HIGH COURT OF MADHYA PRADESH : JABALPUR

S.B : HON.SHRIJUSTICE VISHNU PRATAP SINGH CHAUHAN

CRIMINAL REVISION NO.161/2008

In reference

Vs.

Fauzia Usman alias Monika Bedi

Shri Shashank Upadhyay, learned Govt. Advocate and Shri Vishal Yadav, Dy. Govt. Advocate for the applicant/State.

Shri Arjun Singh and Shri Diljit Singh Ahluwalia, learned counsel for the respondent.

CRIMINAL REVISION NO.2238/2007

State of Madhya Pradesh

Vs.

Fauzia Usman alias Monika Bedi

Shri Shashank Upadhyay, learned Govt. Advocate and Shri Vishal Yadav, Dy. Govt. Advocate for the applicant/State.

Shri Arjun Singh and Shri Diljit Singh Ahluwalia, learned counsel for the respondent.

O R D E R

(18/11/ 2019)

This order shall govern the disposal of both the aforesaid Criminal Revisions, since they are arising out of a common order of acquittal dated 6.9.2007 passed by the appellate Court

(Session, Judge) in Criminal Appeal No.200/2007, impugned herein.

2. The Coordinate Bench of this Court, while going through the news item published in the newspaper about the acquittal of the respondent by the appellate court, took suo-moto cognizance and ordered for calling the record and upon its perusal, *prima facie* found some substance against the respondent and ordered for the registration of a case bearing CRR No.161/08, against the order of acquittal dated 6.9.2007 passed by the Appellate Court (Sessions Judge, Bhopal) in Cri. Appeal No.200/2007 (State of M.P Vs Fauzia Usman @ Monika Bedi) and also directed to issue notice to the respondent. Simultaneously, the State also preferred a criminal revision under Sec.397 read with Sec.401 of the Cr.P.C., being aggrieved by the aforesaid order dated 6.9.2007 whereby affirming the acquittal of the respondent of the charge under Sec.420, 468 and 471 of the IPC and Sec.12(1)(b) of the Passport Act passed in the judgment dated 16.7.2007 passed by the trial court in Regular Criminal Trial No.803/04 (State of M.P. through P.S. Kohefiza Vs. Syed Abdul Jalil alias Siraj and others).

3. Case of the prosecution, against the respondent, in short, was that Superintendent of Police Bhopal, received a secret information that the respondent had succeeded in securing international passport by furnishing false documents and affidavit as also mentioning false address in the application for issuance of passport, at Passport office,

Bhopal, where after the Superintendent of Police entrusted the matter to the SDOP, Bairagarh, Bhopal, for enquiry, who upon inquiry, found that the respondent was not residing at the given address and also furnished forged documents for getting the passport. The SDOP lodged the report at P.S. Kohefiza, Bhopal, against the respondent and others, registered as Crime No.505/01, under Sec.419, 420, 467, 468, 471, 120(B) and 182 of the IPC. After completion of the investigation, the charge sheet came to be filed against the other accused persons including the respondents, since respondent at the relevant time, was residing at Portugal. When the police came to know that the respondent had been arrested for some offence in Portugal and she was also required in the crime No.505/01, extradition proceedings were initiated by virtue of Indian Extradition Act,1962. The Court of Appeals, Lisbon, Portugal, vide order dated 3.8.2005 and judgment dated 28.10.2005 of Supreme Court of Justice, Portugal, allowed the respondent to be sent to India, for prosecution against her for the offence under Sec.420, 468 and 471 of the IPC and Sec.12 of the Passport Act, 1967, thereafter the respondent was brought to India. The investigating officer, after conducting a short investigation and collecting some additional documents, submitted supplementary charge sheet against the respondent, before Chief Judicial Magistrate, Bhopal, resulting in registration of Regular Criminal Trial No.803/04 (old No.1173/2002).

4. In order to bring home the charges, the prosecution examined as many as 36 witnesses in its favour and submitted

documents Ex.P/1 to P/146 as also Articles A to Article E. The respondent in her examination under Sec.313 of the Cr.P.C, took the defence that the approver Shiraz (PW13) prepared the forged document and she has been falsely implicated in the present case. No other defence was produced on her behalf.

5. The learned Trial Court, after hearing both the parties, delivered the judgment on 16.7.2007, acquitting the respondent and the other accused persons, of all the charges. Against the said judgment and order of acquittal, the State preferred an appeal against the respondent, registered as Cri. Appeal No.200/07, which was decided by Sessions Judge, Bhopal, by judgment dated 6.9.2007, affirming the acquittal of respondent.

6. Heard learned Govt. Advocate(G.A.). on behalf of the State and counsel for the respondent, and perused the entire record thoroughly as well as impugned judgment.

7. Learned G.A. vehemently submitted that prosecution has proved its case beyond reasonable doubt, therefore, judgment and order dated 6.9.2007 of the court below whereby affirming the acquittal of the respondent is bad in law; the evidence has not been appreciated in proper perspective, and as such deserves to be set aside and prays to convict the respondent for the aforesaid offences.

