

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 495 of 2012

Amrendra Kumar, son of Gorak Nath Ganjhu Petitioner
Versus

1. The State of Jharkhand.
2. Punita Devi, w/o Amrendra Kumar Opposite Parties

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Vibhor Mayank, Advocate
For the Opposite Party-State : Mr. Jitendra Pandey, A.P.P.

Through Video Conferencing

C.A.V. on 25.03.2021

Pronounced on 09.04.2021

1. Heard Mr. Vibhor Mayank, learned counsel for the petitioner.
2. Heard Mr. Jitendra Pandey, learned A.P.P. for the opposite party-State.
3. The present criminal revision has been filed, challenging the legality, propriety and correctness of the Judgment dated 25.5.2012, passed by the learned Principal Sessions Judge, Latehar, in Criminal Appeal No. 8 of 2010, whereby, the learned Appellate Court has been pleased to dismiss the appeal, preferred by the petitioner against the Judgment of Conviction and Order of Sentence dated 20.9.2010, passed by the learned Judicial Magistrate, 1st Class, Latehar, in Complaint Case No. 7 of 2007, T.R. No. 143 of 2010. The petitioner was convicted by the learned Trial Court, for the offence under Section 498A of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of three years and also a fine of Rs. 10,000/-. It was further directed that in case of default in payment of fine, the petitioner would further undergo simple imprisonment for six months.

Arguments on behalf of the Petitioner

4. The learned counsel appearing on behalf of the petitioner has submitted that the impugned orders are perverse, in as much as, the case does not come under the definition of "cruelty" either under Explanation (a) of Section 498A of the Indian Penal Code or under Explanation (b) to the said Section. He submits that the allegation of

“cruelty”, as defined under Explanations (a) or (b) of Section 498A of the Indian Penal Code is totally absent in the present case.

5. Learned counsel while referring to the impugned Judgments has submitted that there is no allegation of demand of any kind of property and as such the applicability of Explanation (b) of Section 498A of the Indian Penal Code is *ex-facie* excluded. He further submits that the petitioner was ultimately acquitted for the alleged offence under Section 3/4 of the Dowry Prohibition Act, 1961.

6. He further refers to Explanation (a) of Section 498A of the Indian Penal Code, and submits that the said explanation is attracted only when the conduct of the accused is of such a nature that such ‘cruelty’ is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman and there is no dispute that such cruelty could be mental or physical. Learned counsel submits that there is no finding recorded by the learned courts below that the conduct of the petitioner was such, which was likely to drive the complainant-wife to commit suicide or to cause grave injury or danger to her life, limb or health. He further submits that the only allegation which appears from the Trial Court’s Judgment is that the petitioner did not conduct *gauna* (second marriage) of the complainant and this conduct of the petitioner was the cause for filing a complaint case against the petitioner. He submits that the impugned Judgment of Conviction and Order of Sentence cannot be sustained in the eyes of law.

7. Learned counsel for the petitioner has placed reliance upon the judgment passed by the Hon’ble Supreme Court in the case of *State of A.P. Versus M. Madhusudhan Rao*, reported in (2008) 15 SCC 582.

Arguments on behalf of the opposite party-State

8. The learned counsel appearing on behalf of the opposite party-State, on the other hand, has opposed the prayer and submitted that there are consistent findings, recorded by the learned courts below and there is no scope for re-appreciation of the evidence before this Court in the revisional jurisdiction and, accordingly, the conviction and sentence, which are impugned in the present case cannot be interfered with.

Learned counsel has, however, submitted that the revisional jurisdiction of this High Court is very limited and the arguments of the petitioner do not call for any interference by this Court in the revisional jurisdiction.

Findings of this Court

9. The present case arises out of a complaint, filed by the opposite party No. 2 before the learned court below on 16.1.2007, alleging *inter alia* that the complainant was married to the present petitioner on 02.07.2006. She spent about a week in the conjugal home and returned back to her parental house. Thereafter, *gauna* (second marriage) was required to be performed, which was deferred by the petitioner on the ground that some dowry items were to be sent to him at Gumla, where the petitioner was residing in a rented premise. Ultimately fridge, colour T.V., godrej etc. were purchased by the complainant's father and given to the petitioner, but still *gauna* (second marriage) was not agreed upon. Eventually the circumstances led to filing of the complaint petition in the court of learned Chief Judicial Magistrate, Latehar. Complainant-wife was examined on solemn affirmation and five witnesses were also examined in course of the enquiry, under Section 202 of the Cr.P.C. and *prima facie* case under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 was found against the present petitioner and his sister and trial began.

10. The complainant examined altogether four prosecution witnesses and one witness was examined on behalf of the defence. P.W.-1 is the father of the complainant, P.W.-2 is the complainant herself, P.W.-3 is an acquaintance and independent witness and P.W.-4 is the friend and acquaintance of the father of the complainant. D.W.-1 is the resident of Khunti.

