



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER 2020

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

CRIMINAL REVISION PETITION No.152 OF 2014
C/W.

CRIMINAL REVISION PETITION No.1358 OF 2010

CRIMINAL REVISION PETITION No.152 OF 2014

BETWEEN:

Smt. Sushma Rani,
D/o. Krishnoji Rao,
Aged about 34 years,
Residing at Shree Lakshmi Nivasa,
Jayanagar 2nd Cross,
Chikkahonnenahalli, 573 103.
Hassan.

.. Petitioner

(By Sri. Ashish Krupakar, Advocate)

AND:

Sri. H.N. Nagaraja Rao,
S/o. Y. Nanjunda Rao,
A/a: 38 years,
Working at: Dynamatic Technologies Ltd.,
E.C. No.1159, Peenya II Phase,
T. Dasarahalli, Bangalore-58.

.. Respondent

(By Smt. P.V. Kalpana, *Amicus Curiae*)

This Criminal Revision Petition is filed under Section 397 r/w. Section 401 of Cr.P.C. praying to call for the records and set aside the judgment and sentence confirmed in Criminal Appeal No.815/2010 dated 15-02-2012 passed by the Additional Sessions Judge, Fast Track Court-XIV CCC, Bangalore City and also set aside the judgment of conviction and sentence dated 25-10-2010 passed by the 6th Additional Chief Metropolitan Magistrate, Bangalore in C.C.No.11445/2006 and acquit the petitioner of the charges of defamation framed against her under Section 500 of IPC, in the interest of justice and equity.

CRIMINAL REVISION PETITION No.1358 OF 2010

BETWEEN:

Mr. H.Nagaraj Rao,
Aged about 40 years,
S/o. Nanjunda Rao,
I.C.No.1159,
Dynamatic Technology Ltd.,
Peenya II Phase,
T. Dasarahalli, Bangalore.

.. Petitioner

(By Sri. Ashok Patil, Advocate)

AND:

Mrs. Sushma Rani,
Aged about 23 years,
Krishnoji Rao Road,
Near Kamakshi Stores,
Anchikoplu, Post Arsikere,
Dist.Hassan.

.. Respondent

(By Sri. Ashish Krupakar, Advocate)

This Criminal Revision Petition is filed under Section 397 r/w. Section 401 of Cr.P.C. praying to enhance the punishment to the maximum permissible under Section 500 of IPC and modify the order of conviction passed by the 6th Additional Chief Metropolitan Magistrate, Bangalore City dated 25-10-2010 in C.C.No.11445/2010 in the interest of justice and equity.

These Criminal Revision Petitions having been heard and reserved on 28-09-2020, coming on for pronouncement of judgment this day, the Court made the following:

ORDER

The revision petitioner in Criminal Revision Petition No.1358/2010 is the husband of the respondent therein which respondent is the revision petitioner in Criminal Revision Petition No.152/2014. The revision petitioner in Criminal Revision petition No.1358/2010 is the sole respondent in Criminal Revision Petition No.152/2014.

The petitioner husband - Sri. Nagaraja Rao had filed a criminal case in C.C.No.11445/2006 against the accused (his wife) - Smt. Sushma Rani in the Court of the VI Additional Chief Metropolitan Magistrate, Bangalore City (hereinafter for brevity referred to as the

“Trial Court”) alleging the offence punishable under Sections 500, 191 and 193 of the Indian Penal Code, 1860 (hereinafter for brevity referred to as “I.P.C.”) against the accused.

The said criminal case, after trial, ended in conviction of the accused therein for the offence punishable under Section 500 of the IPC and the accused was sentenced to undergo Simple Imprisonment for a period of one month and to pay a fine of ₹5,000/- by the judgment and order on sentence of the Trial Court dated 25-10-2010.

Challenging the said judgment of conviction and order on sentence passed by the Trial Court, the accused therein (Smt. Sushma Rani – the wife) preferred a Criminal Appeal in Criminal Appeal No.815/2010 in the Court of the Additional Sessions Judge, Fast Track Court-XIV, CCC, Bangalore City,

(hereinafter for brevity referred to as "Session Judge's Court") which appeal, after contest, is dismissed by the judgment dated 15-02-2012. Against the said judgment of confirmation of conviction passed by the learned Sessions Judge's Court, the accused has preferred Criminal Revision Petition No.152/2014, whereas, seeking enhancement of sentence, ordered by the Trial Court, the complainant (husband) has filed Criminal Revision petition No.1358/2010 before this Court.

