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SHLOK BHARDWAJ,

v.

RUNIKA BHARDWAJ & ORS.

(Criminal Appeal No. 741 of 2009)

B,

DECEMBER 10, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND

ADARSH KUMAR GOEL, JJ.]

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Jurisdiction – Revisional jurisdiction of High Court – Scope of – Matrimonial dispute – Divorce Petition by husband as well as wife – Criminal Case by wife u/ss. 498-A, 406, 506 IPC and ss. 3/4 of Dowry Prohibition Act resulting in acquittal of husband and his relatives by the trial court –

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On parties reaching settlement, divorce by mutual consent granted – Thereafter, wife challenging the acquittal order – High Court in its revisional jurisdiction set aside the acquittal order and remanded the matter for trial afresh – Held: Scope of revisional jurisdiction is limited – High Court could interfere with acquittal order only when it was perverse – In the present case order of the trial court was not perverse – Hence interference therewith not justified specially when the parties had taken divorce by mutual consent – Penal Code, 1860 – ss. 498-A, 406 and 506 – Dowry Prohibition Act, 1961 – ss. 3/4- Code of Criminal Procedure, 1973 – s. 401.

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– Hence interference therewith not justified specially when the parties had taken divorce by mutual consent – Penal Code, 1860 – ss. 498-A, 406 and 506 – Dowry Prohibition Act, 1961 – ss. 3/4- Code of Criminal Procedure, 1973 – s. 401.

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Allowing the appeal, the Court

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HELD: 1. The scope of revisional jurisdiction of the High Court does not extend to re-appreciation of evidence. In exercise of revisional jurisdiction, the High Court can interfere with the acquittal only if there is perversity in the order of acquittal. In the present case, the order of acquittal could not be held to be perverse. The Magistrate having dealt with the matter threadbare, the High Court, in exercise of revisional jurisdiction was

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not justified in interfering with the order of acquittal particularly when the parties had reached the settlement before this Court on the basis of which divorce by mutual consent was granted by the Family Court. [Para 12] [1377-F-H; 1378-D-E] A

Bindeshwari Prasad Singh v. State of Bihar (2002)
6 SCC 650 : 2002 (1) Suppl. SCR 495 – relied on. B

2. Once the matter was settled between the parties and the said settlement was given effect to in the form of divorce by mutual consent, no further dispute survived between the parties. No liberty was reserved by the wife to continue further proceedings against the husband. Thus, the wife was, after settling the matter, estopped from continuing the proceedings. [Para 12][1377-E-F] C D

Case Law Reference

2002 (1) Suppl. SCR 495 relied on Para 9

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 741 of 2009. E

From the Judgment and Order dated 21.11.2006 of the Allahabad High Court in Criminal Revision No. 1159 of 2002.

Appellant-in-person.

B. K. Satija, Kamendra Mishra, Advs., for the Respondents. F

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. This appeal has been preferred against the Judgment and Order dated 21st November, 2006 passed by the High Court of Allahabad in Criminal Revision Case No.1159 of 2002. G

2. By the impugned order, the High Court has allowed the revision petition filed by the Respondent, set aside the order dated 30th July, 2002 passed by Judicial Magistrate, Ghaziabad, in Case No.356 of 2002 and remanded the matter H

A back to the trial Court for fresh decision in accordance with law.

3. We have heard learned counsel for the parties.

B 4. The question raised for our consideration is whether in exercise of revisional jurisdiction, the High Court was justified in setting aside the acquittal of the appellant, having regard to the facts and circumstances of the case.

C 5. The appellant and Respondent No.1 were married on 25th January, 1996. The appellant belongs to Allahabad where his parents live and the respondent belonged to Jabalpur where her parents are living. The appellant is said to be employed at Delhi in Central Government. The appellant-husband filed a divorce petition on 7th July, 1997 at Allahabad Family Court. The wife lodged First Information Report dated 4th November, D 1997 at Ghaziabad making allegations of cruelty against the husband. After investigation, the husband and four of his family members were tried under Sections 498-A, 406, 506 IPC and 3/4 of the Dowry Prohibition Act before the Judicial Magistrate, Ghaziabad, in Case No.356/2002. The trial ended in acquittal E of all the accused including the appellant vide Order dated 30th July, 2002.

F 6. The divorce petition filed by the husband was ordered to be transferred to Jabalpur at the instance of the wife. The wife also filed a divorce petition at Jabalpur. The husband filed Transfer Petition (Civil) No.150 of 2004 before this Court which was disposed of on 11th March, 2005. This Court noted that since both the parties had sought divorce, the marriage had broken down and the parties had agreed to a decree of divorce by mutual consent. Accordingly, this Court directed G the Family Court, Jabalpur, to take up the matter on 4th April, 2005 without entertaining any prayer for adjournment and pass a decree of divorce. Accordingly, the Family Court, Jabalpur passed the decree of divorce on 4th April, 2005 after recording H the statement of the parties that they mutually agreed to decree

of divorce. The wife did not press her counter claim for maintenance. She also did not reserve liberty for any other action against the husband. A

7. It may be mentioned that against the Order of the Magistrate acquitting the appellant and his family members, the Respondent-wife had preferred Criminal Revision No.1159 of 2002 before the Allahabad High Court. The husband filed affidavit dated 4th September, 2006 placing on record the order of this Court and the order of the Family Court, Jabalpur and also mentioning that after the dissolution of marriage, the wife has re-married and in view of the order of this Court and the Family Court, the revision petition ought to be dismissed. B C