11. The complainant had exhibited the following documents apart from the oral evidence:- (a) Exhibit-1 was the Marriage Certificate, (b) Exhibit-2 is the letter written by the petitioner (c) Exhibit-3 is the legal notice, issued at the instance of the petitioner, (d) Exhibit-4 is the letter written by the complainant, (e) Exhibit-5 is the petition dated 11.9.2007, which was filed by the complainant before the Sub-Divisional Judicial Magistrate, Latehar (f) Exhibit-6 is the complaint petition filed by the

complainant (g) Exhibit-7 is the certified copy of the order sheet passed in Criminal Revision No. 5 of 2009 and (h) Exhibit-8 is the copy of the judgment passed in Criminal revision No. 5 of 2009 related to order of maintenance under Section 125 Cr.P.C in favour of the complainant.

12. Complainant-wife has been examined as P.W.-2, who has deposed that she was married to the petitioner on 2.7.2006 in a Temple and thereafter she remained in her in-laws house for a period of one week and thereafter she returned back to her parents house, but her husband never came to her parents house for the purpose of *gauna* (second marriage) and instead the husband (petitioner) wrote a letter that the things i.e. fridge, colour T.V., godrej etc. may be sent to the house, where mother-in-law and sister-in-law of the complainant were residing. Consequently, these things were taken at their place, but the mother-in-law and sister-in-law refused to keep the complainant by stating that she was of dark complexion and was illiterate and further demanded rupees two lakhs' cash and one Hero Honda motorcycle. The complainant had also alleged that in the meantime, on the basis of compromise between the complainant and the petitioner, the petitioner had taken the complainant, but left her at an isolated house and did not make any arrangement for her food etc. She had also stated that two unknown persons had threatened her that if she would insist to stay with the petitioner, then they will kill her. Ultimately, the complainant called her brother and went to her parents' house. This fact was brought to the notice of the learned court below by filing a petition dated 11.09.2007, which was marked Exhibit-5.

During her cross-examination, she stated that her father has given the articles during marriage on his own wish and at the time of marriage itself there was a demand of Rs.two lakhs and one Hero Honda motorcycle, which her father could not meet and, consequently, her in-laws family left her and petitioner had asked by writing letter to her father to fulfill the demand of various items, which was fully complied with by her father and the goods were sent where only her sister-in-law and mother-in-law were present. She also deposed during cross-examination that she came to know that the petitioner had also filed a

case for divorce, but denied the suggestion that the complainant had filed a false case.

13. The father of the complainant was examined as P.W.-1, who has fully supported the prosecution case. He has deposed that when the complainant came back from her in-laws' place, she did not make any complaint. He had received the letter (Exhibit-2) issued by the petitioner regarding the demand of dowry. He has also stated that the petitioner never came to the house of P.W.-2 to take back the complainant and it was also not correct to say that the complainant had any illegitimate affair with anybody else. This witness has also been thoroughly cross-examined by the defence and he has denied that the complaint case was filed after coming to know about the divorce case filed by the petitioner.

14. P.W.-3 is an independent witness. He has deposed that on 5.11.2006, he had taken fridge, colour T.V., godrej almirah to the house of the petitioner, where her mother and sister were residing and handed over the goods to them and they had asked for Rupees two lacs and a Hero Honda Motorcycle. He has stated in his cross-examination that he has no relationship with P.W.-2 and he was the owner of the jeep, which carried the aforesaid articles and he had also gone with the driver. He has further stated that he had lifted the goods from Ranchi from a person namely Murari and thereafter went to the house of the petitioner at Khunti. P.W.-4 has also fully supported the prosecution case.

15. This Court finds from the records that the accused persons were examined under Section 313 of the Cr.P.C. and specific queries were raised to the petitioner but the petitioner was in total denial and simply claimed to be innocent.

16. The petitioner had led a defence D.W-1. The said defence witness has stated that the complainant was married to the petitioner and she had been in the in-laws' place for eight days and thereafter she went back to her parents house, but the *gauna* (second marriage) was not performed. He has stated that he lives next door to the petitioner. He has stated that the in-laws of the complainant repeatedly asked for performance of the *gauna* (second marriage), but the family members of the complainant did not come for *gauna* (second marriage). This witness

has denied that the complainant side had sent certain items to Khunti. He has also stated that the petitioner had filed a case for divorce.

During his cross-examination, a question was put by the Court, to which, he responded that for the purposes of *gauna* (second marriage), the boy's side has to go to the girl's side, but he did not know as to whether the petitioner had gone to the girl's house for the purpose of performance of *gauna* (second marriage).

