

**(2000) 03 AHC CK 0144****Allahabad High Court****Case No:** Criminal Revision No. 1021 of 1997

Raj Kumar Khemka and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

**Date of Decision:** March 13, 2000**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397
- Penal Code, 1860 (IPC) - Section 323, 406, 498A, 504

**Citation:** (2001) 1 ACR 217**Hon'ble Judges:** Krishna Kumar, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Krishna Kumar, J.

This revision has been filed against judgment and order dated 29.7.1997, passed by Sri M.P. Singh, District Judge, Saharanpur in Criminal Revision No. 494 of 1996, whereby allowing the revision and setting aside the order dated 28.10.1996, passed by the Judicial Magistrate, Saharanpur. The Judicial Magistrate, Saharanpur acquitted the accused persons charged for offence under Sections 498-A, 323, 406 and 504, I.P.C. The complainant filed a revision before the learned Sessions Judge who allowed the revision, set aside the order passed by the learned Magistrate and remanded the case for decision in accordance with law and observations made in the body of the judgment. Against this judgment and order, the revision has been filed. The learned Counsel for the revisionists contended that against acquittal, the revision could not be filed in the Court of Session. However, learned Counsel for the opposite parties contended that the power of revision against acquittal vested both in High Court as well as in Sessions Court in view of provision of Section 397, Cr. P.C. Learned Counsel for the revisionists, however, could not show any case law in this point that the revision against the acquittal can only be entertained by this Court and not by the Sessions Court. Although there may be practice for filing the revision

against the acquittal before this Court but that does not take away the powers of the Sessions Court u/s 397, Cr. P.C. to entertain a revision against acquittal. It may also be stated that in the old criminal procedure, practice was to file the revision against the acquittal in the Court of Session u/s 435 of Code of 1898. When the jurisdiction is concurrent and equally vested in High Court and the Sessions Court, the Sessions Court can entertain a revision against the acquittal.

2. As far as merits are concerned, the learned lower court has not substituted its own finding about conviction, rather the Court of Session remanded the case for retrial in accordance with law and in accordance with observations made in the body of the judgment. The learned Sessions Judge only noted as to how the evidence and circumstances in the matrimonial cases should be considered. The learned Sessions Judge has not given his own finding about any fact or evidence or documents. Therefore, it cannot be argued that the revisional court appreciated the evidence in his own way.

3. Learned Counsel for the revisionists placing reliance upon Vimal Singh Vs. Khuman Singh and Another, argued that the revisional court should not interfere with the judgment of acquittal unless it suffers from illegality. Again, it may be stated that the learned Sessions Judge did not hold that acquittal was illegal or incorrect rather set aside the judgment of the learned Magistrate directing him to re-try the case in the light of observations where the learned Magistrate had failed to exercise its jurisdiction. In the above discussions, there is no force in this revision, which is hereby dismissed.