

**PRADIP MOHANTY, J.**

CRLREV No.854 OF 2008 ( Decided on 30 .04. 2009.)

**BIJAYALAXMI PANDA**

Petitioner

**-V-**

**STATE OF ORISSA & ANR.**

Opp.Parties

**CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – SEC.397, 401.**

For Petitioner – In person & Mr. Sangram Nayak, Advocate.  
For Opp.Parties – Miss. Samapika Mishra,  
Addl.Standing Counsel (O.P.No.1)  
M/s. A.K.Mishra, M.Basu, G.Sethi & P.C.Swain  
(O.P.No.2).

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**PRADIP MOHANTY, J.** In this revision directed against the judgment and order dated 16/26.11.2007 passed by the learned S.D.J.M., Bhubaneswar in G.R. Case No.870 of 2005/Trial No.3288 of 2005 acquitting opposite party no.2 of the charge under Section 498-A IPC, the informant (wife of opposite party no.2) has questioned the correctness of the order of acquittal and sought for interference of this Court.

2. The petitioner was the informant and opposite party no.2 was the accused before the court below.

The allegation of the informant was that her marriage was solemnized with opposite party no.2 on 01.06.2003 according to Hindu rites and customs. At the time of marriage, there was demand for dowry and the same was fulfilled. After a few days of the marriage, accused-opposite party no.2 demanded more money. When the informant protested, she was tortured both physically and mentally by opposite party no.2. It is alleged specifically that accused-opposite party no.2 used to assault the informant time and again. Once accused-opposite party no.2 tried to pour kerosene on her for which in order to save her life she ran through the back side door, concealed herself in a bus stand and finally came to her parents' house. She lodged FIR before the O.I.C., Bhadrak Police Station and accordingly Bhadrak P.S. Case No.65 of 2005 was registered. But on the point of jurisdiction, the same was forwarded to the I.I.C., Mahila Police Station, Bhubaneswar and again registered as Mahila P.S. Case No. 31 of 2005 under sections 498-A/506(II)/34 IPC and section 4 of the D.P. Act. The matter was investigated and on its completion charge sheet was submitted against accused-opposite party no.2 under section 498-A, IPC.

3. Accused-opposite party no.2 took the plea of complete denial.

4. The prosecution, in order to prove the charge, examined as many as eight witnesses and exhibited seven documents. The defence examined none.

5. The learned S.D.J.M., Bhubaneswar after conclusion of trial came to hold that the prosecution has squarely failed to prove the case beyond all reasonable doubts against

accused-opposite party no.2 and accordingly acquitted him under section 248(1) Cr.P.C.

6. As it appears from the order-sheet, on 04.03.2010 although the petitioner appeared in person and argued the matter, but later on with her consent this Court appointed Mr. Sangram Nayak to argue the case on her behalf.

7. Learned counsel for the petitioner inter alia seeks to assail the impugned judgment of acquittal on the following grounds:

(i) The trial court has come to a wrong finding and erroneously acquitted opposite party no.2, when the evidence on record established his guilt.

(ii) The trial court has acquitted opposite party no.2 by ignoring the probative value of the FIR and reliable testimony of the eye witnesses.

(iii) The judgment of the trial court is full of inconsistencies and consisted of faulty reasonings.

(iv) If the prosecution declined to examine some of the material and independent witnesses, it is the duty of the court to call and examine them as the court witnesses.

According to Mr. Nayak, it is a fit case where this Court in exercise of revisional power should set aside the order of acquittal and remit the matter back for retrial. In support of his submission, he placed reliance on the decisions in **Ashok Kumar Chaudhary and ors. v. State of Bihar**, (2008) 40 OCR (SC) 572, **Dama Mallik v. Gurubari Mallik & ors.**, (1992) 5 OCR 93, **Hiradhar @ Hira Kisan v. State of Orissa**, PART II (2009) ILR 228, **State of Orissa v. Anit Singh @ Rabi and another**, 2009 (I) OLR 467 and **Minu @ Sanjaya Behera v. State of Orissa**, 2009(1) OLR 750.

8. Miss. Mishra, learned Additional Standing Counsel submitted that it is not necessary to produce all the witnesses; rather the prosecution is free to choose and examine the witnesses in order to prove its case.

