

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

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HONOURABLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE Nos.520 & 807 OF 2017

Between:

CRIMINAL REVISION CASE No.520 OF 2017

Bhukya Balaji.

Petitioner

VERSUS

Bhukya Padmavathi and another.

Respondents

CRIMINAL REVISION CASE No.807 OF 2017

Bhukya Padmavathi.

Petitioner

VERSUS

The State of Telangana and another.

Respondents

JUDGMENT PRONOUNCED ON:30.08.2023

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

E.V.VENUGOPAL, J

*** THE HON'BLE SRI JUSTICE E.V.VENUGOPAL**
+ CRIMINAL REVISION CASE Nos.520 & 807 OF 2017

% 30.08.2023

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The State of Telangana and another.

Respondents

! Counsel for Petitioner : Sri C.Sharan Reddy in CrI.R.C.No.520 of 2017
and Sri B.Balaji in CrI.R.C. No.807 of 2017.

^ Counsel for the respondents : Sri Ch.Venu Kumar, learned
Counsel for the 1st respondent and Sri
Vizarath Ali, learned Assistant Public
Prosecutor appearing for the State.

<GIST:

> HEAD NOTE:

? Cases referred

¹ (2001) 4 SCC 759

² 2015 SCC OnLine Hyd 922

³ AIR 2023 SC 2228

⁴ (2004) 4 SCC 158

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE Nos.520 & 807 OF 2017

COMMON ORDER:

1 Since both these revisions arise out of the order dated 20.01.2017 passed in Crl.M.P.No.226 of 2016 in Crl.A.No.158 of 2015 on the file of the Court of the Special Judge for S.C & S.T (PoA) Act-cum-V Additional District & Sessions Judge, Medak at Sangareddy; and since the parties to these proceedings are one and the same, I deem it appropriate to dispose of these two revisions by this common order.

2 For the sake of convenience, parties to this proceeding will be referred to as were arrayed in Crl.R.C.No.520 of 2017.

3 The factual context depicts that on the complaint lodged by the first respondent herein, the petitioner was tried for an offence punishable under Section 498-A of IPC before the learned Judicial First Class Magistrate (Spl. Court for Proh.& Excise offences) at Sangareddy in C.C.No.117 of 2011 wherein the first respondent was examined as P.W.1. After full-fledged trial, the said calendar case ended in acquittal by judgment dated 29.01.2013. Aggrieved thereby, the first respondent herein preferred Criminal Appeal No.158 of 2015 on the file of the Court of the Special Judge for S.C & S.T (PoA) Act-cum-V Additional District & Sessions Judge, Medak at Sangareddy. Pending appeal, the first respondent filed Crl.M.P.No.226 of 2016 under Section 391 Cr.P.C. praying the appellate Court to permit her to lead additional evidence in view of the treacherous conduct of the investigating officer who had shown partisan of

attitude and conducted a perfunctory investigation besides declining to give evidence before the Court leading to unjust acquittal of the petitioner herein for the offence under Section 498-A of IPC in C.C.No.117 of 2011.

4 The contention of the first respondent herein being the petitioner in CrI.M.P.No.226 of 2018 before the appellate Court was that she initially lodged a complaint before the police against the petitioner, Swathi, James Bhukya Saidamma and others which was registered as Cr.No.2 of 2008 for the offences punishable under Sections 498-A and 494 IPC, but later the police have filed charge sheet against the petitioner alone for the offence under Section 498-A of IPC only without including Section 494 IPC and Sections 3 and 4 of the Dowry Prohibition Act and other provisions of law. The investigating officer filed charge sheet in a hurried manner in collusion with the petitioner herein tailoring Section 161 Cr.P.C statements inconsistent with the complaint of the first respondent and her father. Even though she had furnished the details of the material witnesses and documentary evidence, the investigating officer intentionally did not examine them and file the same to favour the petitioner. Much has been stated that the petitioner herein subjected the first respondent to cruelty both physical and mental for want of additional dowry and also on the pretext that she could not beget children. In order to meet the unjust demands of the petitioner, the father of the first respondent sold his landed properties and gave the sale proceeds thereof to the petitioner, in spite of which, the petitioner did not mend his attitude and he misappropriated the same. Though the marriage between her and the petitioner is subsisting, the petitioner married one girl by name Swathi. The petitioner purchased various