2. For the sake of convenience, the parties would be henceforth referred to with the ranks they were holding in the Trial Court.

3. Both these Criminal Revision Petitions have been treated as connected matters, as such, taken up together for their hearing and disposal.

4. The revision petitioner in Criminal Revision Petition No.152/2014 who is the respondent in the connected Revision Petition is being represented by her

counsel. The respondent in Criminal Revision Petition No.152/2014, though was originally being represented by a counsel of his choice, but due to the continuous absence of the said learned counsel for the respondent, this Court, by a detailed order dated 03-09-2020, appointed learned counsel Smt. P.V. Kalpana, as *Amicus Curiae* for the respondent in the said revision petition. However, the very same complainant as a revision petitioner in Criminal Revision Petition No.1358/2010 has continued his representation through his learned counsel.

5. The Trial Court and Session Judge's Court's records were called for and the same are placed before this Court.

6. Heard the arguments from both side. Perused the materials placed before this Court including the Trial Court and Session Judge's Court's records.

7. After hearing both side, the points that arise for my consideration in these revision petitions are :

[i] Whether the complainant has proved beyond reasonable doubt that the accused has committed an offence punishable under Section 500 of the Indian Penal Code?

[ii] Whether the sentence ordered by the Trial Court against the accused in C.C.NMo.11445/2006 on 25-10-2010 deserved to be enhanced?

[iii] Whether the judgments and order on sentence impugned under these revision petitions suffers with any illegality, impropriety, warranting interference at the hands of this Court?

8. The summary of the case of the complainant in the Trial Court was that, the complainant had instituted a matrimonial case against his wife in the Family Court at Bengaluru, seeking Restitution of Conjugal Rights in M.C.No.959/2001. In that case, the accused (wife) appeared and filed her statement of objections to the main petition, wherein she had made certain defamatory

allegations accusing the complainant that, he was consuming liquor and was assaulting her in the night hours. It was also accused against him that he used to insist her to dance naked and in the presence of his friends. It was also accused of him that he was acting as a pimp for his friends. The Family Court, by its judgment dated 11-04-2005 passed in M.C.No.959/2001, allowed the petition and ordered for restitution of conjugal rights. It is thereafter the complainant (husband) has filed C.C.No.11445/2006 in the Trial Court alleging that the statements made by the accused in her statement of objections in M.C.No.959/2001 and her evidence led in the said case has brought down his reputation and has resulted into his defamation.

9. In the Trial Court, the complainant examined himself as PW-1 and got marked four documents at Ex.P-1 to Ex.P-4. The accused got herself examined as

DW-1, but no documents were marked as Exhibits from her side.

10. From the evidence of PW-1 and DW-1 led in the Trial Court, the undisputed facts remain that, the complainant was the husband of the accused who had instituted a matrimonial case against her in M.C.No.959/2001 for the relief of restitution of conjugal rights. In the said matrimonial proceeding, the accused has filed her statement of objections as per Ex.P-4 and has given her evidence as per Ex.P-1. It is also not in dispute that Ex.P-2 is the certified copy of the common judgment passed by the Trial Court in M.C.No.959/2001 and in G & WC No.36/2002, which Guardian and Ward's case was also between the same complainant and the accused. It is also an admitted fact that in the said common judgment dated 11-04-2005, M.C.No.959/2001 filed under Section 9 of the Hindu Marriage Act, 1955, was allowed, granting the relief of restitution of conjugal

rights in favour of the complainant and his G & WC No.36/2002 was also partly allowed, granting visiting rights to the complainant to visit their minor daughter. Ex.P-3 is the Decree pertaining to the said common judgment in Ex.P-1.

11. The complainant as PW-1 in his examination-in-chief, apart from marking the documents from Exs.P-1 to P-4 has stated that, the reputation of his family has been affected by the statements made by the accused. He also stated that, due to the insult they have suffered, they cannot move in the society by keeping their head high.

He was subjected to a detailed cross-examination from the accused' side, wherein he stated that the accused herself has published the contents of her statement of objection to the public i.e. to his relatives. Though he stated that those information have not been published in any daily newspapers, but he again stated

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