

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 300 of 2012

Anil Kumar Sah son of Late Gulabi Sah Petitioner

-Versus-

1. The State of Jharkhand
2. Punam Devi W/o Sri Anil Kumar Sah
& D/o Om Prakash SoniOpp. Parties

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Manoj Kumar Sah, Adv.
For the State	: Mr. Shailesh Kr. Sinha, A.P.P.
For O.P. No.2	: None

Through Video Conferencing

J U D G M E N T

7/C.A.V. on 07.04.2021

Pronounced on 30.04.2021

Heard Mr. Manoj Kumar Sah, the learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Shailesh Kumar Sinha, the learned A.P.P. appearing on behalf of the Opposite Party-State.

3. The present criminal revision petition is directed against the Judgment dated 03.02.2012 passed by the learned District and Sessions Judge-II, Sahibganj in Criminal Appeal No. 15 of 2011 whereby and whereunder the Judgment of conviction and the order of sentence of the petitioner under Section 498A of the Indian Penal Code passed by the learned trial court was affirmed and the criminal appeal was dismissed.

4. The criminal appeal was preferred against the Judgment of conviction and the order of sentence dated 21.02.2011 (corrected vide order dated 29.03.2011) passed by the learned Judicial Magistrate, Sahibganj in P.C.R. Case No. 448 of 2006 / T.R. No. 81 of 2011 whereby and whereunder the petitioner was convicted under Sections 323 and 498A of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for 03 years with fine of Rs.1,000/- for the offence under Section

498A of the Indian Penal Code and in default in payment of fine, to undergo additional imprisonment for 03 months and he was further sentenced to undergo Rigorous Imprisonment for 06 months for the offence under Section 323 of the Indian Penal Code and both the sentences were directed to run concurrently. However, the rest two accused persons namely, Sulochana Devi and Rekha Devi were acquitted from the charges under Sections 498A and 323 of the Indian Penal Code for want of sufficient evidence.

Arguments on behalf of the petitioner

5. Learned counsel for the petitioner while assailing the impugned judgments submitted that admittedly, the marriage between the petitioner and Opposite Party No.2 was solemnized on 21.07.1996 and as per the complaint itself, appropriate gifts were also given during the course of marriage. He submitted that the complaint was filed after more than 10 years on 15.12.2006 alleging that after two years of marriage, the petitioner made a demand of Rs.2 Lakhs and assaulted and tortured the complainant and ultimately, on 10.12.2006, the petitioner left the complainant at her father's house. He further submitted that as per the evidence of the complainant herself, the demand of Rs.2 Lakhs was made for her treatment as no child was born out of their wedlock. He also submitted that the learned appellate court has not recorded any finding that the demand of money was in relation to the marriage or on account of dowry.

6. The learned counsel further submitted that without prejudice to the aforesaid submissions, the facts remains that the petitioner was all along on bail during trial and he remained in jail custody from 27.04.2012 to 26.05.2012 i.e. for one month at revisional stage of the case. He further submitted that the Complaint was filed as back as on 15.12.2006 and since

then, more than 14 years have elapsed and the present age of the petitioner is 52 years and the present case is his first offence and therefore, considering the aforesaid aspects of the matter, including the facts that the case was filed after 10 years of marriage and the main problem appears to be the fact that no child was born out of their wedlock, some sympathetic view may be taken. He also submitted that the petitioner is ready to make some payment to the Opposite Party no.2 by way of victim compensation and accordingly, the sentence of the petitioner may be modified to the period already undergone in custody by enhancing the fine amount.

Arguments on behalf of the Opposite Party-State

7. The learned A.P.P. appearing on behalf of the Opposite Party-State, on the other hand, opposing the prayer submitted that under the provisions of Section 498A of the Indian Penal Code, the demand of property need not be in relation to marriage or by way of dowry. He submitted that any demand of property coupled with torture comes within the definition of cruelty as defined under Section 498A of the Indian Penal Code and accordingly, even if the amount of Rs.2 Lakhs was demanded for any purpose whatsoever, the same was coupled with assault and torture to the Complainant and accordingly, there is no illegality or perversity in the impugned judgments passed by the learned courts below.

8. The learned A.P.P. further submitted that if this Court is inclined to modify the sentence of the petitioner, then the fine amount may not be less than Rs.1 Lakh which may be directed to be remitted to the Complainant by the learned court below.

