

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No. 264 of 2016

Suresh Thakur @ Bhutak Thakur, Son of Ruplal Thakur, Resident of Bagro, P.O. & P.S. Bagodar, Dist. Giridih **Petitioner**

Versus

1. The State of Jharkhand
2. Binda Devi @ Bindu Devi w/o Suresh Thakur @ Bhutali Thakur, R/o Village Bagro, P.O. Gundro, P.S. Bagodar (Saria), District Giridih**Opposite Parties**

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For the Petitioner : Mr. Lukesh Kumar Advocate

For the State : Mrs. Vandana Bharti, Addl.P.P

For the O.P. No.2 : None

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. On 01.03.2024

Pronounced On: 30 .04.2024

1. Heard the learned counsel for the petitioner and the learned APP for State. In spite of valid personal service of notice, opposite party no.2 did not turn up to contest this case and it is reported that she has been remarried with one Ashok Thakur of village Manjhaladih, Badki P.S. Dumri.
2. The instant criminal revision is directed against the Judgment dated 15.12.2015 passed in Criminal Appeal No 51 of 2009 by learned District and Additional Sessions Judge-II, Giridih, whereby and whereunder while dismissing the appeal, Judgment of conviction and order of sentence dated 02.06.2009 passed in Bagodar P.S. Case No. 43 of 2002 corresponding to G.R. No. 351 of 2002 (T.R.

Case No. 103 of 2009) by learned Sub Divisional Judicial Magistrate, Giridih for the offence under Section 498A of the Indian Penal Code and sentence passed against petitioner to undergo R.I. for two years along with fine of Rs. 3,000/- with default stipulation has been confirmed.

3. Factual matrix giving rise to this appeal is that informant Binda Devi was married with the present petitioner on 10.03.1999 in accordance with Hindu rites and customs. It is alleged that at the time of marriage cash, jewelries and other articles worth Rs. 75,000/- to Rs. 80,000/- were presented by the father of the informant and she went to her matrimonial home. It is further alleged that on 21/22.9.1999 on the occasion of Karma festival the present petitioner (husband) raised a demand of Rs. 28000/- for going to Bombay and work there and asked the informant to bring the above money from her parents in the name of Karma Puja. Informant was forced and compelled to fulfill above demand and was being physically and mentally harassed and tortured. Thereafter, informant called upon her father who along with his friends arrived at the matrimonial home of the informant on 24.09.1999 and negotiated the matter and expressed his inability to fulfill the said demand, thereafter her husband left talking with her. Again in the year 1999 after Diwali festival the informant was brutally assaulted and called as daain and tortured and harassed in

various ways by calling Ojha and Guni. She was compelled to lay on a cot with tying her hands and legs and below the cot a mud pot containing fire known as “Borsi” by which chilli and mustard smoke was also given to her. She was put in a door closed room due to which she became unconscious. Ultimately in the year 2000, on the occasion of Makarsakranti informant’s father came to her matrimonial home and seeing the miserable condition of the informant, very politely requested to her husband, in-laws and others to keep her with dignity but her father was also dashed and slapped and she was driven away from the matrimonial home and forced to go her parental home with her father. Thereafter, father of the informant attempted to convene a Panchayat for amicable settlement but no fruitful result was yield rather her husband was adamant to perform second marriage. Last Panchayat was held on 30.11.2001 at Village Bagado but they declined to keep her, hence, informant was compelled to lodge a complaint before the Court of Chief Judicial Magistrate, Giridih which was sent to concerned police station under Section 156(3) Cr.p.c. and FIR was registered. After completion of trial, the learned trial court has held the petitioner guilty for the offence under Section 498 A IPC and sentenced to undergo imprisonment and fine as stated above which was assailed in the Criminal Appeal before the learned Sessions

Judge, which has also been dismissed and the same is assailed in this revision.

