

Smt. Vasantha Vs. Smt. Sivanthi and Another

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Court : Chennai

Decided On : Sep-11-1998

Reported in : 1998(3)CTC653

Judge : M. Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) -- Sections 397 read with Sections 401, 313; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 -- Offence Under Sections 3(1); Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976; Private International Law; Civil Rights Protection Act

Appeal No. : Crl.R.C.No. 40 of 1995

Appellant : Smt. Vasantha

Respondent : Smt. Sivanthi and Another

Advocate for Def. : Mr. S. Sathiya Chandran and;Mr. C.M. Gunasekaran, Advs.

Advocate for Pet/Ap. : Mr. Bharat Kumar and;Mr. K. Mohan Ram, Advs.

Judgement :

ORDER

1. Smt. Vasantha of Malaikodu, Kanniyakumari District, the petitioner herein, on being aggrieved over the judgment acquitting the first respondent in respect of the

offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has filed this revision before this court.

2. Normally, this court in the revisional jurisdiction would not entertain this petition challenging the acquittal, particularly when the State, the real complainant, has not preferred any appeal before this Court. However, the first informant, the petitioner herein, who is the victim, in order to express her grievance over the judgment of acquittal, would state that the verdict by the trial court is utterly perverse and patently erroneous, which is liable to be set aside.

3. In that view of the matter, this court is desirous to look into the impugned judgment and the materials. The facts are these:-

(a) P.W. 1 Vasantha is the resident of Malaikodu, Kanyakumari District. She is working as a Malayalam Teacher in L.M.M.S. School in the said village. She belongs to Hindu Vannar community, a Scheduled Caste. Her husband also belongs to the same caste. After the marriage, for 12 years or so they have been residing in the same village in Aamos building alongwith her two daughters. Her parents being Vannar Community people were doing the profession of washing of clothes. The respondent No.1/accused Sivanthi belongs to Hindu Nadar Community. She is staying just opposite to the house of P.W. 1.

(b) Some days prior to 1.12.1993 P.W.4. Ponnammal, the mother of P.W.1 came to Malaikodu to visit the house of P.W.1. On 1.12.1993 the accused Sivanthi asked P.W.4 Ponnammal to wash the clothes. P.W.4 did not agree for the same. Having felt that P.W.1 was responsible for the refusal by P.W.4 to wash her clothes, on 2.12.1993 evening, accused Sivanthi came and stood in front of the house of P.W.1. and abused her by her caste name in a filthy language. Regarding this incident, P.W.1. gave a complaint to P.W.11, the Sub Inspector of police, Arumanai on 6.12.1993. He received the same and gave a receipt. On 7.12.1993 evening P.W.11 came to the house of accused Sivanthi in order to interrogate her. But, she was not available then. Therefore, he went back.

(c) When the accused came to know about the arrival of the Sub Inspector to her house on the complaint of P.W.1 she got angry against P.W.1. Therefore, on

8.12.1993 at about 7.00 A.M. She came again to the house of P.W.1 and abused her saying:

Due to the shouting, the residents in the neighbouring houses came out and saw the incident. Since there was no immediate action for the complaint given on 6.12.1993 by the Arumanai Police this time she went to the Civil Rights Protection cell for Kanniyakumari District at Nagercoil and gave a complaint to P.W.12, the Inspector of Police of the said cell.

(d) P.W.2 Mary and P.W.3 Vijayam both are neighbours, who saw the occurrence. P.W.6 Tahsildar, P.W.7 Revenue Inspector and P.W.8 Village Administrative Office gave report stating that the petitioner Vasan-tha (P.W.1) belongs to Hindu Vannar community of Scheduled Caste. P.W.9, former Tahsildar of Agastheeswaram and P.W.10, Agas-theeswaram Tahsildar gave a certificate to the effect that the accused Sivanthi belongs to Hindu Nadar Community.

(e) After examining all the witnesses, P.W.12 filed the charge- sheet on 30.4.1994 against the accused for the offence punishable under Section 3(1)(x) of the S.C. and S.T Act.

4. To prove the case of prosecution, P.W.1 to P.W.11 were examined and Exs.P1 to P12 were marked.

5. The first respondent/accused would state while questioning under Section 313 Cr.P.C. that out of enmity, this false case has been foisted against her.

