

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Criminal Revision No. 955 of 2012**

Durga Prasad, son of Late Kishun Chandra Pandit

... .. Petitioner

-Versus-

The State of Jharkhand

... .. Opp. Party

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**CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Petitioner

: Mr. Pandey Neeraj Rai, Advocate

Mr. Rohit Ranjan Sinha, Advocate

Mr. Akchansh Kishore, Advocate

For the State-Opp. Party

: Mr. Tarun Kumar, A.P.P.

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**Through Video Conferencing**

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**J U D G M E N T**

C.A.V. on 09.04.2021

Pronounced on 04.06.2021

1. Heard Mr. Pandey Neeraj Rai, the learned counsel appearing for the petitioner assisted by Mr. Rohit Ranjan Sinha and Mr. Akchansh Kishore, Advocates.
2. Heard Mr. Tarun Kumar, the learned A.P.P. appearing on behalf of the State-Opposite Party.
3. The petitioner, husband of the informant, has preferred the present criminal revision petition against his conviction and sentence under Section 498(A) of the Indian Penal Code passed by the learned trial court and confirmed by the learned appellate court. All other accused family members of the petitioner i.e. mother-in-law and two sisters -in-law have been acquitted by the learned appellate court for alleged offence under section 498(A) of IPC and sections 3 and 4 of Dowry prohibition Act. The petitioner has also been acquitted for alleged offence under sections 3 and 4 of Dowry prohibition Act.
4. The Judgment of conviction and the order of sentence dated 23.06.2009 was passed by the learned Sub-Divisional Judicial Magistrate, Civil Court, Ghatsila in G.R. No. 326 of 1998 / T.R. No. 122 of 2009. Altogether six accused had faced trial. Out of them four were family members of the informant -

Petitioner-husband of the complainant;

Mother -in-law of the informant - Ram Pyari Devi @ Ramdeiya Devi;

Two Sisters-in law of the informant namely Muniya Devi @ Meena and Phulpati Devi @ Phulmati Devi.

The remaining two were

Vishwanath Singh Yadav and Gopal Sharma, both friends of the petitioner.

5. The result of the trial is summarized as under: -

Accused	Conviction u/s	Punishment
Petitioner, his mother and two sisters.	498(A) of IPC and 3/4 of the Dowry Prohibition Act	<p>RI for 02 ½ years and fine of Rs.5,000/- for the offence under Section 498(A) IPC</p> <p>RI for 06 months and fine of Rs.1,000/- for the offence under Section 3 of the Dowry Prohibition Act.</p> <p>RI for 06 months and fine of Rs.500/- for the offence under Section 4 of the Dowry Prohibition Act</p> <p>The fine amounts also had default clauses. The learned trial court directed that all the sentences shall run concurrently.</p> <p>Petitioner-husband to pay compensation of Rs.2,00,000/- to the Informant for the physical and mental cruelty suffered by her.</p>
Two friends of the petitioner	109 of IPC	RI for 06 months and fine of Rs.2,000/-

6. Being aggrieved by and dissatisfied with Judgment of conviction and the order of sentence, the petitioner alongwith his mother and two sisters preferred Criminal Appeal No. 184 of 2009 in which the learned appellate court vide Judgment dated 30.03.2012 passed by the learned

Addl. Sessions Judge, Ghatsila confirmed the conviction and sentence of the petitioner for the offence under Section 498(A) of the Indian Penal Code only, but set aside the conviction and sentence of the petitioner under Sections 3/4 of the Dowry Prohibition Act and also set aside the order directing the petitioner to pay compensation of Rs.2,00,000/- to the Informant and partly allowed the criminal appeal with respect to the petitioner. The learned appellate court also set aside the conviction and sentence of the mother and two sisters of the petitioner.

**Arguments on behalf of the petitioner**

7. The learned counsel appearing for the petitioner submitted that the petitioner is the husband of the Informant and his conviction under Section 498(A) of the Indian Penal Code has been confirmed by the learned appellate court by recording specific findings at Para-32 of its judgment. He further submitted that the learned appellate court has recorded that the prosecution has been able to prove the allegation of subjecting the informant to cruelty by the husband and such allegation was supported by evidence of the informant P.W.-7 read with the evidence of P.W.-4, P.W.-5 and P.W.-6 who have supported the evidences of one another that husband used to assault the informant.

8. The learned counsel submitted that the learned appellate court vide Para-31 read with Para-13 and 35 of its judgment has held that neither the demand of dowry was proved, nor the accused could be convicted under Section 4 of the Dowry Prohibition Act, 1961.

