IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2424-2002
Date of decision: 14.11.2013

Reema Aggarwal

...Petitioner

Versus

Anupam and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Rahul Dev, Advocate for the petitioner

Mr.PS Ahluwalia, Advocate for respondent Nos. 1 and 2

Mr.Naresh Prabhakar, Advocate for respondent Nos. 3 and 4

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Jitendra Chauhan, J.

The present revision petition has been filed against the judgement dated 23.7.2002, passed by the learned Additional Sessions Judge, (Adhoc), Jalandhar, vide which, the respondents were acquitted of the charged offences under Sections 307, 498-A of the Indian Penal Code.

2. The facts necessary for adjudication of the matter as noticed in para no.2 of the impugned judgment are as under:-

"On 13.7.1998, ASI Charanjit Singh received information from Tagore Hospital, Jalandhar, where Reema wife of Anupam had been admitted on account of having taken some poisonous substance. On reaching Hospital, ASI Charanjit Singh obtained opinion of the

doctor regarding her fitness to make statement. On declaring the patient fit to make statement, ASI Charanjit Singh recorded her statement. Reema stated before the investigating officer that she was married to Anupam on 25.01.1998 and after the marriage, she was harassed by her husband Anupam, mother-in-law Chanchal, father -in-law Som Dutt and brother-in-law Sanjiv Kumar without any reason. Further, she stated that often they asked her to bring money from her parents. It was also disclosed by her that it was her second marriage and it was also the second marriage of Anupam. On 13.07.1998 at 5 P.M. all the four accused named above said to her that she should consume something to end her life. Thereafter, all the four accused forcibly pour acid in her mouth. She started vomitting and Mohallawalas gathered there. Reema was taken to Hospital in unconscious state of mind. According to her further statement, accused did not act for lust of more dowry. Reema's statement was recorded in the hospital at 10 p.m. on 13.07.1998 and formal first information report under Sections 307/458A read with section 34 of Indian Penal Code was recorded at 2 a.m. On 14.7.1998. Anupam was arrested on 15.7.1998 while Sanjiv Kumar accused obtained anticipatory bail from the Hon'ble High Court and other two accused surrendered in Court.

3. After completion of the investigation, the challan was presented against all the accused in the Court. They were charged

under Sections 307 and 498-A of IPC, to which, they did not plead guilty and claimed trial.

4. In order to substantiate the charges, the prosecution examined the PW1, Reema, the victim, PW2, Raj Mani, father of Reema, PW3, Dr.Rajesh Kumar, Tagore Hospital, Jalandhar treated Reema, PW4, Dr.Vijay Mahajan, Director of Tagore Hospital, Jalandhar, proved Ex.PB/1, opinion given by him, PW5, Naval Gupta, cousin of Reema, PW6, ASI Charanjit Singh, is the Investigating Officer in this case, and PW7 Dr.Pankaj Sharma, who was posted as Medical Officer in Tagore Hospital, Jalandhar, opined that Reema was fit to make statement vide Ex.D2.

5. When examined under Section 313 of the Code of Criminal Procedure, the accused-appellants denied all the incriminating circumstances appearing in the prosecution evidence against them and pleaded false implication. Without examining any witness, they closed their defence evidence.

6. The learned trial Court recorded the following reasons for the acquittal: -

7. The learned trial Court noticed the factum of admission made by petitioner Reema in her cross-examination that earlier she was married to Vipin Kumar, and their marriage had not been dissolved by the court of competent jurisdiction. It was, therefore, held that since marriage was not dissolved legally, therefore, her marriage with accused Anupam was

void *ab initio*.

8. The second reason cited by the learned Court was that commonly held belief that in a case of second marriage, no demand for dowry is usually put forward. It was further observed that petitioner Reema in her statement had not given any particulars or the details of the demands made nor she deposed that any amount was ever given by her to any of the accused.