8. On the other hand, the learned counsel for the respondent submitted that both the courts below has rightly appreciated the evidence. The prosecution has miserable failed to prove the charges against the respondent. There is concurrent finding of acquittal recorded by the courts below. While exercising revisional jurisdiction, court is not having jurisdiction to re-appreciated the evidence as appreciation of evidence would result in exercising appellate jurisdiction, and further that there is no need to interfere in the finding of acquittal recorded by the courts below. The State could not point out any manifest glaring illegality which has led to invoke the revisional jurisdiction.

9. After hearing learned counsel for the parties, it would be necessary to discuss the ambit and scope of revisional jurisdiction before dealing the present matter.

10. Learned counsel for respondent has strongly placed reliance on the observations made by Hon. the Apex Court in the case of ***Ganesha Vs Sharanappa (2014(1) SCC 87***. Para-10 is relevant which reads as under :

> **10**. However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to re-appraise the evidence in light of the observation of the revisional court and take

an independent view uninfluenced by any of the observations of the revisional court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order re-trial. The view, which we have taken finds support from a decision of this Court in **Bindeshwari Prasad Singh v. State of Bihar (2002) 6 SCC 650 : (AIR 2002 SC 2907 : 2007 AIR SCW 3315),** in which it has been held as follows:

> "12. .....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, 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 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 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 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 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."

11. The scope of power of revision against an order of acquittal has been well settled by the Apex Court in case of ***Vimal Singh Vs. Khuman Singh (1998) 7 SCC 223***. The observation made in para 9 of the said case reads as thus:

> "9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been

> considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside and order of acquittal if it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

12. The same view has been reiterated by the Apex Court in it's subsequent judgment in case of ***Venkatesan Vs. Rani and another (2013) 14 SCC 207*** and held as follows:

> "Revisional jurisdiction of the High Court while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where trial court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Reappreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction.
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> If within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a retrial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction."

13. Hon'ble Apex Court in the case of ***Johar & others Vs. Mangal Prasad and another, 2008(3) SCC 423***, considering the previous judgments has held as under :

"19. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.

20. Ms. Makhija is correct that sub-section (4) of Section 378 of the Code of Criminal Procedure was not available to the first informant but the same by itself would not mean that in absence of any appeal preferred by the State, the limited jurisdiction of the court should be expanded.

21. We may notice a few of the decisions of this Court which are binding on

22. In **K. Chinnaswamy Reddy v. State of Andhra Pradesh [1963] 3 SCR 412,** this Court observed :-

> "It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised."

23. In **Mahendra Pratap Singh v. Sarju Singh and Anr. [1968] 2 SCR 287** this Court stated the law thus :-

> "8. The practice on the subject has been stated by this Court on more than one occasion. In **D. Stephens v. Nosibolla [[1951] SCR 284]**, only two grounds were mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. Again, **in Logendranath Jha and others v. Shri Polailal Biswas [[1951] SCR. 676]**, this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is "perverse" or "lacking in true correct perspective". It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the Subordinate Court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in K. Chinnaswamy Reddy v. State of Andhra Pradesh, it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High

> Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court."

24. In **Janata Dal vs. HS Chowdhary (1992) 4 SCC 305**, this Court stated that the object of the revisional jurisdiction was to confer power on superior criminal courts to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment.

25. In **State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand : (2004) 7 SCC 659**, this Court observed :-

> "21. In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397, Cr. P.C. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party i.e. Ram Briksh Singh v. Ambika Yadav. That was the case in which the High Court interfered in revision because material evidence was overlooked by the courts below."

26. The judgment of Ram Briksh mentioned above, has since been reported as **Ram Briksh Singh vs. Ambika Yadav (2004) 7 SCC 665**, wherein it has been observed :-

> "12. For the aforesaid reasons, we are unable to accept the contention that the High Court has reappreciated the evidence. The High Court has only demonstrated as to how the material evidence has been overlooked leading to

> manifest illegality resulting in gross miscarriage of justice."
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> It was, therefore, relevant in the fact-situation obtaining therein.
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> **27.** Yet again in **Satyajit Banerjee vs. State of W.B. (2005) 1 SCC 115**, this Court has, while exercising its jurisdiction under Section 142 of the Constitution of India, expressed a note of caution stating :-
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> "22. The cases cited by the learned counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice."
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> **28**. We may notice that prohibition contained in sub-section (3) of Section 401 refers to a finding and not the conclusion.
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> **29.** A bare perusal of the judgment of the High Court clearly demonstrates that in effect and substance the finding of the learned trial Judge has been reversed. While hearing the matter afresh in terms of the direction of the High Court, the learned Trial Judge would be bound by the observations made therein and thus, would have no option but to convict the appellants."

