

Surya Narayan Panda Vs. State of Orissa

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Court : Orissa

Decided On : Sep-02-1997

Reported in : 1998CriLJ3050

Judge : P.K. Misra, J.

Acts : Dowry Prohibition Act, 1986 - Sections 4, 6-A; Indian Penal Code (IPC) - Sections 34, 498A and 495; Code of Criminal Procedure (CrPC) - Sections 197 and 362; Code of Civil Procedure (CPC) - Sections 100

Appeal No. : Criminal Revision No. 404 of 1996

Appellant : Surya Narayan Panda

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : A.K. Mishra-2, ;S.K. Misra and ;Sk. Q. Mahammed, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

P.K. Misra, J.

1. The petitioner was convicted under Section 498A, Indian Penal Code and sentenced to undergo R.I. for 6 months and to pay a fine of Rs. 500/-, in default, to undergo S.I. for one month. The appeal by the petitioner having been dismissed, the present revision has been filed.

2. There is no dispute that the petitioner had married P.W. 3 on 17-5-1986. It is alleged by the prosecution that the wife (P.W. 3) was being harassed from time to time for non-fulfilment of demand for dowry. The petitioner and three others were charged under Sections 498A, 495 read with Section 34, Indian Penal Code and Sections 4 and 6A of the Dowry Prohibition Act. However, the petitioner alone was convicted under Section 498A, Indian Penal Code and all others were acquitted by the trial Court.

3. When the revision came up for admission on 28-10-1996, an order was passed admitting the revision on the question of sentence. In spite of the said order, the learned counsel for the petitioner has vehemently contended that though the revision was admitted on the question of sentence, still the High Court can go into the merit of the case for the purpose of satisfying itself as to the correctness, legality or propriety of the finding of guilt recorded by both the Courts below.

4. Unlike under Section 100, Code of Civil Procedure, where while admitting a Second Appeal, High Court is required to frame the substantial question of law, a Court admitting a Criminal Revision is not required to specify the particular reason for admitting the Criminal Revision. Therefore, the practice of admitting a Criminal Revision on a particular point, such as on the question of sentence only, may not appear to be prudent. However, in the present case, I am not concerned with the desirability of continuing or discontinuing such practice of admitting a revision only on a particular question. The question is, if the Criminal Revision is admitted on a particular ground or question, such as question of sentence only, whether it would be open to the revisional Court to delve into the other points relating to the merit of the case.

5. It is contended that when a Criminal Revision is admitted on the question of sentence only, after receipt of records the revisional Court may satisfy itself as to the correctness, legality or propriety of any finding recorded by the Court below. It

is further submitted that when a case is admitted, albeit, on a particular question, such as question of sentence, the entire record comes before the revisional Court and there should not be any embargo on the revisional Court to consider the entire case. Such a view had been taken earlier in several decisions of the Patna High Court such as the decisions reported in AIR 1939 Patna 349 : (40 Cri LJ 751), Sheikh Idris v. Emperor and AIR 1970 Patna 391 : (1970 Cri LJ 1578), Kamaleshwari Thakur v. State, which have been noticed in 1982 Cri LJ 19, S.P. Mallick v. State of Orissa. Similar view has been expressed by the Punjab and Haryana High Court in the decision reported in 1982 (84) Punj LR 357 Pawan Kumar v. The State of Punjab, where it was observed :-No case can be admitted on a particular point. Either a case is dismissed or it is admitted. When it is admitted the whole case is open and the Court has to decide it on merits after hearing the parties....

However, these decisions have not considered the effect of Section 362, Code of Criminal Procedure, which provides that a Court is not to alter its judgment or final order disposing of a case except to correct a clerical or arithmetical error. It may be argued that an order admitting a criminal revision on a question of sentence only is not a judgment, nor a final order disposing of the case and as such the principle of finality envisaged under Section 362, Code of Criminal Procedure, is not applicable. However, on a closer scrutiny, such a view cannot be accepted. The order admitting a revision on the question of sentence only necessarily implies that the revision is dismissed on other aspects, such as merits of the case, or legality of the proceedings, and, therefore, to that extent the order becomes final. Section 197, Code of Criminal Procedure, enables the revisional Court to examine the correctness, legality or propriety of any finding, sentence or order. Therefore, a revisional Court at the threshold may be satisfied that the finding recorded by the Court below is correct, or the proceedings have been completed legally, but yet the Court may admit on the question of sentence only. If such a course can be adopted at the time of final decision, there is no reason why at the threshold the revisional Court should not say so. I must hasten to add that the practice of admitting the revision on the question of sentence may not sound proper and may be avoided as far as possible. But that does not mean that the revisional Court does not have any power to do so at the threshold by admitting a revision on a

particular point, including the question of sentence only. Where such a course is adopted, it would not be open to the Court (whether the same Judge or some other Judge, is immaterial) to re-consider the matter in its entirety. Any other interpretation would be against the principle contained in Section 362, Code of Criminal Procedure, as well as against the principle of judicial decorum and propriety.

Ordinarily, the view expressed by the Patna High Court is prior to 26th July, 1948 and in the absence of any specific decision of the Orissa High Court, is required to be followed in Orissa keeping in view the accepted norms of judicial precedent. However, I find that the views expressed in the decision reported in AIR 1939 Patna 349 : (40 Cri LJ 751) have been subsequently explained and distinguished in a Division Bench decision of the Patna High Court, reported in 1984 Cri LJ 1590, Rabindra Nath Chaubey v. Charai Chamar. I respectfully agree with the views expressed in the aforesaid division Bench decision of the Patna High Court, though I have my reservations about the desirability of the practice of admitting a criminal revision on the question of sentence only.

6. Even if it is held that the petitioner can challenge the findings on merit of the case, in exercise of revisional jurisdiction, I am not inclined to take a different view of the matter. Both the Courts below have considered the effect of evidence adduced on the side of the prosecution. I do not find any perversity in appreciation of evidence or any apparent illegality in the concurrent findings recorded by the Courts below to take a different view in the matter.

7. Learned counsel for the petitioner then contended that in the peculiar facts and circumstances of the present case, the sentence may be appropriately modified and the custodial sentence may be reduced to the period already undergone. Relying upon the decision reported in (1969) 35 CLT 411 :(1969 Cri LJ 1414), Bhanja Naik v. Somanath Mohanty, followed in the decision reported in (1996) 11 OCR - 505, Sudhakar Sahoo v. State of Orissa, it has been submitted that surrendering to judicial custody even for a day or fraction of a day is also imprisonment. The learned counsel has filed a certified copy of the order dated 7-11-1994 in O.S. No. 208 of 1988-1 and the decree in the said suit. From the

aforesaid documents, it is apparent that the marriage between the petitioner and P.W. 3 has been dissolved on the basis of a joint petition filed by the parties. The criminal proceeding had been started in the year 1987 and during the pendency of the trial, the said suit for divorce had been filed by the wife. Since the suit has been subsequently disposed of on consent on the basis of a joint petition filed by both the parties, it is evident that the rancour between the parties is subsided. Having regard to the aforesaid subsequent event, I consider it a fit case where the sentence should be appropriately modified and the period of substantive sentence is reduced to the period already undergone and in lieu thereof, the petitioner should pay a fine of Rs. 3,000/- in all, in default, to undergo rigorous imprisonment for six months. From the fine amount, if realised, a sum of Rs. 2,500/- may be paid to the wife (P.W. 3).

8. Subject to the aforesaid modification in the sentence, the revision is dismissed.

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