9. Thirdly, the learned trial Court further observed that Raj Mani, the father of the petitioner, made a statement that there was a demand of Rs. 2 lacs from her daughter Reema by the respondents and a sum of Rs. 5,000/- was given by him to his daughter on two occasions. However, the learned trial Court observed that these allegations were levelled for the first time when the said witness deposed before the Court and was duly confronted with earlier statement where no such allegations were made by the father, who stated so for the first time while stepping into the witness box. The said fact assumes significance because the statement of father of the petitioner was also recorded after seven months of the occurrence for which there is no explanation as to why statement was recorded at a belated stage. Therefore, the assertion made by the father of the petitioner were ignored.

10. Fourthly, the learned trial Court also noticed the fact that it is in the statement of Dr. Rajesh Kumar that Reema was taken to Tagore Hospital, Jalandhar by her husband and in-laws. It was observed that it is also a circumstance which should weigh in favour of the accused as

normally, a criminal will not take the patient to hospital to keep victim alive if he had any intention to kill the victim.

11. Fifthly, the learned trial Court also observed that it has come in the testimony of Dr. Rajesh Kumar that petitioner herself had told the doctor that she has consumed the acid orally. Thus, the first statement, which was made to the doctor, the petitioner had admitted categorically that she had taken acid orally, which falsifies the entire prosecution story.

12. Sixthly, that it has further come in the testimony of Dr. Vijay Mahan that if acid is administered forcibly, it is likely to cause some effect on other parts of the body. The Court observed that it is a matter of common knowledge that when a small child do not drink milk and if it is poured into his mouth from glass forcibly, in such circumstances, milk would always spill over other parts of body. However, there was no injury on the tongue or any part of mouth except swelling over the lips, which negates the story of forcible administration of poison.

13. Seventhly, that the learned trial Court also noticed the fact that the acid alleged to have been recovered was not sent to the Chemical Examiner for test nor was it produced before the Court. The stomach were not preserved and sent to the Chemical Examiner. Thus, taking into account the above facts, delay in the registration of case, inconsistencies and discrepancies in the statements of witnesses that the learned trial Court acquitted the respondents/accused.

14. It is, therefore, apparent that the learned trial Court had given in detail and cogent reasons for acquitted the respondent/accused.

However, to supplement the findings returned by the learned trial Court, the following submissions may also be considered by this Hon'ble Court:-

(A) <u>Effect of dismissal of appeal against acquittal instituted by the State of Punjab before the Division Bench of this Hon'ble Court</u>

15. It is pertinent to mention herein that the judgment by virtue of which the respondent/accused had been acquitted was challenged both by the State of Punjab by way of Criminal Appeal No. 580-MA/2002 as well as by the complainant by way of Criminal Revision No.2424/2002. It is further pertinent to mention herein that both the appeal against acquittal as well as criminal revision was dismissed by this Hon'ble Court on 16th January 2003. The State never challenged the order by virtue of which appeal against acquittal had been dismissed before the Hon'ble Supreme Court and the said order attained finality. However, the complainant challenged the order, whereby, criminal revision against acquittal had been dismissed by way of Criminal Appeal No. 25 of 2004 wherein the Hon'ble Supreme Court was pleased to remand the matter for hearing the matter on merits vide judgment dated 08.01.2004. After the passing of the order by the Hon'ble Supreme Court, the record of the appeal against acquittal was ordered to be detached and was sent back to the record room by Hon'ble Division Bench of this Hon'ble Court vide order dated 08.10.2004 whereas the present criminal revision against

acquittal came to be admitted.