9. Learned counsel further submitted that as the demand of property was not proved, the cruelty has to be seen in the light of explanation (a) of Section 498(A) of Indian Penal Code. He also submitted that all assault may not come within the meaning of 'cruelty' under explanation (a) of Section 498(A) of Indian Penal Code, but the same is required to be 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 and for that purpose also, evidence was required to be led.

10. Learned counsel submitted that the learned appellate court vide Para-32 has convicted the petitioner under Section 498(A) of Indian Penal Code by holding that the petitioner has not managed to keep and maintain his wife properly and has not taken any step since long for treatment of her mental ailment and such omission and commission alleged and proved against the petitioner are sufficient for a deserted wife to commit any act dangerous to her life. He submitted that there is no allegation on record that the wife was subjected to any cruelty of the nature contemplated under explanation (a) of Section 498(A) of Indian Penal Code. He further submitted that the finding of the learned appellate court that since long the petitioner has not taken any steps for treatment of his wife is also contrary to the impugned judgment of the learned appellate court in Para-21 wherein, the deposition of the informant has been recorded where she clearly deposed that her treatment took place continuously for 15 to 16 days in the private mental hospital, Ranchi and during her treatment, her father and her husband, both were with her. He also submitted that it has also come in evidence that at the time of marriage itself, the mental condition of the informant was not sound. Learned counsel also submitted that not only there is total absence of evidence on record to bring home the basic ingredients of 'cruelty' as contemplated under explanation (a) of Section 498(A) of Indian Penal Code, but also the prosecution had filed such evidences which were discarded by the learned appellate court by citing reasons. He submitted that the learned appellate court has recorded finding in connection with such prosecution evidences which were brought before the learned court below by way of afterthought and the learned appellate court rejected those evidences by speaking order.

11. Learned counsel for the petitioner also submitted that considering the other findings recorded by the learned appellate court, the present case is a fit case where the learned appellate court should have granted benefit of doubt to the petitioner as the veracity of the prosecution evidence and the manner in which it was produced before the learned trial court itself created a doubt in the prosecution case. The learned counsel appearing

on behalf of the petitioner has relied upon the judgement passed by the Hon'ble Supreme Court which is reported in *(2003) 2 SCC 401(Lallu Manjhi and another versus State of Jharkhand)*, para 10.

12. Learned counsel for the petitioner also relied upon the statement of the petitioner recorded under Section 313 of Code of Criminal Procedure to submit that only vague questions were put to him by the learned trial court and the circumstances, which have been relied upon by the learned appellate court in Para-32 of the impugned judgment, were not specifically put to the petitioner by the learned trial court while recording statement under Section 313 of Cr.P.C., and accordingly, the same could not have been a basis for upholding the conviction of the petitioner under Section 498(A) of the Indian Penal Code. Such approach of the learned court below has caused prejudice to the petitioner.

13. He submitted that the impugned judgment of conviction of the petitioner is ex-facie perverse and unsustainable in the eyes of law and is fit to be set aside.

#### **Arguments on behalf of the Opposite Party-State**

14. Learned counsel appearing on behalf of the State, on the other hand, submitted that both the learned courts below have convicted the petitioner for offence under Section 498(A) of Indian Penal Code and accordingly, no interference is called for in the present case under revisional jurisdiction.

15. However, he did not dispute the fact that the learned trial court had convicted all the accused, not only under Section 498(A) of Indian Penal Code, but also under Section 3 / 4 of Dowry Prohibition Act, 1961, but the learned appellate court has not convicted the petitioner on account of demand of any property/dowry, but on account of assault to the informant by stating that the act of the petitioner was sufficient for the wife to commit any act dangerous to her life. He also did not dispute the fact that all the accused persons were acquitted for offence under Section 4 of the Dowry Prohibition Act, 1961 and all other accused persons were also acquitted under Section 498(A) of Indian Penal Code and the conviction of the petitioner was sustained only under Section 498(A) of

Indian Penal Code. He also did not dispute the fact that as per the appellate court's judgment, the petitioner was present at the time of treatment of his wife in the mental hospital and also the fact that even at the time of marriage, the mental condition of the wife was not found sound. He also did not dispute the fact that certain evidences which were produced from the side of the prosecution including some documentary evidences were discarded by the learned appellate court after full discussion with an observation that those evidences were manipulated and produced by way of afterthought and there were sufficient improvement and supplements made in the allegations which were not even reflecting in the initial allegation made by the informant of the case.

