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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 816 OF 2019

BETWEEN:

STATE OF KARNATAKA
BY SAKHARAYAPATTANA POLICE,
SAKHARAYAPATTANA,
KADUR TALUK.
(REPRESENTED BY PUBLIC PROSECUTOR,
CHIKKAMAGALURU),
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 1.

...PETITIONER

(BY SRI. RAHUL RAI K., HCGP)

AND:

MALLESHNAIKA,
S/O. HEMINAIKA,
AGED ABOUT 29 YEARS,
R/O JODILINGADAHALLI THANDYA,
KADUR TALUK,
CHIKKAMAGALURU DISTRICT.

...RESPONDENT

(BY SRI. JAVEED S., AMICUS CURIAE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO (A) SET ASIDE THE ORDER DATED 05.03.2019
PASSED IN THE II ADDL. DISTRICT AND SESSIONS JUDGE,
CHIKKAMAGALURU IN CRL.A NO.69/2017 CONFIRMING THE
JUDGMENT AND ORDER DATED 09.01.2017 PASSED BY THE II
ADDL. CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS
AT KADUR, IN C.C.NO.239/2014.

THIS PETITION, COMING ON FOR FURTHER HEARING,
THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

1. This Criminal Revision Petition is filed by the State, being aggrieved by the judgment of acquittal dated 09.01.2017 in C.C.No.239/2014 on the file of the Court of II Addl. Civil Judge and JMFC, Kadur and its confirmation judgment and order dated 05.03.2019 in Crl.A.No.69/2017 on the file of the Court of II Addl. District and Sessions Judge, Chikkamagalur, seeking to set aside the concurrent findings recorded by the Courts below, wherein the respondent/accused was acquitted for the offences punishable under Sections 504, 324, 498A and 506 of the Indian Penal code (for short 'IPC').

2. The respondent herein is the accused before the Trial Court and respondent before the Appellate Court.

Brief facts of the case are as under:

3. It is the case of the prosecution that, PW1 married the respondent Mallesh Naika on 15.12.2007. The



couple had a female child aged about 4 years. It is stated in the complaint that, the respondent herein used to consume alcohol everyday and assaulting PW1 without any reason. Even though, the said fact was brought to the notice of the parents of PW1, they were advising PW1 to adjust and live with the respondent. It is stated in the complaint that, on 09.12.2011, at about 9.30 a.m., the respondent has assaulted the mother of PW1 by using machete and thereafter PW1 started residing in her parents' house. Such being the fact, on 19.12.2013, when PW1 was grazing the cattle in the field, the respondent gone to the said field and asked her to restore the matrimonial tie. When PW1 refused to join the company of the respondent, the respondent tried to take away the Mangalasutra by stating that, when she was not interested to stay with him, she need not have Mangalasuthra and took a wooden stick attached to tomato plantation and assaulted indiscriminately. By that time, she was rescued by the neighbouring land's owner. Thereafter, the respondent stated to have threatened her



with dire consequences. Being annoyed by the act of the respondent, PW1 lodged a complaint on 20.12.2013 before the jurisdictional police. Based on the complaint lodged by the complainant, FIR came to be registered against the accused in Crime No.95/2013 for the offences punishable under Sections 504, 324, 498A and 506 of IPC. After completion of investigation, the jurisdictional police have submitted the charge sheet for the above said offences.

4. To prove the case of the prosecution, the prosecution examined, in all, 9 witnesses namely PWs.1 to 9 and got marked 7 documents at Exhibits P1 to P7 and also marked the M.O.1 - wooden stick. The Trial Court after appreciating the oral and documentary evidence on record, acquitted the respondent. Being aggrieved by the same, the State preferred an appeal before the Sessions Court/Appellate Court, the Appellate Court upheld the judgment of acquittal rendered by the Trial Court. Being aggrieved by the same, the State has preferred this



revision petition seeking to set-aside the Order of acquittal.

5. Heard Shri Rahul Rai K., learned High Court Government Pleader for the petitioner – State and Sri Javeed S., learned Amicus Curiae for the respondent.

6. It is the submission of learned HCGP that, the Courts below failed to appreciate the evidence properly even though there are materials to proceed against the respondent, failed to consider the same. Hence, the judgment of acquittal passed by the Courts below are erroneous and the same is unsustainable.

7. It is further stated that, PW1 who is none other than the complainant and the injured, has categorically supported the case and she was subjected to cruelty and harassment at the hands of the respondent, which was not considered by the Trial Court properly. Hence, the learned HCGP prays to set-aside the Order of acquittal.



