

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Mar-15-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : CRL.O.P. No. 3190 of 2016 in Crl.A.SR. No. 49930 of 2015

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. Heard both sides.
2. Leave has been sought for under Section 378(4) Cr.P.C to appeal as against the order of acquittal passed by the learned Additional Sessions Judge, Mahila Court, Perambalur in S.C.No.46 of 2014.
3. A1 to A3 were prosecuted before the said Court on the allegation that A2 and A3 have given in marriage PW2 a minor girl, who has not attained the marriageable age, viz., 18 to A1, who is double her age. The trial court having found nil incriminating evidence, acquitted the accused.
4. Learned Additional Public Prosecutor would submit that the impugned judgment suffer from legal perversity when especially PW2 has proved that she is far below 18 years.

5. On the other hand, Mr.P.Mani, learned counsel for the respondents/accused would submit that the impugned judgment does not suffer from any legal perversity or any infirmity. As there is no incriminating evidence to sustain the charge, rightly the trial court has acquitted the respondents.

6. I have anxiously considered the rival submissions and perused the impugned judgment and the relevant materials on record.

7. The yardstick in an appeal as against the conviction and in an appeal as against the acquittal are not one and the same. They differ in principles and perspective. Simply because the appellate court will come to a different conclusion, it will not be a case for entertaining the appeal as against acquittal. Consequently, it will not be a case for grant of leave. The aggrieved party, who seeks the leave of court to prefer an appeal as against the order of acquittal must establish to the court that the impugned judgment suffers from legal perversity.

8. The term "legal perversity" is not a magical word. It is to the effect that in assuming a bogus title, the trial court must have omitted to consider the piece of evidence, which it has to consider and it has taken into account an inadmissible piece of evidence in its zone of consideration which ought not to have been considered. Then it will be an eminent ground for giving leave to appeal.

9. Now, in this case, throughout the evidence both in the chief and in the cross examination, PW2 has not spoken about she having been forced to undergo a form of marriage when she is below 18 years to a man for A1, who has crossed 21 years, long back.

10. Ingredients required for the offence complained of are:

(i) age of the victim and the age of the main accused and (ii) performance of marriage or arrangement made for conducting of the marriage

(iii) as regards Section 4 of POCSO Act, the evidence of PW2 is very important.

11. As already stated PW2's evidence is mere evidence. It does not contain, even a shred of incriminating evidence as against the accused persons. In such

circumstances, in writing the impugned judgment, the trial court has not fell into any legal error and the judgment flawed on account of any legal perversity.

12. In such circumstances, this is not a fit case for grant of leave.

13. Leave refused. Petition dismissed.

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