6. On conclusion of trial, the lower court acquitted the accused holding that the petitioner is not entitled to the benefits of the S.C. and S.T. Act and that the prosecution had not proved the offence alleged. This judgment is now the subject matter of the challenge before this court in this Revision.

7. Mr. Bharath Kumar, representing Mr. Mohan Ram, appearing for the petitioner, while attacking the impugned judgment with great vehemence, would contend that this judgment suffers from grave illegality and perversity, resulting in flagrant miscarriage of justice and that therefore, the impugned judgment is liable to be set aside.

8. Mr. Sathiya Chandran, appearing for the first respondent, would however, repel the submissions made by the counsel for the petitioner, in support of the impugned judgment.

9. Generally, as indicated earlier, this court would be reluctant to disturb the judgment of acquittal in a revision, that too at the instance of a private party, when the State has not preferred any appeal. However, when this court finds out misreading of evidence, overlooking the important materials or perversity, which had led to the grave miscarriage of justice, the interference is quite imperative. Regarding the powers under revisional jurisdiction in a case against acquittal, this court has elaborately discussed in the decision in Somu Thevar v. Sivakumar and State 1997 (1) L.W. 49. In the said authority, the earlier decisions of this court and other courts as well as the Apex Court have been elaborately considered in detail and made the following observations:-

'The High Court in revision can set aside the order of acquittal, at the instance of private party, though the State may not have thought it fit to appeal, but this power could be exercised only in cases, when there is a glaring defect in the procedure or error in law, and there is a flagrant miscarriage of justice, or where the material evidence has been completely overlooked or totally misread by the trial Court. The revisional jurisdiction is not to be likely exercised, when it is invoked by a private party, against an order of acquittal, but it could be exercised in exceptional cases, where the interest of public justice required interference, for the correction of a manifest irregularity, or for the prevention of a gross miscarriage of justice. The revisional jurisdiction confers an extra-ordinary discretionary power to the superior court to be exercised in aid of justice, to set right grave injustice and to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate courts do not exceed that jurisdiction or abuse the powers conferred on them by law. As a general rule, this power does not contemplate interference with the conclusion of facts in the absence of serious infirmity and failure of justice.

10. In the light of the above principles, when this court has made a thorough study of the records and impugned judgment, it has to be necessarily decided that this

case warrants interference, since the impugned judgment is a classic example for a complete misreading of evidence, ignoring of the vital material piece of evidence and mis-interpretation of law.

11. Let me now refer to every one of the reasonings given in the impugned judgment for acquitting the accused and discuss the same, in order to show as to how they are wrong.

12. The first reasoning is this:

'Though P.W.1 was born in Hindu Vannar community and residing in Kanyakumari District, she cannot be considered to be belonging to Kanyakumari District in Tamil Nadu, as she got married to one Sundaresan. who hailed from Nedungadu, Kerala. As such, P.W.1 after the marriage, shall be considered to be belonging to her husband's domicile, namely Kerala. Therefore, Ex.P12, the Government Order declaring Hindu Vannars residing in Kanyakumari District cannot apply to P.W.1. Consequently, the penal Section 3(1)(X) of the S.C. and S.T. Act would not get attracted'.

13. This reasoning, in my view, is most unfortunate and reflection of mis-interpretation of law. Ex.P12 is the G.O. dated 23.6.1981. Under this G.O., various names of the castes have been given as Scheduled Caste in Annexure-I. Under part XVI of Annexure-I, the caste Vannan shall be deemed to be Scheduled Caste and the members thereof resident in the localities in Kanyakumari District and Shenkottah taluk of Tirunelveli district.

14. P.W.1 Vasantha would state both in F.I.R. and evidence that their parents being Hindu Vannar belong to Scheduled Caste and as such, she also belongs to the same caste. There is no challenge in respect of this evidence in her cross-examination. Admittedly, the petitioner has been residing in Kanyakumari District alongwith her husband permanently. She would also state that the marriage was performed between herself and her husband on 6.11.1976 in Nagercoil. The age of the first daughter bom to them is 13 years.The occurrence took place in December 1993. This would show that they were residing as husband and wife for nearly 17 years.