17. The learned trial court recorded contradictions in the evidence of the prosecution regarding demand of dowry and recorded that P.W. 1 had stated that he had taken the various goods i.e., color T.V., Godrej Almira, fridge with Mantu Sao (P.W.3) to the house of the petitioner at Namkom. The learned court found that as per the letter Exhibit 2, the said goods were directed to be sent to Gumla and were sent to Namkom which created doubt in the prosecution case regarding the demand of dowry and further the prosecution has not produced any bill receipt etc. regarding the goods which were said to be sent on demand.

18. The learned trial court also recorded that so far as second marriage is concerned, all the prosecution witnesses in their examination in chief have consistently stated that information for performance of *gauna* was given to the accused, but they did not come for performance of *gauna* and they have also stated that the petitioner did not come to perform *vidayi* of the complainant and simply stated that he will not perform *vidayi*. The learned court also recorded that there are also allegations that demand of Hero Honda motorcycle and Rs.2 lakhs was additionally demanded.

19. The learned trial court recorded that there is clear evidence that the complainant had stayed with the petitioner only for a period of 8 days and thereafter, the petitioner had not taken any interest to bring back the complainant and when during the pendency of the case, the complainant was sent with the petitioner upon assurance that he would keep the complainant properly, he went to Gumla and left the complainant at an isolated place and the complainant informed the entire incident to the court vide petition dated 11.09.2007 (Exhibit 5). Further the learned trial court also referred to Exhibit 4 and also para 6 of Exhibit 3 wherein, it

was alleged by the petitioner that the complainant has illicit relationship with some other person. The learned trial court was of the view that the aforesaid conduct of the petitioner amounted to mental cruelty upon the complainant and held the petitioner guilty of offence under Section 498 A of Indian Penal Code. The learned trial court acquitted the petitioner for alleged offence under Section 3 and 4 of Dowry Prohibition Act, 1961 as the demand of dowry could not be approved against the petitioner as well as his sister beyond all reasonable doubt.

20. Thus, this Court finds that the learned trial court had convicted the petitioner under Section 498A of Indian Penal Code read with explanation (a) thereto and not explanation (b) to the said section as the demand of any property/dowry could not be proved against the petitioner.

21. The learned Appellate Court, after scrutinizing the evidences on record, dismissed the appeal filed by the petitioner by recording its finding at Paragraph-9 of the Judgment, which reads as follows: -

"9. Consequently having perused the evidence of the four witnesses for the complainant as well as one witness for the defence it has been clearly established that marriage was solemnized between both the sides in the year 2006 at Nagar Temple and that on this pretext or the other the complainant wife had been driven out of the matrimonial home compelling her to find refuge at her paternal home and the Exhibit-3 which is the legal notice given by the appellant is an instance of acute cruelty as discussed above. The filing of the divorce case as against the complainant wife also stands admitted in the face of the willingness on part of the complainant wife for conjugal living. Obliging the complainant wife to stay isolatedly in her paternal home despite all the observances having been made on her part is indeed cruelty in law as against the complainant wife perpetrated by the appellant-husband. Therefore, the impugned findings of conviction and sentence under Section 498-A I.P.C. as against the appellant-husband Amerandar Kumar is upheld and confirmed. The appellant Amerandar Kumar has been found guilty for the offence punishable under Section 498-A of the Indian Penal Code and further I am not inclined to interfere with the impugned sentencing."

22. The arguments of the learned counsel for the petitioner that the only reason for which petitioner has been convicted is that the petitioner did not perform *gauna* (second marriage) with the petitioner, is not correct.

The learned courts below, by consistent findings convicted the petitioner

for the offence under Section 498A of the Indian Penal Code on the ground

firstly, that the petitioner did not take any interest to perform *gauna* (second marriage) with the complainant to take her back to her matrimonial house in spite of repeated requests made from the side of the girl and as per the response of the sole defence witness to the court's question, for the purposes of *gauna* (second marriage), the boy's side has to go to the girl's side, but he did not know as to whether the petitioner had gone to the girl's house for the purpose of performance of *gauna* (second marriage)

secondly, the petitioner alleged against the complainant that she has illegitimate relationship with someone else

thirdly, when the petitioner took the complainant with him under the orders of the court with an assurance that he would keep her properly, he did not take her home and took her to an isolated place at Gumla and left her there for which the complainant had duly filed petition before the court (Exhibit-5).

The learned Trial Court while convicting the petitioner under Section 498A of Indian Penal Code held the cruelty to be mental cruelty and apparently there is no allegation regarding any physical cruelty from the side of the petitioner or his family members and the demand of dowry or any property from the side of the petitioner was not proved.

The appellate court while upholding the conviction held that the present case was a case of acute cruelty.