properties in the name of said Swathi and his brother and also in the name of his friend Madhav Reddy. The petitioner is an Industrial Fitter 'Group C' employee and he gets a meagre salary. But he constructed a multi-storeyed building with the amounts given by her father. Since the petitioner married another woman by name Swathi, the family members of said Swathi also started harassing her mentally to consent the second marriage of the petitioner with said Swathi and allow Swathi to live in the same house. It is her specific case that with regard to the harassment and other problems, panchayats were held before elders before whom the petitioner admitted his guilt and promised to look after her well. In utter disobedience to the orders dated 02.04.2008 in DVC No.8 of 2008 passed by the learned II Additional Judicial Magistrate of I Class, Khammam, restraining transfer of any property, the petitioner transferred land admeasuring 450 sq. yards in Sy.No.311 of Isnapur village, Patancheru Mandal, Medak District in favour of his second wife Swathi.

5 The specific contention of the first respondent was that though all these material facts with documentary proof were placed before the investigating officer, he did not conduct the investigation in the manner it should be done and filed charge sheet against the petitioner alone for the offence under Section 498-A IPC in collusion with the petitioner by suppressing best evidence available to her. Hence she filed the above CrI.M.P. requesting the appellate Court to permit her to adduce additional evidence and examine the panchayatdars and other members and mark the documents to meet the ends of justice.

6 The petitioner herein contested the said petition by filing his counter before the learned appellate court stating that the first respondent was given full opportunity to adduce her evidence before the learned Magistrate in C.C.No.117 of 2011 and that the learned trial Court after going through the entire material available before it had rightly acquitted the petitioner for the offence under Section 498-A IPC; the petition filed under Section 391 Cr.P.C. seeking permission of the court to adduce additional evidence by way of filing all irrelevant documents, the contents of which have no bearing whatsoever on the allegations of harassment against him. It was specifically averred that the Crl.M.P. was filed to fill in the lacunae in prosecution evidence and to keep the matter protracted to cause sufferance to the petitioner.

7 The learned appellate Court by order dated 20.01.2017 allowed the Crl.M.P.No.226 of 2016 in Crl.A.No.158 of 2015 by remanding the case to the trial Court which reads as under:

“In the result, this petition is allowed by remanding the case to the trial Court with a specific direction to record additional evidence and also mark only those documents and material objects which are relevant to the petitioner's case and leave the irrelevant registered sale deeds. The trial Court is directed to record the petitioner side evidence and mark those relevant documents and return the record to this court within three months and pending receiving the additional evidence from the trial Court, the main appeal is kept pending till such receipt of the material evidence from the trial Court. The main appeal is posted to 24.04.2017, in the meantime the trial Court is directed to record the additional evidence by marking relevant documents and return the record to this Court.”

8 Aggrieved by the said order dated 20.01.2017 the petitioner filed Crl.R.C.No.520 of 2017 seeking to set aside the said order and on the other hand being dissatisfied with the limited direction of the learned appellate court given to the learned trial court to mark only those documents and material objects which are relevant to the petitioner's case and leave the irrelevant

registered sale deeds the first respondent preferred Crl.R.C.No.807 of 2017 seeking a further direction to the learned appellate Court to allow the Crl.M.P.No.226 of 2016 in Crl.A.No.158 of 2015 in its entirety.

