

# **SUPREME COURT OF INDIA**

Shlok Bhardwaj

Vs.

Runika Bhardwaj

Crl.A.No.741 of 2009

(Sudhansu Jyoti Mukhopadhaya and Adarsh Kumar Goel JJ.)

10.12.2014

## **JUDGMENT**

### **ADARSH KUMAR GOEL, J.**

1. This appeal has been preferred against the Judgment and Order dated 21st November, 2006 passed by the High Court of Allahabad in Criminal Revision Case No.1159 of 2002.
2. By the impugned order, the High Court has allowed the revision petition filed by the Respondent, set aside the order dated 30th July, 2002 passed by Judicial Magistrate, Ghaziabad, in Case No.356 of 2002 and remanded the matter back to the trial Court for fresh decision in accordance with law.
3. We have heard learned counsel for the parties.
4. The question raised for our consideration is whether in exercise of revisional jurisdiction, the High Court was justified in setting aside the acquittal of the appellant, having regard to the facts and circumstances of the case.
5. The appellant and Respondent No.1 were married on 25th January, 1996. The appellant belongs to Allahabad where his parents live and the respondent belonged to Jabalpur where her parents are living. The appellant is said to be employed at Delhi in

Central Government. The appellant-husband filed a divorce petition on 7th July, 1997 at Allahabad Family Court. The wife lodged First Information Report dated 4th November, 1997 at Ghaziabad making allegations of cruelty against the husband. After investigation, the husband and four of his family members were tried under Sections 498-A, 406, 506 IPC and 3/4 of the Dowry Prohibition Act before the Judicial Magistrate, Ghaziabad, in Case No.356/2002. The trial ended in acquittal of all the accused including the appellant vide Order dated 30th July, 2002.

6. The divorce petition filed by the husband was ordered to be transferred to Jabalpur at the instance of the wife. The wife also filed a divorce petition at Jabalpur. The husband filed Transfer Petition (Civil) No.150 of 2004 before this Court which was disposed of on 11th March, 2005. This Court noted that since both the parties had sought divorce, the marriage had broken down and the parties had agreed to a decree of divorce by mutual consent. Accordingly, this Court directed the Family Court, Jabalpur, to take up the matter on 4th April, 2005 without entertaining any prayer for adjournment and pass a decree of divorce. Accordingly, the Family Court, Jabalpur passed the decree of divorce on 4th April, 2005 after recording the statement of the parties that they mutually agreed to decree of divorce. The wife did not press her counter claim for maintenance. She also did not reserve liberty for any other action against the husband.

7. It may be mentioned that against the Order of the Magistrate acquitting the appellant and his family members, the Respondent-wife had preferred Criminal Revision No.1159 of 2002 before the Allahabad High Court. The husband filed affidavit dated 4th September, 2006 placing on record the order of this Court and the order of the Family Court, Jabalpur and also mentioning that after the dissolution of marriage, the wife has re-married and in view of the order of this Court and the Family Court, the revision petition ought to be dismissed.

8. The High Court, instead of dismissing the revision petition, without referring to the above developments, allowed the revision petition by the impugned order with the observation that documents Exhibit Ka2 and Ka3 showed harassment, cruelty and mental torture and the Magistrate had skipped over the facts and wrongly acquitted the appellant. Aggrieved by the said order, the appellant has approached this Court as already noticed above.

9. The appellant appearing in person submitted that the parties had taken divorce by mutual consent as per agreement reached before this Court and thereafter, the respondent was not justified in proceeding against the appellant. It was further submitted that the High Court failed to advert to the settlement between the parties and also exceeded its jurisdiction in setting aside the order of acquittal. The Magistrate in its detailed order duly appreciated the entire evidence and found that no case for cruelty was made out against the appellant. In exercise of revisional jurisdiction, the said acquittal could not be set aside in absence of perversity. Reliance has been placed on Judgment of this Court in Bindeshwari Prasad Singh vs. State of Bihar[1] laying down as follows :

"12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High [pic]Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See D. Stephens v. Nosibolla [AIR (1951) SC 196], K. Chinnaswamy Reddy v. State of A.P. [AIR (1962) SC 1788] , Akalu Ahir v. Ramdeo Ram [(1973) 2

SCC 583], Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu[(1975) 4 SCC 477] and Mahendra Pratap Singh v. Sarju Singh [AIR (1968) SC 707].)

10. Learned counsel for the respondent, on the other hand, submitted that even though the parties had re-married after obtaining divorce by mutual consent as noticed above, the wife was not debarred from pursuing the criminal case against the appellant. He further submitted that the High Court was justified in setting aside the order of the Magistrate and remitting the matter back for a fresh decision.

11. We have given our anxious consideration to the rival submissions. We are satisfied that the view taken by the High Court, in the facts and circumstances of the case, is not just and fair and needs to be set aside.

12. It is clear from perusal of the impugned order of the High Court that the development of settlement between the parties during pendency of the revision petition has not even been adverted to. Once the matter was settled between the parties and the said settlement was given effect to in the form of divorce by mutual consent, no further dispute survived between the parties, though it was not so expressly recorded in the order of this Court. No liberty was reserved by the wife to continue further proceedings against the husband. Thus, the wife was, after settling the matter, estopped from continuing the proceedings. In any case, it is well settled that the scope of revisional jurisdiction of the High Court does not extend to re-appreciation of evidence. In exercise of revisional jurisdiction, the High Court can interfere with the acquittal only if there is perversity in the order of acquittal. In the present case, the order of acquittal could not be held to be perverse. The High Court observed that the demand of articles, papers of house property of Jabalpur and Noida and the contents of Exhibits Ka2 and Ka3 amounted to harassment, cruelty and mental torture. This observation amounted to substitution of its view by the High Court for the view taken by the Magistrate after due consideration of all the allegations. The Magistrate inter alia found the version of the respondent-wife to be not believable and also found that the allegations were not substantiated. It was observed that the wife herself admitted that the documents Exhibit Ka2 and Ka3 were merely guidelines for good conduct and behavior expected of her and did not amount to cruelty. It was also admitted that there was no demand of dowry at the time of marriage. The Investigating Officer had never visited Jabalpur and the demand of house at Jabalpur was not substantiated. It was

further observed that criminal case filed by the wife was a counter blast to the divorce case filed by the husband. Version before the Court was improvement over the original version in the First Information Report. She had given contradictory statement about the place where her husband demanded the house. Thus, the Magistrate having dealt with the matter threadbare, the High Court, in exercise of revisional jurisdiction was not justified in interfering with the order of acquittal particularly when the parties had reached the settlement before this Court on the basis of which divorce by mutual consent was granted by the Family Court, Jabalpur which fact was placed on record of the High Court.

13. In view of the above, we allow this appeal, set aside the impugned order passed by the High Court and restore the order of the Magistrate.

[1] (2002) 6 SCC 650