As a matter of fact, the relevance of the dying declaration and its effect on the prosecution case has not been considered by the High Court at all.

4. Above being the position, we set aside the impugned order of the High Court and remit the matter to it for fresh consideration in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case.

5. During the pendency of the appeal before this court, no bail was granted to the appellant. It is pointed out by learned counsel for the appellant that the appellant has undergone more than two years of sentence. It is open to the appellant to move the High Court for bail. We make it clear that we have not expressed any opinion on the question as to whether the appellant is entitled to bail or not. Needless to say all relevant aspects shall be considered if an application for bail is filed.

6. Since the matter is pending since long, we request the High Court to take up the revision petition at an early date and make an effort to dispose of the same as early as practicable preferably within six months from the date of receipt of our order.

7. The appeal is disposed of accordingly.