16. As it is an admitted position that when revision against acquittal came up for adjudication before this Hon'ble Court, the appeal against acquittal stood dismissed by the Hon'ble Division Bench and the said order had attained finality. This question came to be considered by the Hon'ble Supreme Court in the case of ***K. Ramachandran Versus V.N. Rajan & Anr. {2010 (5) R.C.R. (Criminal) 237***, wherein the following question was framed:-

> *In this appeal, however, the first question which has been raised is about the dismissal of the statutory appeal preferred by the State and its effect on the pending revision*
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> That the question was answered as under:-
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> *"10. The question is undoubtedly important, and hence, though raised for the first time before us, we propose to decide the same. An incongruous situation has arisen where, though the appeal against the acquittal has been dismissed by not allowing the condonation of delay in filing the same, yet, the revision filed against the said judgment by the private complainant has not only survived but such revision has also been allowed. We must observe that the Division Bench in not allowing the condonation of delay has effectively dismissed the appeal in the sense that it has not allowed the State Government to proceed with the appeal for which there was a provision. This was a prosecution not*

based on private complaint but on the police report. Therefore, the State Government had a right under Section 378 (2) Criminal Procedure Code to file appeal and very conspicuously the private party did not have that right. The private complainant, therefore, could only excite the general powers of revision by the High Court. Firstly, we must clarify that when the Division Bench considered the question of condonation of delay in filing the appeal against acquittal, though technically, it was deciding the application under Section 378 (3), Criminal Procedure Code It was actually the whole appeal itself which was before it. In this behalf it will have to be seen that the limitation for filing such appeal at the instance of the State Government against acquittal is provided by Article 114 of the Limitation Act. It is undoubtedly true that sub-Section (3) specifically provides that the appeal under sub-Sections (1) and (2) cannot be entertained except with the leave of the High Court and, therefore, an application for leave in such appeal filed by the State Government is a must. The limitation for filing the appeal is 90 days from the date of the order while the same Article provides for 30 days of limitation from the date of grant of special leave. Therefore, what was before the High Court was the appeal itself and the petitioner prayed the condonation of delay of 801 days in filing appeal against

acquittal. When the High Court declined to grant that permission, it, in effect refused to entertain the appeal against the order of the Trial Court, thus, making it final. Now, obviously, if the judgment was rendered final by the Division Bench of the High Court then there could not be any subsequent order to the contrary by the Single Judge even if the effect of the pendency of the revision was not brought to the notice of the Division Bench. There is no review power under the Criminal Procedure Code to the Criminal Court including the High Court. Such a review power exists only in this Court. As such, once the High Court had passed the order refusing the condonation of delay of appeal and thereby awarding the finality to the Trial Court's judgment, that order could be considered and upset only by this Court on a proper appeal having been filed in this Court by the State Government. As against the State Government, the order of the Trial Court acquitting the appellant- accused had become final. Therefore, the only course left open then in law was to challenge that order refusing to condone the delay in filing appeal against acquittal. It is an admitted fact that such appeal challenging the order passed by the Division Bench was never filed and the order of the Division Bench became final and has remained final till today. Under such circumstances, in our

considered opinion, the revision against the same order could not have been entertained, much less allowed upsetting the finality of the Trial Court's judgment, which finality was confirmed by the order of the High court by refusing to condone the delay in filing the appeal against the same Trial Court judgment. That would be the true import of the appellate powers of the High Court."

17. As is apparent from the reasoning propounded by the Hon'ble Supreme Court, it was held that once an appeal against acquittal stood dismissed by the Hon'ble Division Bench, revision against acquittal cannot be entertained. It is pertinent to mention herein that this law has been laid down by the Hon'ble Supreme Court in the year 2009 much after the remand having been made. Seriousness with which the Hon'ble Supreme Court treated this matter against the State Government is evident from the following observations:-

"Again, as we have already pointed out the finality confirmed by the Division Bench should not be upset by the judgment of the Single Bench of the same Court. Such incongruous results would follow if we allow the revision to be entertained and decided. In this case, undoubtedly, the revision was not only entertained but also admitted by the High Court. We have only to express that the attitude on the part of the State Government counsel as also the appellant-accused was extremely casual. We also do not understand as

to why, when appeal was filed along with the application for condonation of delay against the judgment of acquittal, the revision pending against the same judgment of acquittal was not joined with the appeal. Ordinarily, that should have been done. It is all the result of colossal casualness even on the part of the Registry of the High Court which has resulted in such incongruous situation. We, however, cannot blame the learned Single Judge for proceeding with the revision as he was never apprised of the dismissal of the appeal."