9 Heard Sri C.Sharan Reddy, learned counsel for the petitioner in Crl.R.C.No.520 of 2017, Sri B.Balaji, learned counsel for the petitioner in Crl.R.C.No.807 of 2017, Sri Ch.Venu Kumar, learned counsel for the first respondent and Sri Vizarith Ali, learned Assistant Public Prosecutor appearing for the State.

10 The learned counsel for the petitioner contended that if the first respondent is dissatisfied with the investigation done by the investigating officer she should have filed a protest petition before the trial Court. He further submitted that in order to fill up the lacunae the first respondent filed the petition for recording additional evidence. It is his further contention that if at all the first respondent is aggrieved by the investigation done by the investigating agency she was always at liberty to file a petition under Section 311 Cr.P.C before the trial Court itself to adduce additional evidence during the trial itself. The documents which the first respondent intends to get marked are irrelevant for the offence under Section 498-A of IPC. The learned counsel for the petitioner relied on the judgment of the apex Court in **Rambhau v. State of Maharashtra**¹ and also on a judgment of the erstwhile High Court of Andhra Pradesh in **G.Venkateshwar Rao V. Neelima**² in support of his contentions.

¹ (2001) 4 SCC 759

² 2015 SCC OnLine Hyd 922

11 On the other hand, the learned counsel for the first respondent submitted that the learned appellate Court ought to have allowed the petition filed under Section 391 Cr.P.C in its entirety inasmuch as it was a clear case of dowry harassment and that the petitioner subjected the first respondent to cruelty for want of additional dowry in spite of receiving an amount of Rs.1,50,000/- at the time of marriage besides household articles and ornaments. The learned counsel for the first respondent further contended that as per A.P. Police Manual for Cases of Cruelty and Harassment of married women (Para 537-1(g) (Annexure-1) where normally oral assertions are made on persistent demands for money or property, the investigating officer has to skilfully examine as many witnesses as possible for ascertaining the correct situation. But in the present case the investigating officer colluded with the petitioner and had miserably failed to follow the basic guidelines to carry out fair investigation and examine the material evidence and ultimately filed a defective charge sheet. It is his further contention that the first respondent has filed so many documents in order to establish her case before the learned appellate court along with the petition filed under Section 391 Cr.P.C, but the learned appellate Court passed an erroneous order directing the trial court to take into consideration only some of those documents and ignore some.

12 In order to arrive at a just conclusion, this Court deems it appropriate to refer to the provision of law i.e. Section 391 Cr.P.C. under which the CrI.M.P.No.226 of 2016 was filed before the learned appellate Court which reads as follows:

391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

13 From the above it is manifest that Section 391 of the Code empowers the Court to admit additional evidence at the appellate stage, if it considers that such additional evidence is necessary. But at the same time, it should be borne in mind that the power to be exercised is of a discretionary nature and cannot be utilized to fill up gaps and lacunae in the evidence. At this juncture, this Court refers to the judgment of the Hon'ble apex Court in **State of Rajasthan vs. Asharam**³ wherein the Court held as follows:

16. Both Sections 311 and 391 of the Code of Criminal Procedure relate to power of the court to take additional evidence; the former at the stage of trial and before the judgment is pronounced; and the latter at the appellate stage after judgment by the trial court has been pronounced. It may not be totally correct to state that the same considerations would apply to both situations as there is a difference in the stages. Section 311 of the Code of Criminal Procedure consists of two parts; the first gives power to the court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the trial court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case. On the other hand, the discretion Under Section 391 of the Code of Criminal Procedure should be read as somewhat more restricted in comparison to Section 311 of the Code of Criminal Procedure, as the appellate court is dealing with an appeal, after the trial court has come to the conclusion with regard to the guilt or otherwise of the person being prosecuted. The appellate court can examine the evidence in depth and in detail, yet it does not possess all the powers of the trial court as it deals with cases wherein the decision has already been pronounced. (underlined by me)

³ AIR 2023 SC 2228

14 So, the appellate Court while directing the trial court to take additional evidence on record should bear in mind whether the proposed additional evidence or the evidence likely to be recorded would be of any help to dispose of the appeal or whether there was any miscarriage of justice for not taking on record the evidence which the party is pressing for it because the trial court has already come to a decision on the subject matter and delivered its verdict.