14. On testing the above submissions in the light of law settled by the Apex Court on the scope of true contours of the jurisdiction vested in the High Court under Section 397 read with Section 401 of the Criminal Procedure Code, 1973,

while examining an order of acquittal passed by the trial court, I find that the judgment and order of acquittal in revision can be interfered only on the following circumstances:-

> (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
> (ii) where the trial court has wrongly shut out evidence which the prosecution wished to produce;
> (iii) where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
> (iv) where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
> (v) where the acquittal is based on the compounding of the offence which is invalid under the law.

15. In the background of aforesaid proposition of law, perused the evidence produced before the trial Court and judgment passed by both courts below. The incriminating evidence against respondent Fauzia Usman @ Monika Bedi were Ex.P/23 alleged application submitted by respondent for getting the passport, Ex.P/29 letter allegedly written and signed by the respondent submitted in the Passport office, Ex. P/79 and P/94 affidavits on which alleged signature of the

respondent finds place and ExD/5 information filled by police constable Irfan (PW12) on verification form. This witness Irfan (PW12) stated that respondent signed on that document before him. The signature and handwriting on those documents were sent for examination to the hand writing expert Anil Shrivastava (PW38) vide letter Ex.P/87 by S.K.Shukla (PW-40), who clearly deposed in his statement before the Court that he received the documents Ex.P/88 to P/95 on which the questioned handwriting and signatures of respondent were found placed and Ex.P/96 to P/108 are the admitted signatures of the respondent on the order sheet of the Court and other documents on which the writing of the respondent was taken for matching with the questioned documents. These documents are Ex.P/109 to P/133. The handwriting expert Anil Shrivastava (PW-38) finally submitted an examination report Ex.P/135 and its opinion letter is Ex.P/134 and opined that the handwriting on all the admitted documents i.e. F-1 to F-60 and N-1 to N-13 and N-12A are of the same person, however, could not express any definite opinion of matching of the admitted handwriting and signatures on the questioned documents.

16. Learned trial Court while appreciating the evidence on this point in paragraph No.24 of the judgment, gave a finding that the writing and signatures are similar. Anil Shrivastava (PW-38) stated that the writing and signature on Ex.P/57 are of the same person whose signatures and writing found in the admitted writing and signature on the documents placed on F-1 to F-60 and N-1 to N-13 and N-12A. But, when Ex.P/134

and P/135 are perused carefully by this Court, it is noticed that the expert Anil Shrivastava (PW38) expressed that it has not been possible to give any definite opinion about matching of the signatures and handwriting on the questioned document Ex.P/88 to P/95 and admitted documents Ex.P/96 to P/133 are that of same person. That apart, document Ex.D/5 is the verification report, and this document has been confronted to Amar Lakda (PW2), who was then posted as Superintendent in passport office, but the person who conducted the verification of respondent and submitted verification report Ex.D/5 is Irfan (PW12) Head Constable, who has not been confronted with this document Ex.D/5. Irfan (PW12) categorically stated that he verified the fact personally from the respondent and received the signature of respondent on Ex.D/5, but signature on Ex.D/5 did not send for matching with the admitted signatures to the handwriting expert. Since it has not been investigated, this Court, at this revisional stage, cannot direct for the re-investigation for filling the lacuna.

17. On perusal of the whole evidence, it is apparent that incriminating evidence against the respondent are Ex.P/23, P/29, P/79, P/94. As alleged, all the documents filled and signed by the respondent and on the basis of forged documents applied for getting the passport and copies of all these documents are Ex.P/88 to P/95. Investigating Officer S.K. Shukla, SDO(P) (PW-40) sent all the photocopies of the documents for matching the handwriting and signatures placed on those photocopies with the matching of the

admitted handwriting and signatures of the respondent. Handwriting expert Anil Shrivastava (PW-38) on the basis of handwriting signatures on the photocopies matched with the admitted handwriting and signatures placed on the documents Ex.P/96 to P/133 opined that it was not possible to express any definite opinion about the matching. No doubt, had the original documents Ex.P/23, P/29, P/79, P/94 and D/5 sent for examination of the handwriting and signatures placed on these documents to the expert instead of photocopies of those documents, certainly the handwriting expert Anil Shrivastava (PW-38) would have been given a definite opinion about the matching of the handwriting and signatures with the admitted documents.

18. Hon'ble Apex Court in the case of **Sanjay Singh Ramarao Chavan Vs. Dattatray Gulabrao Phalke and others, AIR 2015 (Suppl) 127** in para-14 has held as under :

> "14. ……The revisional Court is not meant to act as an appellate Court. The whole purpose of the revisional jurisdiction is to preserve the power in the Court to do justice in accordance with the principles of criminal jurisdiction. Revisional power of the Court under Section 397 and 401 of the Cr.P.C. is not to be equated with that of an appeal. Unless the finding of the Court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the Courts may not interfere with decisions in exercise of their revisional jusrisdiction."

19. On the basis of forgoing discussions, this Court does not find any manifest error or glaring injustice done during appreciation of evidence by both the Courts below, hence this Court while exercising the revisional jurisdiction does not find fit to interfere in the conclusion of the appellate Court.

20. Accordingly, both revisions are hereby dismissed without any order as to cost.

(Vishnu Pratap Singh Chauhan)
Judge

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