

Shashi Kumar Goyal Vs. State and ors.

Shashi Kumar Goyal Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/705696

Court : Delhi

Decided On : Oct-16-2001

Reported in : 95(2002)DLT582; I(2002)DMC316

Judge : K.S. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 376, 406, 420, 495, 498-A and 511; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 198-A, 397, 401, 439, 439(5) and 482

Appeal No. : Crl. R. No. 335/2000

Appellant : Shashi Kumar Goyal

Respondent : State and ors.

Advocate for Def. : K.B. Andley, Sr. Adv., ; Arvind K. Gupta and ; M.L. Yadav

Advocate for Pet/Ap. : B.K. Sharma, Adv

Disposition : Revision petition dismissed

Judgement :

K.S. Gupta, J.

1. This revision petition by Shashi Kumar Goyal is directed against the order dated 3rd June, 2000 passed by an Addl.Session Judge discharging

accused/respondents 2 to 6 for the offences under Section 406/498-A/495/376/420/120-B/511 IPC.

2. A preliminary objection was raised by Sh. K.B. Andley appearing for respondents 2 to 6 that petitioner has no locus standi to file this petition as he is not the maker of FIR and Ms. Kavita, complainant who has since re-married, presumably is not willing to challenge the impugned order. While controverting the objection, it was contended by Sh. B.K. Sharma for petitioner that petitioner is the brother of complainant and if he could file a complaint for the offence under Section 498-A IPC on her behalf under Section 198-A Cr.P.C., he can also file this petition. As part of submission, it was further contended that even a private party has locus standi to file revision petition. Reliance was placed particularly on the decisions in *Kavita v. State and Ors.*, 1999 III AD (DHC) 713, *Pratap v. State of U.P.*, : 1973 CriLJ565 , *Girdhari Lal v. Sita Ram and Ors.*, 1988 All.L.J. 930, *Rajendra Prasad Singh v. The State of Bihar and Ors.*, and *S.P. Dubey v. Narsingh Bahadur*, : AIR1961 All447 . To be noted that State has not filed revision petition against the said order dated 3rd June, 2000. Aforesaid Section 198-A Cr.P.C. which is material, reads thus:-

'No Court shall take cognizance of an offence punishable under Section 498A of the Indian Penal Code except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.'

3. Above Section falls in Chapter XIII while Sections 397/401 Cr.P.C. under which present petition has been filed, in chapter XXX of the Code of Criminal Procedure, 1973. It is true that certain categories of relatives of the person aggrieved by the offence under Section 498-A IPC have also been empowered under Section 198-A Cr.P.C. to file complaint but, in my view, after the charge sheet based on complaint lodged by the person aggrieved is submitted in Court by the police, the relatives cannot bank upon the provision of said Section 198A to support their right to have revision petition filed under Sections 397/401 Cr.P.C. against an order

made in the case by the trial court. First limb of submission advanced on behalf of petitioner, thus, deserves to be repelled being without any merit.

4. Coming to second limb of submission, in Kavita's case (supra), party at whose instance power under Section 482 Cr.P.C. was sought to be invoked was the person who had lodged FIR with the police. Further, discussion in para No. 15 at page 791 of the report in Pratap's case (supra) would reveal that it was in exercise of suo moto power of the Court under Old Section 439 Cr.P.C. that the question of imposition of penalty of death on the accused was considered by the Apex Court. Again, in Girdhari Lal's case (supra), one of the points agitated in the revision petition was that Sita Ram, complainant did not have the right to file complaint under Section 498-A IPC and taking note of the provisions of Section 198-A Cr.P.C., it was held that he being the father of first wife of accused, was competent to file it on her behalf. In Rajendra Prasad Singh's case (supra), revision petition was held to be maintainable at the instance of informant who was an aggrieved party in the case. In S.P. Dubey's case (supra), the petitioner was cited as witness in the complaint and from the discussion made in para No. 4 at page 449 of the report, it may be seen that while dealing with the issue of locus standi, it was held that Section 439(5) Cr.P.C. (Old) only prevented a revision being filed at the instance of a party who could have appealed and as the petitioner could not file a valid appeal not being the complainant, Section 439(5), obviously, could not operate against him. However, with respect, I am unable to agree with this reasoning as it would entitle even a stranger to the criminal proceedings to file revision which position may not be in consonance with the provisions of new Sections 397/401 Cr.P.C. It may be noticed that barring S.P. Dubey's case, none of aforesaid decisions support the said submission that a revision can be filed by a party not even being the complainant as in present case.

5. For the foregoing discussion, upholding the objections taken on behalf of respondents 2 to 6, the revision petition is dismissed being not legally maintainable.