15 In the case on hand, the crime was registered against the petitioner on 04.01.2008 and initially the case was numbered as C.C.No.109 of 2008 on the file of the Court of the Additional Judicial Magistrate of I Class, Sangareddy and subsequently it was transferred to the Court of the learned Judicial First Class Magistrate (Spl. Court for Proh.& Excise offences) at Sangareddy and renumbered as C.C.No.117 of 2011 wherein the entire trial was conducted and judgment was pronounced on 29.01.2013. So, in between the registration of crime and pronouncement of the judgment five years time has gone by. If the first respondent had any grievance that the investigation was not done properly and material evidence was not collected, she had five years of time to ventilate her grievance before the trial Court itself by filing an application under Section 311 Cr.P.C. praying the trial Court itself to adduce additional evidence during the trial itself. Instead of resorting to such a procedure, having ample time and opportunity at hand, the first respondent filed the petition before the appellate Court. In **Zahira Habibulla H. Sheikh and Ors. v. State of Gujarat and Ors**⁴ the Hon'ble apex Court held as follows:

⁴ (2004) 4 SCC 158

27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The Section is not limited only for the benefit of the Accused, and it will not be an improper exercise of the powers of the court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the Accused. The Section is a general Section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the Section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

16 Further, at every stage of the proceedings right from the inception of the registration of the crime till the date of pronouncement of the judgment in the trial Court, the first respondent was conscious of the fact that the petitioner herein was being tried for an offence under Section 498-A of IPC only and not under other sections of law. That being so, she could have filed an application under Section 216 Cr.P.C. which empowers the Court to alter or add to any charge at any time before the judgment is pronounced. Without resorting to or availing such opportunity, the first respondent filed the petition under Section 391 Cr.P.C at the appellate stage, which in my considered view is nothing but an effort to fill up the lacunae.

17 Insofar as the laches on the part of the investigating officer in conducting the investigation is concerned, the first respondent has not pleaded the same before the trial Court during the course of its proceedings and allowed the case to continue and it is only after the case ended in acquittal, she, after filing an appeal, filed the petition under Section 391 Cr.P.C.

18 It is also brought to the notice of this Court that the first respondent filed a private complaint against the petitioner for the offence under Section 494 IPC

and that the same was referred to the police who registered it as a case in Crime No.36 of 2013 and that the said case is still pending.

19 In that view of the matter the documents filed by the first petitioner to project that the petitioner contracting second marriage with one Swathi will take its own course in the proceedings referred to above because she had already initiated separate proceedings to that effect.

20 From an analysis of the above, and in the light of the principle enunciated by the Hon'ble apex Court in the judgments cited supra, this court is of the considered opinion that the appellate Court ought not to have entertained the petition filed under Section 391 Cr.P.C.

21 Accordingly, Criminal Revision Case No.520 of 2017 is allowed, setting aside the order dated 20.01.2017 passed in CrI.M.P.No.226 of 2016 in CrI.A.No.158 of 2015 on the file of the Court of the Special Judge for S.C & S.T (PoA) Act-cum-V Additional District & Sessions Judge, Medak at Sangareddy. Consequently, Criminal Revision Case No.807 of 2017 filed by the first respondent is dismissed.

22 It is needless to observe that this Court has not given any observations with regard to the findings given by the trial Court in the calendar case or on the observations made by the appellate Court in the criminal miscellaneous petition. Hence the appellate Court is directed to proceed with the appeal pending before it with the material available on record.

23 As a sequel, miscellaneous petitions, if any, pending in these two criminal revision cases shall stand closed.

E.V.VENUGOPAL, J.

Date: 30.08.2023
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B/o Kvsn