4. Learned counsel for the petitioner has assailed the concurrent findings of the learned court below on following main grounds:-

- (i) The learned court below has failed to consider that petitioner has been acquitted from other charges except for the charge under Section 498(A) IPC and there is no allegation with regard to cruelty against the informant at the hands of present petitioner.
- (ii) Entire family members of the petitioner have been acquitted on the basis of same evidence which have been found to be false against them and the petitioner has been held guilty simply because he happens to be husband of the informant.
- (iii) P.W. 1, Sita Saw and P.W.5, Tejo Thakur were not mentioned in the charge sheet as a witness, hence, their evidence cannot be relied upon.
- (iv) The learned court below has failed to take into consideration that the complainant/informant has solemnized second marriage during the pendency of trial, which clearly indicates that she has refused to live with the petitioner and indulged in false implication. Petitioner has been acquitted for the offence under Section 4 Dowry Prohibition Act which also falsifies the demand of dowry, hence, no question of

subjecting the informant to cruelty or torture due to non-fulfillment of demand arises.

- (v) The learned trial court has not framed the charge regarding commission of offence under Section 498-A IPC during the period of September 1999 to 30.11.2001 but has put the question under Section 313 Cr.p.c. from the accused in respect of aforesaid period, hence order of conviction and sentence beyond the charge is illegal and without jurisdiction.
- (vi) The learned trial court as well as appellate court has failed to appreciate the evidence of D.W. 1 and documentary evidence Exhibit-A which clearly goes to show that a decision of Panchayat was taken on 25.03.2000 between the parties on core issues of domestic dispute and question of daain/witch.
- (vii) No incriminating circumstances constituting the offence under Section 498-A of the Indian Penal Code has been put to the petitioner in his statement under Section 313 Cr.p.c. and the basis of conviction are extraneous facts surfaced in the evidence of the prosecution witnesses. Petitioner has been convicted on the basis of extraneous evidence which were never get explained by him under Section 313 Cr.p.c., which is absolutely illegal and not sustainable under law and fit to be set aside.

5. Per contra, learned APP, Mrs. Vandana Bharti has opposed the aforesaid contentions raised on behalf of the petitioner and submitted that there is concurrent finding about guilt of accused petitioner for the offence under Section 498-A IPC, which suffers from no perversity and no interference is required under law. This revision has no merits and fit to be dismissed.

6. For better appreciation of the legal questions involved in this case, it is pertinent here to discuss the provisions of Section 498-A I.P.C. which reads as under:-

Huband or relative of husband of a women subjecting her to cruelty:-

“whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”.

Explanation: For the purpose of this Section, “Cruelty means

“a. any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassmt of the woman where such harassmt is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

7. In the case of *Lakhan Deka & Ors vs The State Of Assam*, reported in 2017 SCC Online Gua, 425 it was held that in order to convict a person under Section 498-A I.P.C., the prosecution is duty bound to prove that the demand of dowry was made to the victim and for that purpose the victim was tortured.

Another important factor to be looked into the corroboration of prosecution story from independent witnesses.

The third consideration requires that there must be specific allegation against each and every applicants whose names are mentioned in the complaint or FIR.

8. In the matrimonial case of Mohan Raj & Ors. Versus State, Crl. R.C. No. 24 of 2018 it was held by Madras High Court that bald allegations against petitioner about demand of dowry and cruelty are hard to believe. The complaint by the wife was bereft of any details like the dates on which the demand of dowry was made or mental or physical cruelty was committed on her. There was no specific allegation about the alleged acts of dowry demand and cruelty in her evidence as well as cross-examination. Thus, the Court held that allegation without corroborative evidence are just bald allegation and cannot be relied upon by the Courts. Therefore, on the failure of prosecution to lead any evidence, the husband and the family members were acquitted. Cryptic allegations without any

elaboration as to part short of torture was made can never be trusted.

9. The Court after referring to plethora of Judgments of others High Court as well as Hon'ble Supreme Court was of the firm opinion that in order to convict a person under Section 498-A I.P.C. there must be evidence to prove that willful conduct of person has drove a women to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical).
10. It is settled law that "for the purpose of Section 498-A IPC is to be established in the contest of Section 498-A IPC as it may be different from other statutory provisions. It should be determined by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the women to commit suicide, etc. It is to be established that the women has been subjected to cruelty continuously or at least enclose proximity of time of lodging the complainant. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC.
11. In the case of *B S Joshi and Ors V State Of Haryana and Anr*, *AIR 2003 SC 1386*, it was held that there is no uncertainty that the object of present chapter 20(A) containing Section 498-A of the Indian Penal Code was to forestall the torment to a lady by her better half or by family members of her husband Section 498-A was