8. It is further submitted that, PW2 being an eye witness to the incident, has supported the case of prosecution. Even though he was subjected to cross-examination, nothing was elicited to discredit the trustworthiness. He has identified M.O.1 - the wooden stick. PWs.3 and 5 are the parents of PW1, they have supported the case of prosecution regarding cruelty and ill-treatment given to their daughter i.e., PW1. In fact they are the best witness to depose about the cruelty and harassment. However, the Courts below failed to appreciate their evidence, consequently, the judgment of acquittal is passed.

9. PW4 is the brother of PW1 consistent in his evidence with respect to cruelty and harassment given to PW1. However, PWs.3, 4 and 5 are not the eyewitnesses to the incident which stated to have taken place on 19.12.2013. The evidence of PWs.1 and 2 corroborated by the evidence of PW6 - Doctor who treated PW1 and issued wound certificate as per Ex.P5.



10. It is further submitted that, even though all the witnesses and also the documents clearly supported the case of the prosecution, the Courts below failed to consider the same. Hence, the learned HCGP prays to interference with the findings of Courts below to ascertain about perversity. Making such submission, learned HCGP prays to allow the petition by setting aside the judgment of acquittal.

11. *Per contra*, Sri. Javeed S., learned Amicus Curiae vehemently submits that, the judgment of acquittal passed by the Trial Court ought not to have been challenged before the Appellate Court / Sessions Court. The State cannot be construed as aggrieved party and Section 372 of Code of Criminal Procedure (for short 'Cr.P.C.') should not have maintained. However, the Appellate Court entertained the said appeal and disposed of on merits which is without jurisdiction. Therefore, the revision is not maintainable. Having submitted thus, learned Amicus Curiae prays to dismiss the petition.



12. Having heard the learned counsel for the respective parties and also perused the concurrent findings of the Courts below. The learned Amicus Curiae raised a valid ground that, the revision is not maintainable.

13. Before advertng to the facts of the case, it is relevant to refer the provision under Section 372 of Cr.P.C.

"372. No appeal to lie, unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]"

As per the proviso, the victim shall have right to prefer an appeal against the order of acquittal before the Sessions Court. The definition of 'victim' stipulated under Section 2(wa) of Cr.P.C., which states that, "*a person who has suffered any loss or injury caused by reason of the act*



or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir". On careful reading of the provision, the State is not construed as 'victim' under the said definition.

14. Now it is relevant to refer the provision under Section 378(1) and (3) of the Cr.P.C, which read thus:

378. Appeal in case of acquittal. - (1) *Save as otherwise provided in sub- section (2) and subject to the provisions of sub- sections (3) and (5),-*

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]



(2) xxxxxxxx

(3) *[No appeal to the High Court] under sub- section (1) or sub- section (2) shall be entertained except with the leave of the High Court.*

(4) xxxxxxxx

(5) xxxxxxxx

(6) xxxxxxxx

On careful reading of the above provision, it appears that, the State Government may file appeal against the order of acquittal. The said appeal may be entertained on granting the leave of the Court.

15. When there is separate provision stipulated to file an appeal against the acquittal to the State and the said provision is in existence even after Section 372 of Cr.P.C., was incorporated, the State cannot exercise the jurisdiction which is meant for victim under Section 372 of Cr.P.C. There is a distinction between the two provisions, the victim has to file appeal under Section 372 of Cr.P.C., against the order of acquittal. Whereas the State has to file appeal under Section 378(1) and (3) of Cr.P.C. When there is a distinct provision distinctly conferring certain



rights to the victim and the State independently, it is necessary to exercise their respective jurisdiction independently. In the present case, the State has preferred appeal by invoking the provision under Section 372 of Cr.P.C., which is not permitted under law. Therefore, the appeal filed by the State under Section 372 of Cr.P.C., ought not to have been entertained by the Appellate Court. However, the Appellate Court considered and disposed of on merit, which amounts to, order without jurisdiction and the same is considered as *non-est* in law. Therefore, the present revision petition filed against the said order is unsustainable and liable to be dismissed.

16. In the light of the observations made above, I proceed to pass the following:

ORDER

- (i) The Criminal Revision Petition is *dismissed*.
- (ii) The order passed in Crl.A.No.69/2017 dated 05.03.2019 on the file of the II Addl. District and Sessions Judge, Chikkamagaluru, is set aside as *non-est* in law.



- (iii) The liberty is reserved to the petitioner / State to file Criminal Appeal against the order of acquittal passed by the Trial Court by invoking the provision under Section 378(1) and (3) of Cr.P.C.
- (iv) The assistance rendered by the learned Amicus Curiae is appreciated and the said appreciation is placed on record and the Karnataka State Legal Services Authority is directed to pay a remuneration of Rs.3,000/- for the valuable assistance rendered by the learned Amicus Curiae, on production of the certified copy of this Order.

Sd/-
JUDGE