Findings of this Court

9. After hearing the learned counsel for the parties and going through the impugned judgments as well as the lower court records of the case, this Court finds that the prosecution

case is based on the Complaint presented by the Complainant namely, Punam Devi on 15.12.2006 alleging inter-alia that the marriage of the Complainant with the petitioner was solemnized on 21.07.1996 and Rs.50,000/- in cash, household articles, gold ornaments, necklace and other necessary articles were given to the petitioner as gifts and after the marriage, she went to her matrimonial house where she was treated well and there was cordial relationship for two years, but thereafter, the petitioner alongwith other accused persons started harassing her for more dowry amount and he mercilessly assaulted the Complainant to bring Rs.2,00,000/- from her father for investing in business. It was further alleged that the other accused persons attempted to burn her by pouring kerosene oil, but she was rescued by the villagers and her parents were informed and thereafter, a panchayati was held for settlement of the disputes. On 10.12.2006, the petitioner assaulted the complainant and forcibly left her at her father's house and told her family members that if Rs. 2,00,000/- is not given to him, he would marry with another girl.

10. After conclusion of enquiry, the learned Chief Judicial Magistrate, Sahibganj, vide order dated 25.09.2007 / 26.09.2007, found a prima facie case under Sections 323 and 498A of the Indian Penal Code against the petitioner and Rekha Devi and Sulochana Devi.

11. On 09.07.2009, the charges under Sections 498A/34 and 323/34 of the Indian Penal Code were framed against the petitioner and Rekha Devi and Sulochana Devi which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

12. In course of trial, the Complainant examined altogether 03 witnesses in support of her case. C.W.-1 is Ras Bihari Mishra, C.W.-2 is Om Prakash Soni who is the father of the

Complainant and C.W.-3 is Punam Devi who is the Complainant herself. No document has been exhibited as documentary evidence on behalf of the Complainant.

13. On 23.04.2010, the statements of the accused persons including the petitioner were recorded under Section 313 of Cr.P.C. wherein the petitioner simply denied the incriminating evidences put to him and claimed to be innocent. Thereafter, 02 witnesses were examined on behalf of the petitioner and other accused persons in their defence. D.W.-1 is Shravan Bhandari and D.W.-2 is Lalan Kumar Sah. No document has been exhibited as documentary evidence on behalf of the petitioner in his defence.

14. This Court finds that the learned trial court considered the arguments advanced on behalf of the parties and recorded its findings after discussing the evidences on record. The learned trial court recorded its finding that D.W.-1 accepted the marital relationship between the parties and that they are staying separately. The learned trial court discussed the evidence of D.W.-2, but has not recorded any finding with regard to the petitioner. After discussing the evidence of C.W.-1, the learned trial court recorded that the evidence of C.W.-1 supports the version of the Complainant and it is clear that the Complainant was driven out from her matrimonial house on account of dowry and that the Complainant was tortured by the petitioner. After discussing the evidence of C.W.-2 who is the father of the Complainant, the learned trial court recorded that from the evidence of C.W.-2, it transpires that the Complainant wanted to go to her matrimonial house, but she was not taken to her matrimonial house and his evidence supports the allegations of dowry demand with torture and assault committed to the Complainant. After discussing the evidence of C.W.-3 who is the Complainant herself, the learned

trial court recorded its findings that there is no medical certificate on record with regard to assault of the Complainant and from the evidence of C.W.-3, it is proved that the petitioner not only assaulted the Complainant, but also tortured her for dowry. The learned trial court summarized its findings in Para-9 and recorded that so far as the petitioner is concerned, the Complainant and her witnesses have unanimously supported the allegations of assaulting and driving out the Complainant after torturing her for dowry.

15. The learned trial court acquitted Sulochana Devi and Rekha Devi from the charges under Sections 498A and 323 of the Indian Penal Code for want of sufficient evidence, but convicted and sentenced the petitioner for the charges under Sections 323 and 498A of the Indian Penal Code.

16. This Court further finds that the learned appellate court also considered the oral evidences adduced on behalf of the Complainant and the defence and also the arguments advanced on behalf of both the parties and recorded its findings in Para-10 which reads as under:

“10. From the evidence of the prosecution and defence, it is clear that the appellant (petitioner herein) is not providing food to the Complainant, there is no issue of the Complainant. She is issueless, which is also one of the reasons of her neglect by her husband. From weighing the entire evidence, I came to the conclusion that the prosecution has been able to bring home charge levelled against the accused and the learned lower court has rightly come to the conclusion of harassment and torture and assault and has rightly passed order of conviction and sentence. I find no reason to interfere in the findings. In the result, the appeal is dismissed.”