added so as to rebuff the spouse and his family members who disturbed or torment the wife to force her family members to fulfill unlawful request of share. Be that as it may, if the procedures are started by spouse under Section 498(A) against the husband and his family members and in this way she has settled her debates with her better half and his family members and wife and husband concurred common separation, refusal to practice innate forces by the High Court would not be appropriate as it would keep lady from settling prior. Hence, to make sure about the finishes of equity suppress of FIR becomes necessary, Section 320 Cr.p.c. would not be a bar to the activity of intensity of suppress. It would any way be an alternate issue contingent on the realities and the conditions of each case whether to practice or not to exercise such a force.

12. Now coming back to the material aspects of this case, it is pertinent to point out that the victim/informant in her complaint petition has specifically stated that she resided at her matrimonial home after marriage about 5 to 6 months quite well. Thereafter, it was her husband alone who raised demand of Rs. 28,000/- from his wife to ask from her father for going to Bombay in connection with some work and due to non-fulfillment of which she was subjected to physical and mental torture by her husband/petitioner, in-laws and other family members. The extent of cruelty is also depicted in her evidence on oath that she was tied with rope in a cot and put in a

dark room and she was compelled to take smoke of chilli and mustard. The evidence of complainant/informant has not been rebutted by the defence through cogent and reliable evidence. Other witnesses of facts although close relatives of the informant, namely, P.W. 1 Sito Saw, P.W. 2, Prasadi Rajak, P.W. 3 Badri Thakur and P.W. 4 Puran Thakur and P.W. 5 Tejo Thakur have also consistently corroborated the version of complainant/informant. The conduct and behavior as disclosed in the evidence of the informant relating to the present petitioner certainly comes within the ambit of cruelty as defined under Section 498-A IPC. Therefore, the contention of petitioner that impugned Judgment is not based on proper appreciation of evidence is not sustainable. Moreover, the contention of petitioner that Exhibit-A (Panchayatnama) proved by defence is also not considered doest stand to reason because this Panchayati was also called upon by the father of victim in connection of Daain/Witch Practices imputed against the victim/informant and commission of torture against her through ojha and Guni. It also suggest the cruelty meted with the informant at the instance of present petitioner and his family members. Although, other family members of petitioner have been extended the benefit of doubt that itself is not sufficient to absolve the petitioner from his own criminal liability in view of specific

allegation of illegal demand of money and consequent torture committed by him.

13. In view of above discussions and reasons, I do not find any illegality and infirmity in the impugned Judgment and order of conviction of the petitioner through concurrent findings recorded by court below which requires no interference.

14. So far quantum of sentence and the benefit of Section 4 of Probation of Offenders Act is concerned, it appears that it is first offence of the petitioner and he was never convicted for any other offence. It is also surfaced during trial of the case that the informant/victim had solemnized second marriage on 15.05.2006 and she is living a peaceful conjugal life with her present husband.

Under such circumstances, sending back the petitioner to undergo rest of the imprisonment as awarded to him would not meet the ends of Justice. Having regard to facts and circumstances of the case, nature of offence committed by the petitioner, his character, antecedents and other relevant factors surfaced during trial it appears expedient in the interest of Justice to release the petitioner extending the benefit of Section 4 Probation of Offenders Act, 1958 instead of awarding immediate sentence of imprisonment inflicted by learned trial court.

15. Accordingly, petitioner is directed to be released on probation of good conduct and behavior and maintain peace for a period of three

years by furnishing bond of Rs. 10,000/- (Ten Thousand) with one sureties of like amount to the satisfaction of learned trial court instead of undergoing the substantive period of imprisonment awarded to him for the offence under Section 498-A I.P.C. The petitioner is directed to appear before the concerned trial court within three months from the date of this Judgment and furnish the bond as per above direction. The learned court below shall also obtain a report from District Probation Officer. In case of violation of terms and condition of bond the petitioner shall be called upon by the concerned trial court to undergo the rest period of imprisonment awarded to him for the offence under Section 498-A IPC.

16. Accordingly, this revision is disposed of.

17. Let the copy of this order along with LCR be sent to the court below for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date: 30/04/2024

Rajnish/- N.A.F.R.