8. The High Court, instead of dismissing the revision petition, without referring to the above developments, allowed the revision petition by the impugned order with the observation that documents Exhibit Ka2 and Ka3 showed harassment, cruelty and mental torture and the Magistrate had skipped over the facts and wrongly acquitted the appellant. Aggrieved by the said order, the appellant has approached this Court as already noticed above. D E

9. The appellant appearing in person submitted that the parties had taken divorce by mutual consent as per agreement reached before this Court and thereafter, the respondent was not justified in proceeding against the appellant. It was further submitted that the High Court failed to advert to the settlement between the parties and also exceeded its jurisdiction in setting aside the order of acquittal. The Magistrate in its detailed order duly appreciated the entire evidence and found that no case for cruelty was made out against the appellant. In exercise of revisional jurisdiction, the said acquittal could not be set aside in absence of perversity. Reliance has been placed on Judgment of this Court in Bindeshwari Prasad Singh vs. State of Bihar¹ laying down as follows : F G

¹ (2002) 6 SCC 650

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and we are satisfied that the High Court was not justified
in reappreciating the evidence on record and coming
to a different conclusion in a revision preferred by the
informant under Section 401 of the Code of Criminal
B Procedure. Sub-section (3) of Section 401 in terms
provides that nothing in Section 401 shall be deemed
to authorize a High Court to convert a finding of acquittal
into one of conviction. The aforesaid sub-section, which
places a limitation on the powers of the revisional court,
C prohibiting it from converting a finding of acquittal into
one of conviction, is itself indicative of the nature and
extent of the revisional power conferred by Section 401
of the Code of Criminal Procedure. If the High Court
could not convert a finding of acquittal into one of
D conviction directly, it could not do so indirectly by the
method of ordering a retrial. It is well settled by a catena
of decisions of this Court that the High Court will
ordinarily not interfere in revision with an order of
acquittal except in exceptional cases where the interest
E of public justice requires interference for the correction
of a manifest illegality or the prevention of gross
miscarriage of justice. The High Court will not be
justified in interfering with an order of acquittal merely
because the trial court has taken a wrong view of the
F law or has erred in appreciation of evidence. It is neither
possible nor advisable to make an exhaustive list of
circumstances in which exercise of revisional
jurisdiction may be justified, but decisions of this Court
G have laid down the parameters of exercise of revisional
jurisdiction by the High Court under Section 401 of the
Code of Criminal Procedure in an appeal against
acquittal by a private party. (See *D. Stephens v.*
Nosibolla [AIR (1951) SC 196], *K. Chinnaswamy*
Reddy v. State of A.P. [AIR (1962) SC 1788], *Akalu*
Ahir v. Ramdeo Ram [(1973) 2 SCC 583], *Pakalapati*
H*

Narayana Gajapathi Raju v. Bonapalli Pedu Appadu[(1975) 4 SCC 477] and *Mahendra Pratap Singh v. Sarju Singh* [AIR (1968) SC 707].) A

10. Learned counsel for the respondent, on the other hand, submitted that even though the parties had re-married after obtaining divorce by mutual consent as noticed above, the wife was not debarred from pursuing the criminal case against the appellant. He further submitted that the High Court was justified in setting aside the order of the Magistrate and remitting the matter back for a fresh decision. B

11. We have given our anxious consideration to the rival submissions. We are satisfied that the view taken by the High Court, in the facts and circumstances of the case, is not just and fair and needs to be set aside. C

12. It is clear from perusal of the impugned order of the High Court that the development of settlement between the parties during pendency of the revision petition has not even been adverted to. Once the matter was settled between the parties and the said settlement was given effect to in the form of divorce by mutual consent, no further dispute survived between the parties, though it was not so expressly recorded in the order of this Court. No liberty was reserved by the wife to continue further proceedings against the husband. Thus, the wife was, after settling the matter, estopped from continuing the proceedings. In any case, it is well settled that the scope of revisional jurisdiction of the High Court does not extend to re-appreciation of evidence. In exercise of revisional jurisdiction, the High Court can interfere with the acquittal only if there is perversity in the order of acquittal. In the present case, the order of acquittal could not be held to be perverse. The High Court observed that the demand of articles, papers of house property of Jabalpur and Noida and the contents of Exhibits Ka2 and Ka3 amounted to harassment, cruelty and mental torture. This observation amounted to substitution of D
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A its view by the High Court for the view taken by the Magistrate after due consideration of all the allegations. The Magistrate *inter alia* found the version of the respondent-wife to be not believable and also found that the allegations were not substantiated. It was observed that the wife herself admitted

B that the documents Exhibit Ka2 and Ka3 were merely guidelines for good conduct and behavior expected of her and did not amount to cruelty. It was also admitted that there was no demand of dowry at the time of marriage. The Investigating Officer had never visited Jabalpur and the demand of house

C at Jabalpur was not substantiated. It was further observed that criminal case filed by the wife was a counter blast to the divorce case filed by the husband. Version before the Court was improvement over the original version in the First Information Report. She had given contradictory statement

D about the place where her husband demanded the house. Thus, the Magistrate having dealt with the matter threadbare, the High Court, in exercise of revisional jurisdiction was not justified in interfering with the order of acquittal particularly when the parties had reached the settlement before this Court on

E the basis of which divorce by mutual consent was granted by the Family Court, Jabalpur which fact was placed on record of the High Court.

F 13. In view of the above, we allow this appeal, set aside the impugned order passed by the High Court and restore the order of the Magistrate.

Kalpana K. Tripathy

Appeal allowed.