17. This Court further finds that the learned trial court has recorded that the Complainant and her witnesses have

unanimously supported the allegations of assaulting and driving out the Complainant after torturing her for dowry and has found sufficient evidence for conviction of the petitioner under Sections 323 and 498A of the Indian Penal Code.

18. This Court further finds that the learned appellate court has recorded that the Complainant was issueless and due to which she was assaulted, tortured and harassed by the petitioner. The learned appellate court refused to interfere with the trial court's judgement.

19. After scrutiny of the materials on record, this Court finds that the marriage of the Complainant with the petitioner was solemnized on 21.07.1996 and she lived peacefully in her matrimonial house for two years, but she remained issueless and she was assaulted and tortured by the petitioner for demand of Rs.2,00,000/- and on 09.12.2006, the petitioner took the Complainant to her father's house and left her there and thereafter, the Complainant filed the Complaint on 10.12.2006. The evidence of the prosecution witnesses is consistent on the point. This Court finds that the allegation of attempting to burn the Complainant by pouring kerosene oil upon her is against Sulochana Devi and Rekha Devi who have already been acquitted by the learned trial court. Admittedly, the Complainant has not filed or exhibited any injury report.

20. The Hon'ble Apex Court has explained the power of revisional court in the case of *Jagannath Choudhary and others reported in (2002) 5 SCC 659* at Para-9 as under:-

"Incidentally the object of the revisional jurisdiction as envisaged u/s 401 was to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved hardship to

individuals. (See in this context the decision of this Court in Janata Dal Vs. H.S. Chowdhary). The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the application would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction."

21. The revisional power is further explained in the case of **Ramesh Kumar Bajaj reported in (2009) 1 JCR 684 (Jhar)** at Para-13 as follows:

"It is well settled that revisional interference may be justified where:

- (i) the decision is grossly erroneous.*
- (ii) there is no compliance with the provisions of law.*
- (iii) the finding of fact affecting the decision is not based on evidence.*
- (iv) material evidence of the parties is not considered and*
- (v) judicial discretion is exercised arbitrarily or perversely."*

22. In the case **Duli Chand v. Delhi Administration, (1975) 4 SCC 649**, the Hon'ble Supreme Court while considering the scope of revisional power held in paragraph-5 as follows:

"5. The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact

reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

23. Considering the entire facts and circumstances of the case, this Court does not find any reason for re-appreciation of the evidences for any interference under revisional jurisdiction. This Court does not find any illegality or perversity in the conviction of the petitioner under Sections 323 and 498A of the Indian Penal Code.

24. This Court further finds that the Complaint case was filed on 10.12.2006 after 10 years of the marriage and since then, more than 14 years have already elapsed and the petitioner has faced the rigors of the criminal litigation for a long period and the present case is his first offence as recorded by the learned trial court and at present, he is aged about 52 years.

25. Considering the aforesaid aspects of the case, this Court is of the considered view that the ends of justice would be served, if the sentence of the petitioner is modified and reduced to some extent and the fine amount is enhanced. Accordingly, the sentence of the petitioner for offence under Section 498A of the Indian Penal Code is modified and reduced to Rigorous Imprisonment for six (06) months and the fine amount of Rs.1,000/- awarded by the learned trial court is enhanced to Rs. 1,00,000/- (One Lac) to be deposited before the learned trial court within a period of two months from the date of communication of this order to the learned court below. This Court is not inclined to interfere with the sentence passed under Section 323 of the Indian Penal Code. Both the sentences shall run concurrently and the period of custody already undergone by the petitioner shall be set off.

26. The learned trial court is directed to remit the fine amount so deposited by the petitioner, to the Complainant upon due identification. If the fine amount is not deposited

within the time frame as indicated above, the petitioner would serve the sentence imposed by the learned trial court.

27. Accordingly, the conviction of the petitioner for offences under Sections 323 and 498A of the Indian Penal Code passed by the learned trial court and affirmed by the learned appellate court is upheld and the sentence is modified as indicated above. Accordingly, this criminal revision petition is hereby **disposed of**.

28. Interim order, if any, stands vacated.

29. The bail bond furnished by the petitioner is hereby cancelled.

30. Pending interlocutory application, if any, is dismissed as not pressed.

31. Let the Lower Court Records be immediately sent back to the court concerned.

32. Let a copy of this order be communicated to the learned court below through "FAX/Email".

(Anubha Rawat Choudhary, J.)

Saurav/