

Smt. Mobina Begum Vs. Nawab Ali and ors.

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Court : Delhi

Decided On : Jan-22-2008

Reported in : 2008(100)DRJ672

Judge : Sanjay Kishan Kaul, J.

Acts : Indian Penal Code (IPC) - Sections 34, 308, 323, 324 and 352; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 107, 151, 155, 397 and 401

Appeal No. : Crl. M.A. 6991/2006 and Crl. Rev. Pet. No. 478/2006

Appellant : Smt. Mobina Begum

Respondent : Nawab Ali and ors.

Advocate for Def. : Pawan Sharma, APP

Advocate for Pet/Ap. : G.S. Sharma, Adv

Disposition : Petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

CRL.M.A.6991/2006

1. The petitioner/complainant is aggrieved by the impugned order dated 7.2.2006 of the learned Additional Sessions Judge in terms whereof the accused have been acquitted for the charges under Sections 308/34 of the Indian Penal Code (hereinafter referred to as the IPC). The State has not filed any appeal against the impugned order.

2. There is a delay of 68 days in filing the revision petition. It is stated in the application for condensation of delay that after the petitioner had deposed in the matter, she did not participate any further and it is only when a legal notice dated 11.5.2006 was served on the petitioner on 29.5.2006 alleging malicious prosecution, did the petitioner come to know about the acquittal of the accused by the impugned order. The petitioner thereafter contacted her counsel and applied for certified copy of the judgment and other relevant documents on 29.6.2006 which were made available on 6.7.2006. It is during this period of time that the petitioner also requested the Chief Prosecutor through a counsel for the State to challenge the acquittal order or for permission for filing of criminal revision by the petitioner, but no reply was received. The petitioner claims to hail from an economically dis-advantaged section of society.

3. In view of the aforesaid reasons, sufficient grounds have been made out for condensation of delay and for consideration of the revision petition on merits. Application stands allowed.

4. An alleged agreement for repairing of Gali No. 8, B-Block, S.R. Colony, for which contributions were stated to have been made by the inhabitants of the Gali, gave rise to a quarrel and the police took preventive action against two groups under Sections 107/151 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) on 11.3.2000. All the persons involved in the quarrel were medically examined as they had received injuries and the MLC opined that it was a case of simple injury caused by blunt objects. However, a subsequent MLC of Smt. Mobina Begum (the petitioner) after receipt of C.T. Scan report gave rise to medical opinion that the injury on her person was dangerous and, thus, her statement was recorded by the police. As per her case, on 11.3.2000 while she was present at the shop located in her house in the Gali, the accused persons came and started beating her and a blow was also given with an iron rod over her head. Beating was also given to her husband and her sons and the money box was taken away. An FIR was registered under Sections 308/34 of the IPC and on completion of investigation, the charge-sheet was filed under Sections 308/323/324/352/34 of the IPC against the accused (respondents No. 1 to 9 herein). The charges were framed on 27.11.2001 under Section 308/34 of the IPC against all the accused who claimed trial after denying the charges. On completion of trial, in terms of the impugned order dated 7.2.2006 of the learned ASJ all the accused have been acquitted.

5. Before proceeding to analyze the reasoning of the trial court, it is necessary to keep in mind the scope and ambit of scrutiny by this Court while exercising jurisdiction under Section 401 of the Cr.P.C. Section 397 of the Cr.P.C. empowers the High Court or any Sessions Judge to call for and examine the records of any proceedings before the inferior criminal court situate within its local jurisdiction for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. Sub-section (3) of Section 401 of the Cr.P.C. provides that nothing contained in the said Section 401 of the Cr.P.C. shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. Thus, in such matters there is a difference in the approach while exercising the power to entertain a revision against an order of acquittal as against an appeal.

6. The judgment referred to in this behalf by the learned APP is in the case of Jagannaath Choudhary and Ors. v. Ramayan Singh and Anr. 2002 (2) Cri 409 where the Supreme Court frowned upon an order of the High Court while exercising revisionary jurisdiction filed by a private complainant directing trial court for writing of a fresh judgment by giving proper judicial mind to the evidence on record. Such a direction was held to be unjustified. A reference was made to the earlier judgments in K.Chinnaswamy Reddy v. State of Andhra Pradesh and Anr. : [1963]3SCR412 ; and D.Stephens v. Nosibolla 1951 SC 196. In these two judgments it has been observed that the exercise of revisionary jurisdiction on a private complainant's revision petition against an order of acquittal was to be exercised only in exceptional cases where the interest of public justice required interference for the correction of a manifest illegality or the prevention of a gross mis-carriage of justice. Jurisdiction was held not to be ordinarily invoked merely because the lower court had taken a lenient view of the law or mis-appreciated the evidence on record. The High Court is not to re-appraise the evidence and reverse the findings of fact on which the acquittal was based in the absence of any error on a point of law. The observations in Logendranath Jha v. Shri Polailal bids was 1951 SC 316 was cited to stress that it was not open to the High Court to convert a finding of acquittal into one of conviction. Thus, where the State may not have thought fit to appeal, but the jurisdiction to be exercised in such revision petitions was in exceptional cases where there is glaring defect in the procedure or manifest error on a point of law and consequently a flagrant miscarriage of justice.