15. P.W.6 Mohamed Hussain, the Tahsildar would state on the strength of the certificate Ex.P.4 that both P.W.1 and her husband belong to Hindu Vannar community, a Scheduled Caste. In Ex.P4 it is stated that the enquiry through Village Administrative Officer and Revenue Inspector, Edaicode revealed that Vasantha, wife of Sundaresan, the petitioner belongs to Hindu Vannar community, which is recognised as a Scheduled Caste as per the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 vide serial No.71 and certified that Tmt. Vasantha and her family ordinarily reside at Edaicode Village, Vilavancode Taluk, Kanyakumari District of Tamil Nadu. P.W.6 in the cross-examination would clarify the word 'family' stating that vasantha was residing at Edaicode, Kanyakumari District alongwith her husband.

16. The Revenue Inspector who conducted the enquiry was examined as P.W.7. His report is Ex.P5. He would also state that enquiry revealed that the petitioner Vasantha, wife of Sundaresan, residing at Edaicode village, belongs to Hindu Vannar community. The statements recorded by him from the witnesses during enquiry is Ex.P6.

17. P.W.8 is the village Administrative Officer having jurisdiction over Edaicode village. His report is Ex.P7. In Ex,P7 also it is mentioned that Vasantha, the resident of Edaicode belongs to Hindu Vannar community of Scheduled Caste. In the cross-examination, he would state that

(I submitted report to issue Community Certificate to Vasatha, since she belongs to Edaicode Village and is residing here after her marriage.)

18. P.W.12, the Inspector of Police, through whom Ex.P12, the G.O. declaring Vannar community, a Scheduled Caste in Kanyakumari District was marked, would state that his investigation disclosed that the petitioner alongwith her husband has been residing in Edaicode village, Kanyakumari District for 12 years.

19. In spite of these materials, the trial court had held merely on the basis of some observation contained in Private International Law at page 134 that by a valid marriage that the domicile of the wife becomes that of her husband hailing from kerala and as such, she cannot be considered to be the resident of Kanyakumari

District to get the benefits of G.O. Ex.P12. It also took support from Neelima v. Dean, P.G. Studies, A.P. Agricultural University, Hyderabad, : AIR 1993 AP229 (D. The observation as referred to above in Private International Law or the authority in : AIR 1993 AP229 would not be, in any way, relevant to consider this aspect.

20. In fact, in Neelima v. Dean, P.G. Studies, A.P. Agricultural University, Hyderabad, : AIR 1993 AP229 it is said that though the wife belongs to upper caste marries the husband belongs to Scheduled Caste and belongs to his family, she cannot claim reservation as a Scheduled Caste woman. Therefore, I am at a loss to understand as to how the above decision would be of any use, in order to conclude that P.W.1 who belongs to Scheduled Caste cannot invoke S.C. and S.T. Act merely because she married the husband, who is stated to have belonged to Nedumangadu.

21. As a matter of fact, P.W.1's husband also belongs to Vannar community as per the certificate Ex.P4. Merely because the husband was born in Nedumangadu of Kerala, it cannot be said that the wife of the said husband, who was born and brought up in Kanyakumari District and is residing alongwith her husband for more than 12 years in the same district, loses her status as a Scheduled Caste woman, though she was proclaimed so under Ex.P12. Moreover, the word 'domicile' as found in the commentaries in the private International Law would not affect the factum of the residence of the wife as proved through various certificates issued by the Tahsildar, Revenue Inspector and Village Administrative Officer, who are P.W.7, P.W.8 and P.W.9.

22. It is relevant to note that in Shrivastava Rajeshkumar v. Chairman, Selection Committee : AIR1987 Guj4 , it is held that 'domicile' means, one's connection with the territory, not connection with the membership of the community. The relevant observation is this:-

'After the decision of the Supreme Court in case of Dr. Pradeep Jain v. Union of India, : (1984)11LLJ481SC , the question of domicile is not very material, but the only thing that has some connection or bearing with the issue is as to what was the permanent residence of the petitioner'.

23. Admittedly in this case, materials would show that both husband and wife have been residing in Kanyakumari district for more than 12 years. There is no challenge with regard to this aspect. Even assuming for the arguments sake that the domicile of the petitioners husband is at Nedumangadu, it cannot be said that both the wife and husband were residing only at Nedumangadu.