Mr. Basu, learned counsel appearing for opposite party no.2, contended that no infirmity or illegality has been committed by the trial court in acquitting opposite party no.2 of the charge under Section 498-A IPC. The trial court not only assessed the evidence on record but also analyzed the matter from various angles. In the instant case, prosecution has failed to prove the cruelty and harassment by the husband, opposite party no.2, to meet the unlawful demand for any property or valuable security. He further submitted that P.W.3 (the mother of the informant) and P.W.4 (the informant-petitioner) in their examination-in-chief have not whispered a single word regarding demand of dowry by opposite party no.2 which contradicts the FIR allegation. The evidence on record also reveals that the informant received divorce notice on 24.09.2004 and thereafter filed the FIR on 10.03.2005. The delay in lodging the FIR has not been satisfactorily explained. His further contention was that the scope of interference of a revisional court with an order of acquittal is limited. To buttress his submission, he relied upon the decisions reported in **Johar & Ors. V. Mangal Prasad & Anr.**, 2008) 40 OCR (SC) 104 and **Rajkishore Patra @ Subudhi v. State of Orissa**, 2009 (II) OLR 419.

9. Perused the LCR and the decisions cited by the parties. It is the settled principle of law that the scope of interference with an order of acquittal in exercise of revisional jurisdiction particularly at the behest of the informant is limited. But where the conclusions are contrary to the evidence on record and findings are of such nature that unless the revisional court interferes with the order of acquittal and sets aside the same there would be gross miscarriage of justice, the revisional Court can interfere and direct retrial by setting aside the order of acquittal. This Court examined the matter and found that there is no dispute with regard to the marriage of the informant-petitioner with opposite party no.2. The marriage was solemnized on 01.06.2003. The trial court seems to have given much emphasis on the FIR having been lodged about seven months after the occurrence. In the instant case, star witnesses, i.e., P.W. 3 (mother of the informant) and P.W.4 (informant-petitioner) have been examined. They are the most natural and competent witnesses to depose about the ill-treatment and torture meted out by opposite party no.2. But the trial court acquitted opposite party no.2 by ignoring the probative value of FIR. In the FIR itself explanation has been given by the informant and she has also explained in her evidence why she had not lodged the FIR earlier. The evidence of P.W.3 is very clear that she had tried to settle the dispute and dissension amicably without bringing the same to the court of law. The commission of offence under Section 498-A IPC being a continuous offence, more stress cannot be given to a single incident. In case of dispute between the spouses and in case of matrimonial differences, delay, if any, in initiating criminal proceeding cannot be adversely viewed for one naturally expects return of normalcy of situation or reunion between the parties. Immediate lodging of FIR before the police makes the chance of reunion bleak. There is specific evidence of P.W.3 that she had tried to settle the dispute. This explanation also reveals from the FIR. In the present case, sufficient cause has been shown about the delay in lodging the FIR in the month of March, 2005. Therefore, it is not fatal to the prosecution. It has been held in **Ashok Kumar Chaudhary & Ors. v. State of Bihar**, (2008) 40 OCR (SC) 572 that merely on the ground of delay, the prosecution case cannot be thrown out.

10. In the instant case, the trial court has given more emphasis on the FIR without considering the evidence of P.W.3 and P.W.4. The trial court without considering the evidence of the prosecution has rendered the order of acquittal. Sufficient evidence has been adduced by the prosecution to show that opposite party no.2 has committed the offence. There are several incriminating circumstances which too point guilty finger towards opposite party no.2. From the LCR it reveals that the statement of the accused has not been recorded in accordance with law.

11. For the above reasons and in view of the ratio decided in **Dama Malik's** case (supra), this Court comes to the conclusion that the trial court was not justified in discarding the evidence of the prosecution witnesses without recording the positive findings as to how the same was unacceptable and/or suffered from any unexplained exaggeration. Therefore, the order of acquittal passed by the S.D.J.M. is not sustainable. Accordingly, the same is set aside and the matter is remitted back to the trial court for re-trial, which shall be done on the basis of the evidence already recorded. This Court further directs the trial court to complete the trial by the end of 2010.

12. The Criminal Revision is accordingly disposed of.

Registry is directed to send back the LCR immediately.

Revision disposed of.