7. In Jagannath Choudhary's case (supra) some illustrations have been given where the High Court ought to interfere. Such restrictions include the cases where the trial court had no jurisdiction to try the case but still acquitted the accused or where the trial court had wrongly shut out evidence which the prosecution wished to produce or where the appeal court had wrongly held evidence which was admitted by the trial court to be inadmissible. Simultaneously, where material evidence had been over-looked by the trial court or by the appeal court was another such example. This was so as the object of revisionary jurisdiction under Section

401 of the Cr.P.C. was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on one hand in some injury to the due maintenance of law and order or on the other hand in some undeserved hardship to the individuals. The main question which remains to be considered in an application in revision is whether substantial justice had been done. Thus, if the impugned order is apparently presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, there can be no interference in exercise of revisional jurisdiction. The exercise of power under Section 401 of the Cr.P.C. was held to be discretionary though such an exercise of discretion had to be judicious.

8. The aforesaid aspects have been emphasized as the revision petition itself was worded and the submissions of the learned Counsel for the petitioner seem to suggest as if this Court has to go again into detailed scrutiny of evidence to derive a different conclusion which is not permissible.

9. The first aspect which has weighed with the trial court is the inordinate delay in registration of the FIR without any Explanation and the case was, thus, seemed with suspicion and a benefit was given to the accused. Learned Counsel for the petitioner, however, sought to contend that this was on account of police inaction or collusion with the accused. This plea is not sustainable. There was preventive action taken under Sections 107/155 of the Cr.P.C. while preparing the Kalandra. However, the DD entry was not proved on record. The Kalander, however, mentions that the SI had reached the spot and found that both the parties were bent upon quarreling with each other. The Dispute was about payment of the amount for repair of the Gali which had not been paid in full. The altercation was corroborated by material witnesses and it is in pursuance thereto that the matter went out of hand when the parties started pelting stones at each other.

10. The learned trial court found that PW8 and PW9 were declared hostile by the prosecution but nothing prevented in law in relying upon the hostile witness if his statement was otherwise corroborated by other evidence on record. The learned trial court found that the deposition of these two witnesses was sufficiently corroborated by PW12 and the Kalandra as also some documents. The conclusion, thus, arrived at was that the investigation and the consequent charge-sheet was filed on the basis of twisted facts as deposed by PW1 to PW5. The testimony of even these five witnesses was found to be full of material contradiction. The said witnesses had deposed that first the incident started at the shop where PW3 was sitting and thereafter the accused entered inside the house but the site plan prepared by the Investigating Officer at the spot showed the spot in the Gali in-front of the house. The testimony of the five witnesses were not even ad idem on the alleged weapon used. Some stated it was danda, other stated that it was iron rods alone. Another version was of lathies and iron rods together and of knife.

11. The material aspect referred to in the impugned judgment, as pointed out by the learned APP, is that even the accused had received injuries and their MLC were on record, but no Explanation was given as to how the accused had received injuries which was mandatory in the circumstances particularly in view of the preventive action taken by the police authorities. The prosecution was, thus, held to have failed to discharge its onus of proving the injuries on the respective persons of the accused. PW5 in the Kalandra case Ex.PW12/H in his statement admitted the version of the defense of the payment of the money on account of the agreement and this admission went contrary not only to his deposition but the story to be put-forth by the other prosecution witnesses.

12. The aforesaid have been discussed in detail only to show that the trial court had discussed the evidence and the ramification of the testimonies of the parties to come to the conclusion that the case had not been established against the accused beyond unreasonable doubt and the testimonies of the prosecution witnesses were contradictory. This is coupled with the fact that the incident was one of an altercation arising from the non-payment of money for an agreement about the repair of the Gali.

13. In view of the aforesaid, I see no reason why this Court should exercise the revisionary jurisdiction to

reverse the order of acquittal of the trial court.

14. Dismissed.

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