24. As contained in P. Ramanatha Aiyar's The Law Lexicon, the domicile may be divided into domicile of origin and domicile of choice domicile by operation of law. A domicile of origin is that which every infant has upon attaining majority, being the domicile of the parents at that time. A domicile of choice is that which the individual has elected and chosen for himself to displace the domicile previously obtained. A domicile by operation of law after the marriage connotes the place in which a man has voluntarily fixed the habitation of himself and his family, with the intention of making a permanent home.

25. Even under these definitions, the domicile of husband by operation of law is at the place where both husband and wife have been residing permanently. Therefore, merely because the husband's domicile of origin is at Nedumangadu, it cannot at all be stated, in view of the abundant materials available in this case, that the petitioner and her husband, admittedly belong to Hindu Vannar community, are not to be considered as residents in Kanyakumari District.

26. Moreover, it is observed by the lower Court, on the strength of the decision in Neelima v. Dean, P.G. Studies, A.P. Agricultural University, Hyderabad, : AIR 1993 AP229 , that the petitioner though belongs to the Scheduled Caste, after the marriage, acquires the caste or tribe of her husband. Actually, that was not the conclusion arrived at in the said decision.

27. In fact, this aspect has been elaborately dealt with by this court in Kaliya Perumal v. State, Etc. 1998 (1) L.W. 269. In that case, it was argued that the wife who belongs to Scheduled Caste loses her caste by marrying the husband, who belongs to Yadhava Community and becomes member of the husband's family and that therefore, the wife cannot invoke the provisions of the S.C. and S.T. Act. This court answered this point on the strength of the judgment of the Supreme Court rendered in Valsammal v. Cochin University, : [1996]1SCR128 in the way:

'So, the marriage does not create a conversion of the caste. In the same way, merely because a Harijan lady, who has suffered all along from her birth the handicaps, disadvantages and restrictions to which the member of the Scheduled Caste community were subjected to, married a member of the backward class community, she cannot be said to have acquired the backward class status by losing her birth right of reservation. A Harijan lady on marriage may become a member of the family of her husband who belongs to a backward community or forward community. But it does not mean that the caste rigidly imposed upon her would become automatically broken down'.

28. Moreover, the decision reported in *Neelima v. Dean*, P.G. Studies, A.P. Agricultural University, Hyderabad, : AIR 1993 AP229 (supra) has been referred to in the judgment of the Supreme Court and held that the marriage would not convert the caste. The observation by the Supreme Court relating to how a judge should interpret the sections of the particular Act by taking into account of the scope and object of the Act, is the following:-

' The judges should adept purposive interpretation of the dynamic concepts under the Constitution and the Act with its interpretive armoury to articulate the felt necessities of the time. Social legislation is not a document for fastidious dialects but means of ordering of the life of the people. To construe law one must enter into its spirit, its setting and history. Law should be capable to expand freedom of the people and the legal order can weigh with utmost equal care to provide the underpinning of the highly inequitable social order. Judicial review must be exercised with insight into social values to supplement the changing social needs. The existing social inequalities or imbalances are required to be removed re-adjusting the social order through rule of law. In that case, the need for protection of right to take water, under the Civil Rights Protection Act, and the necessity to uphold the constitutional mandate of abolishing untouchability and its practice in any form was emphasised.

29. So, these things would show that the trial court has committed grave error by mis-interpreting the word 'domicile' and thereby concluded that the petitioner would not be entitled to the benefits of the S.C. and ST. Act, though there are

materials that she belongs to the Scheduled Caste.

30. The second reasoning is given below:-

'The occurrence in the instant case took place on 8.12.1993. The motive for this occurrence is the incident that took place on 2.12.1993. According to P.W.1, on 2.12.1993 the accused went to her house and abused her in the name of her caste, since she felt that P.W.4 Ponnammal, the mother of P.W.1 did not oblige the accused by washing her clothes was only at the instance of P.W.1. Regarding this incident, on 2.12.1993 P.W.1 gave a complaint to P.W.11, Sub-Inspector, Arumanai, on 6.12.1993. However, the motive for the occurrence was not mentioned in the said complaint. Moreover, though the occurrence took place on 2.12.1993, the complaint was given only on 6.12.1993. There is no reason for the delay mentioned in the complaint. The motive for the occurrence dated 2.12.1993 and the explanation for the delay in giving the complaint are only stated in the deposition. Therefore, the incident took place on 2.12.1993 is doubtful'.