Section 498-A IPC makes "cruelty" by husband or his relatives a punishable offence. The word "cruelty" is defined in the Explanation appended to the said section.

Section 498-A IPC with Explanation reads thus:

"498-A. Husband or relative of husband of a woman 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 purposes 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) harassment of the woman where such harassment 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."

23. The Hon'ble Supreme Court in the case of ***State of A.P. Versus M. Madhusudhan Rao***, reported in (2008) 15 SCC 582 has held in para 17 as under :-

17. Thus, providing a new dimension to the concept of "cruelty", clause (a) of Explanation to Section 498-A IPC postulates that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute "cruelty". Such wilful conduct, which is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman would also amount to "cruelty". Clause (b) of the Explanation provides that harassment of the woman where such harassment 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, would also constitute "cruelty" for the purpose of Section 498-A IPC.

24. In the judgement passed by the Hon'ble Supreme court reported in (2019) 5 SCC 384 (***Rupali Devi Vs. State of Uttar Pradesh and Others***) it has been held as under: -

14. "Cruelty" which is the crux of the offence under Section 498-A IPC is defined in Black's Law Dictionary to mean "the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue

in the parental home even though there may not be any overt act of physical cruelty at such place.

15. *The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Penal Code. The definition of "domestic violence" in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which define "cruelty". The provisions contained in Section 498-A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife."*

25. This Court is of the considered view that the conduct of the accused for an offence under Section 498 A read with explanation (a) includes both, the act and omission, which has an underlying element of an emotional distress and mental agony.

26. In the instant case, the sufferings of the complainant at the parental home was a result of a *deliberate omission* by the petitioner by not performing *Gauna* (second marriage) which was required to be performed by the petitioner. The adverse effects on the mental health in the parental home out of such deliberate omission would, in considered view of this Court, amount to commission of cruelty within the meaning of Section 498A of Indian Penal Code *when seen coupled with the act/conduct of the petitioner*, who took the complainant along with him by the orders of the court with an assurance that he would keep her properly, but left her at an isolated place at Gumla. Such Act of the petitioner certainly endangered her health, safety, life, limb and well-being, both mental and physical, and actually caused humiliation, trauma amounting to emotional abuse and mental distress. The learned appellate court has already recorded a finding of acute cruelty to the complainant at the hands of the petitioner by appreciating the materials on record.

27. This Court is of the considered view that the impugned judgements reflect concurrent findings with regard to the ingredients of

'cruelty' as defined under explanation (b) of section 498A of the Indian Penal Code.

28. 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."

29. 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."

30. This Court finds that none of the above criteria for interference in the impugned judgement in revisional jurisdiction are satisfied in the instant case. This Court finds that the findings recorded by the learned courts below are neither unreasonable or perverse. From perusal of the

impugned judgements, this Court is of the considered view that there has been no miscarriage of justice arising from the impugned judgements of conviction. The impugned judgements do not suffer from any misconception of law or irregularity of procedure. The learned courts below have not committed any illegality or material irregularity or impropriety in passing the impugned judgment of conviction. This Court is of the considered view that substantial justice has been done and there is no failure of justice, accordingly, no interference is called for on the point of conviction of the petitioner.

31. In view of the aforesaid discussions and findings and considering the entire facts and circumstances of this case, this Court is of the considered view that the learned courts below have passed well-reasoned judgements considering every aspect of the matter and every argument advanced on behalf of the petitioner. There being no perversity or illegality in the impugned judgements of conviction, no interference is called for.

32. So far as the point of sentence is concerned, this Court finds that the complaint case was filed as back as in the year 2007, and about 14 years have elapsed, the petitioner has faced the rigors of the criminal case for a long time and as per the trial court judgement, the present offence appears to be the first offence of the petitioner. In addition to the aforesaid, keeping in mind the manner in which the offence has been committed, this Court is of the considered view that the facts and circumstances of the case does not call for maximum sentence to the petitioner.

33. Accordingly, this Court is of the considered view that the ends of justice would be met if the sentence of the petitioner is modified to some extent. Accordingly, the sentence of the petitioner is modified and reduced to rigorous imprisonment for a total period of one year and fine amount is enhanced to Rs.1,00,000/- to be deposited by the petitioner before the learned court below within a period of four months from the date of communication of this judgement to the learned court below. The fine amount so deposited is directed to be remitted to the complainant of the case after due identification. In case of non-deposit of the aforesaid

fine amount within the stipulated period, the petitioner would further serve simple imprisonment for a period of six months.

34. As a cumulative effect of the aforesaid findings, this criminal revision petition is hereby disposed of with modification of sentence.

35. Bail bond furnished by the petitioner is hereby cancelled.

36. Pending interlocutory application, if any, is closed.

37. Let the lower court records be immediately sent back to the learned court below.

38. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)