18. It is, therefore, submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of *K. Ramachandran vs. V.N. Rajan & Anr. (**Supra**)*, this revision against acquittal is not longer maintainable as the appeal against acquittal stood dismissed and the said decision has attained finality.

(B) <u>Powers of the Revisional Court</u>

19. It has been held by the Hon'ble Supreme Court that the powers of revisional Court dealing with the judgment of acquittal are extremely limited in view of the embargo contained under Section 401 (3) of the Code of Criminal Procedure, which specifically provides that the High Court while exercising the powers of a Court cannot convert the judgment of acquittal into one of conviction.

20. The factum of powers of the revisional court dealing with the revision against acquittal being extremely limited was reiterated by the Hon'ble Supreme Court in the case of *K. Ramachandran vs. V.N. Rajan*

*& Anr. (**Supra**)*, wherein it was held as under:-

> *This question has been considered in the celebrated judgment of **Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2 SCC 583],** where, after considering the judgments of **D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412]** and **Mahendra Pratap Singh v. Sarju Singh [(1968) 2 SCR 287]** this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:*
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> > *"(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant- accused;*
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> > *(ii) Where the Trail Court has wrongly shut out evidence which the prosecution wished to produce;*
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> > *(iii) Where the appellate Court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible;*
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> > *(iv) Where the material evidence has been overlooked only (either) by the Trial Court or by the appellate Court; and*
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> > *(v) Where the acquittal is based on the compounding of the offence which is invalid under the law."*
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> *Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of*

similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed "the Court of appeal may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to re-appreciate the evidence for itself as if it is acting as a Court of appeal and then order a re-trial." The situation, as we will show further, is identical in the present case.

21. In the said case, it has been pointed out that re-appreciation of evidence cannot be done by the revisional Court while dealing with the judgment against acquittal unless and until there are some procedural irregularities or illegalities in the decision of the case. Even if the reading of evidence by the trial Court is free from flaw the same cannot be a ground to justify the exercise of powers in revision against acquittal. It is pertinent to mention herein that in the case of ***Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2 SCC 583],*** the Hon'ble Supreme Court held as under:-

"10. No doubt, the appraisal of evidence by the trial Judge in the case in *hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing*

with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court."

22. Similarly, in the case of ***Hydru v. State of Kerala, {2004 (13) SCC 374}***, the Hon'ble Supreme Court has held as under:-

"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions

Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court".

23. Thus, it is apparent that re-appraisal of evidence is not possible in a revision against acquittal unless and until there are some procedural irregularities or illegalities, which has been pointed out by the complainant/petitioner so as to justify the exercise of revisional powers by this Hon'ble Court.

(C) <u>Effect of the Remand Order</u>

24. The bare perusal of the judgment rendered by the Hon'ble Supreme Court would reveal that the remand has been made primarily on the ground that even in the absence of a valid, legal marriage, a person can be held liable under Section 498-A of the Indian Penal Code. Even if this proposition of law is assumed to be significant, it is noteworthy to mention herein that there are several other reasons on appreciation of evidence, which warranted the acquittal of respondent/accused as the story propounded by her is unwarranted and unnatural. It is pertinent to mention the decision in the case of ***Reema Aggarwal v. Anupam, {2001 (1) R.C.R. (Criminal) 776}*** by virtue of which the remand order was made had already been held to be bad in law by the Hon'ble Delhi High Court in the case of ***Mohit Gupta vs. State Govt. of NCT of Delhi {2006 (3) JCC 1923}***, wherein the Hon'ble Delhi High Court held that the

judgment in the said case runs contrary to the decision of larger Bench in the case of Shivcharan Lal Verma vs. State of M.P. {2002 (2) Crimes 177 (SC) by observing as under:-