31. In the instant case, the complaint was given by P.W.1 in respect of the occurrence took place on 8.12.1993. Therefore, it is not necessary for the court to consider whether the motive for the occurrence that took place on 2.12.1993 has been established or not. Further, it is factually incorrect to state that the motive relating to P.W.4's refusal to oblige the accused for washing her clothes though not mentioned in Ex.P9, but is specifically mentioned in Ex.P1 complaint. Moreover, P.W.4 Ponnammal, the mother of P.W.1, has been examined in this case. She would also state that she did not incline to wash the clothes when she was requested to do so by the accused. Therefore, the motive for the occurrence dated 2.12.1993 is not a belatedly introduced one only in the Court. As indicated earlier, the said motive for the occurrence dated 2.12.1993 is not relevant to this case. Even otherwise there are materials through Ex.P1 F.I.R. and the evidence of P.W.4 which would establish the said motive as well. These materials have been ignored by the trial Court.

32. Though the first occurrence had taken place on 2.12.1993, it is true that the complaint was received by P.W.11, the Sub-Inspector of Police, Arumanai, on 6.12.1993. It is to be seen that the complaint was dated 4.12.1993, though it was

received on 6.12.1993. P.W.1, while explaining the said delay in cross-examination, would state that her uncle died in the meantime and after attending the ceremony she came back and gave the complaint on 6.12.1993. Furthermore, she would state that even when she gave a complaint on 6.12.1993, she knew about the Special Wing set up in Nagercoil to deal with these cases, but, even then she gave the complaint to the local police with a view to see that the accused is simply warned by them. This would show that P.W.1 was not interested in serious action being taken against the accused for the first occurrence.

33. Moreover, delay in giving a complaint cannot be said to be the reason to hold that the occurrence on 2.12.1993 is doubtful. Furthermore, in the instant case, the issue is only in respect of the occurrence dated 8.12.1993 and not with reference to the occurrence dated 2.12.1993. Therefore, the alleged delay or the non-explanation of the said delay in Ex.P9 would not be germane for the purpose of deciding this case. However at any rate, when there are materials for explaining the said delay, the lower court cannot conclude ignoring those materials that the occurrence on 2.12.1993 is doubtful.

34. The next reasoning is as follows:-

'P.W.11 the Sub-Inspector, who received the complaint Ex.P9 regarding the occurrence took place on 2.12.1993, would admit that he found out on enquiry that no such occurrence took place on 2.12.1993 and that therefore, the complaint was not registered. P.W.1 would admit in cross-examination that since no action was taken on Ex.P9 by P.W.11 in respect of the occurrence dated 2.12.1993, she gave the complaint Ex.P1 to the Special Wing on 8.12.1993. This would show that both the alleged incidents dated 2.12.1993 and 8.12.1993 are not true'.

35. This reasoning is not on the basis of the factual materials. It must be pointed out that the materials available in this case are contrary to the above finding. P.W.11, the Sub-Inspector never admitted that the complaint was not registered, as it was found out that there was no such occurrence on 2.12.1993. As a matter of fact, P.W.11, S.I. of Police would specifically deny this suggestion to the said effect. This is as follows:

36. Similarly, P.W.1 never admitted that since no action was taken on Ex.P9, she gave a complaint Ex.P1 to P.W.12. The trial Court observed as if P.W.1 stated in the evidence that with regard to the occurrence on 2.12.1993 she gave two complaints, one is on 6.12.1993 to P.W.11 and another is Ex.P1 to P.W.12. This is factually wrong. The relevant portion of her evidence is as follows:-

37. In Ex.P1 also it is mentioned that she already gave a complaint to Arumanai local police with reference to the incident on 2.12.1993 and that the Sub-Inspector of Police came to the village to conduct enquiry on the said petition and that having grudge over the first complaint to police on 8.12.1993 at 7.00 A.M. the accused again came to her house and abused her in a filthy language by using the caste name. In order to prove that complaint was given on 6.12.1993 with reference to the first incident P.W.11 had been examined and ExP9 had been marked.

38. As discussed earlier, P.W.11 would state about the enquiry conducted on Ex.P9 in relation to the occurrence took place on 2.12.1993. P.W.12, the investigating officer would also state that he received the complaint Ex.P1 only with reference to the occurrence took place on 8.12.1993. Therefore, the finding that the incident took place on 8.12.1993 is doubtful, since P.W.1 admits that she gave a complaint to P.W.12 only with regard to the first incident, is palpably wrong and without any material whatsoever.