> *"Therefore the decision in Shivcharan Lal Verma (supra) will clearly take precedence over the decision in Reema Aggarwal (supra). That being the case, the arguments advanced by the learned counsel for the petitioners would have to be accepted that the provisions of section 498-A Indian Penal Code would not be attracted inasmuch as the marriage between Mohit Gupta and Shalini was null and void and Mohit Gupta could not be construed as a "husband" for the purposes of section 498-A Indian Penal Code. Clearly, therefore, the charge under section 498-A Indian Penal Code cannot be framed and the Metropolitan Magistrate had correctly declined to frame any charges under section 498-A Indian Penal Code. The learned additional Sessions Judge, however, fell into error in the relying upon Reema Aggarwal (supra), when the decision of the larger bench in Shivcharan Lal Verma (supra) to the contrary had also been cited by the counsel for the accused. One may be inclined to agree with the views expressed by a smaller bench of the Supreme Court but, judicial decorum and propriety and the well settled rule with regard to precedents requires that the ratio of the larger bench be*

followed. Unfortunately, the learned Additional Sessions Judge lost sight of this."

25 It further observed that since the decision in the case of *Reema Aggarwal* **(supra)** was held to be *per incuriam* as it did not notice the decision of earlier decision of the case of *Reema Aggarwal* **(supra)**. The said observation is as under:-

"It must also be pointed out that the decision in Shivcharan Lal Verma (supra) has not been noticed in Reema Aggarwal (supra) although the latter decision is later in point of time. So, the decision in Reema Aggarwal (supra) has to be regarded as per incuriam. The second point that has to be kept in mind is that the decision in Shivcharan Lal Verma (supra) has been rendered by a bench of three honourable judges whereas the decision in the case of Reema Aggarwal (supra) is by a bench of two honourable judges".

26 The fact that the judgment of *Reema Aggarwal* **(supra)** runs contrary to the larger Bench of the Hon'ble Supreme Court was also noticed by the Hon'ble Supreme Court in the case of ***U. Suvetha vs. State by Inspector of Police and another, {2009 (2) R.C.R. (Criminal 923}*** and held as under:-

"14. A Three Judge Bench of this Court, however, in ***Shivcharan Lal Verma and another v. State of M.P., [2002 (2) Crimes 177 SC : JT (2002) 2 SC 641]*** *while interpreting Sedction 498A of the Indian Penal Code, in a case where the*

prosecution alleged that during the life of the first wife-Kalindi, appellant therein married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result thereof, she ultimately committed suicide by burning herself, opined :-

> *"..One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the Indian Penal Code."*

15. A Two Judge Bench of this Court, however, in ***Reema Aggarwal v. Anupam, 2004(1) RCR(Criminal) 776 : 2004 (2) Apex Criminal 375 : [(2004) 3 SCC 199]****, while*

construing the expression 'husband' opined that the word should not be given a restricted meaning to include those, who had married for the second time strictly in accordance with law, stating :-

> *"...If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions - Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B Indian Penal Code. Such an interpretation, known and recognized as purposive construction has to come into play in a*

case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A Indian Penal Code, viewed in the context of the very object and aim of the legislations introducing those provisions."

16. It is not necessary to go into the controversy as to whether Reena Agarwal (supra) was correctly decided or not as we are not faced with such a situation here. We would assume that the term 'husband' would bring within its fold a person who is said to have contracted a marriage with another woman and subjected her to cruelty".

27. Even if this question is held to be in favour of the complainant this petition cannot be decided on the basis of this controversy alone, since, as mentioned above, there are number of reasons cited by the learned trial Court for acquitting the respondent/accused and on those grounds itself, this revision is liable to be dismissed.

28. Dismissed.

14.11.2013 **(JITENDRA CHAUHAN)**
gsv **JUDGE**

Note: Whether to be referred to the Reporter? Yes/No