39. The fourth reasoning is stated below:-

'P.Ws.2 and 3 who are the eye-witnesses are not reliable. P.W.1 would say that when she went to Nagercoil and gave the complaint Ex.P1 to P.W.12, P.Ws.2 and 3 did not accompany her. P.Ws.2 and 3 also would state that they did not accompany P.W.1 to the Police Station at the time of giving the complaint. But, P.W.12 in cross-examination would admit that P.W.1 was accompanied by P.Ws.2 and 3 to the Police Station. Therefore, the evidence of eye-witnesses supporting the prosecution case are not trustworthy'.

40. This reasoning also is not correct, as it is not based on any evidence as referred to by the trial court. It is true that P.W.1 did not say that P.Ws.2 and 3

came to the Police Station to give the complaint. P.W.12 never admitted in the cross-examination that P.Ws.2 and 3 came alongwith P.W.1. The relevant statement in the cross-examination by P.W.12 is this:-

Therefore, the finding is contrary to the facts.

41. No doubt, it is true that there is a reference about the name of the witnesses is the F.I.R. By reason of that it cannot be concluded that the evidence of P.Ws.2 and 3 are unreliable. Moreover, P.W.12 would also specifically state that P.Ws.2 and 3 did not come to the Police Station. In such a situation, the trial court cannot observe that P.W.12 admitted in his cross-examination that P.Ws.2 and 3 accompanied P.W.1, when factually it is not so. Similarly, it is not open to the trial court to disbelieve P.Ws.2 and 3 on the basis of conjectures and surmises. In this case, the evidence of P.Ws.2 and 3 have not been discussed at all.

42. The inherent merits of the evidence of P.Ws.1 to 3 have not been dealt with. Without any appreciation, on overlooking various vital materials, the trial court had hastily concluded on the basis of some observation made in the judgment of the M.P. High Court in Karansingh v. State of M.P., to the effect that the courts must be vigilant for avoiding any possibility of the S.C. and S.T. Act being misused.

43. It is highly condemnable on the part of the trial court to have gone to the extent of observing that this complaint was falsely given against the accused by P.W.1 by setting up P.Ws. 2 and 3 for which there is no material whatsoever.

44. In this context, it is relevant to notice the observation made by the Supreme Court in the decision in Ayodhya Dube v. Ram Sumer Singh, : 1981 CriLJ1016 , which is as follows:-

'When the sessions judge acquitted the accused by ignoring the probative value of F.I.R. and reliable testimony of eye-witnesses and without considering material evidence on record and his judgment was full of inconsistencies and consisted of faulty reasoning, the order of the High Court in revision directing retrial by setting aside acquittal would be justified'.

45. In view of the fact situation, this court has to necessarily invoke the revisional jurisdiction for the correction of a manifest illegality and for the prevention of a gross miscarriage of justice which has been caused in this case, in order to set right the grave injustice and justice is done in accordance with the recognised rules of criminal jurisprudence, as in this case, I find that the trial court has exceeded its jurisdiction by abusing the power conferred on which by law, by acquitting the accused, despite the overwhelming vital materials, to the extent of saying that the case was a false one.

46. Of course, this court is quite aware of the limitation, while dealing with the revisional jurisdiction. The limitation is that the acquittal cannot be converted into conviction, but on reversal of acquittal, the further enquiry or trial can alone be directed. As indicated earlier, once this court comes to the conclusion that the findings given by the trial court are based on surmises and conjectures, overlooking and ignoring the vital piece of evidence and that the cumulative effect of all the infirmities makes the judgment impeachable and that the findings are perverse, the interference by this court would become imperative.

47. In view of what is stated above, I deem it fit to set aside the judgment of acquittal and remit the matter back to the trial court for re-consideration of the entire evidence already recorded by the trial court. However, the learned trial judge, while deciding the case afresh, shall not be influenced by any of the observations made in this order, as the above observations should not be taken to mean that the materials overlooked by the trial court while rendering judgment have been appreciated by this court.

48. In the result, the judgment of the trial court made in S.C.No.33 of 1994 acquitting the first respondent, is set aside and the case is remitted back to the trial court for fresh disposal on the basis of evidence already available on record after hearing both the parties concerned in accordance with law.