### **Findings of this Court**

16. After hearing the learned counsel for the parties and going through the impugned judgments and the lower court records of the case, this Court finds that the case was registered as Musabani P.S. Case No.42/1998 dated 07.10.1998 under Sections 498(A)/109 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against the petitioner-husband; Ram Pyari Devi -mother-in-law; Phulpati Devi, Muniya Devi, two sisters-in-law; Vishwanath Singh Yadav and Gopal Sharma, two friends of the petitioner.

After completion of investigation, the Investigating Officer submitted charge-sheet under Sections 498(A)/109 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against the five co-accused persons and thereafter, submitted supplementary charge-sheet against the petitioner under the same sections. Accordingly, the learned A.C.J.M., Ghatsila took cognizance of the offence under the same sections against the petitioner and other accused persons.

On 04.10.2002, the charges under aforesaid provisions were framed against the accused which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

In course of trial, the prosecution examined altogether 10 witnesses in support of its case. P.W.-1 is Thakur Prasad, P.W.-2 is Ramyash Pandit, P.W.-3 is Gunjan Machhuwa who has been declared hostile by the

prosecution, P.W.-4 is Sanjay Kumar Prasad who is the own brother of the Informant, P.W.-5 is Prabha Devi who is the mother of the Informant, P.W.-6 is Narendra Prasad who is the father of the Informant, P.W.-7 is Jayanti Devi who is the Informant herself, P.W.-8 is Harbansh Lal Srivastava, P.W.-9 is Satya Prakash Singh who is the Investigating Officer of the case and P.W.-10 is Lalan Prasad Verma who is a formal witness.

The statement of the petitioner and co-accused were recorded under Section 313 of Cr.P.C.

The defence examined 09 witnesses in their defence. D.W.-1 is Prabhawati Devi, D.W.-2 is Krishna Lal Kanto, D.W.-3 is Kapilmuni Devi, D.W.-4 is Ramji Prasad, D.W.-5 is Vijay Pandey, D.W.-6 is Lalita Devi, D.W.-7 is Hiralal Prasad, D.W.-8 is Ashok Kumar Singh and D.W.-9 is Mukesh Mandal. The defence exhibited the treatment papers of the Informant as Exhibits-A, A/1, A/2, A/3 and A/4, reply dated 27.06.1998 sent on behalf of Narendra Prasad to Sri Suresh Chandra Choudhury, Advocate of the petitioner to the notice dated 16.05.1998 as Exhibit-B and the legal notice dated 16.05.1998 sent by the petitioner to Narendra Prasad as Exhibit-B/1.

17. The prosecution case is based on the written report dated 07.10.1998 lodged by the Informant namely, Jayanti Devi (P.W.-7) before the Officer-in-charge, Musabani P.S. alleging interalia that the marriage of the Informant with the petitioner was solemnized on 18.05.1994 and at the time of the marriage, the father of the Informant had given Rs.80,000/- in cash, ornaments worth Rs.40,000/-, T.V., Scooter and several other articles by way of tilak. Thereafter, she went to her matrimonial house and stayed there for 08 days and came to her parental house with the petitioner and stayed for 03 days. She again went to her matrimonial house alongwith the petitioner. It was alleged that after few months, the petitioner and her mother-in-law asked her to bring one Hero-Honda Motorcycle and Rs.40,000/- in cash for construction of the house and her two sisters-in-law were also present who supported the demand, but the Informant denied to raise the demand to her father. In

the meantime, two friends of the petitioner namely, Vishwanath Singh Yadav and Gopal Sharma called the petitioner out of the house and instigated the petitioner for making the said demand from the Informant and for driving her out from the house, if she does not put the demand to her father and thereafter, both went away. After few hours, the petitioner again asked the Informant to make the said demand and on refusal, the accused persons abused and assaulted her by fists and slaps. The Informant informed her father who came there and pacified the accused persons. It was further alleged that after one month, her husband and in-laws repeated the said demand before her and on refusal, they assaulted and drove her out from her matrimonial house and she came to the house of her father. Thereafter, her father made efforts to resolve the matter, but her in-laws did not agree and the petitioner with the help of Gopal Sharma made efforts to kill the Informant and her father. The delay in filing the FIR was explained by stating that repeated efforts were made at the social level to make the accused understand. As per the written report itself, the informant was living with her parents in their house.

#### **Consideration of prosecution evidence by the trial court**

18. The learned trial court recorded that it is not in dispute that the marriage between the petitioner and the Informant was solemnized on 18.05.1994 according to Hindu rites and customs. P.W.-7 deposed that at the time of marriage, her father had given Rs.80,000/- cash, ornaments worth Rs.40,000/-, scooter, bed, Almirah, etc. and other household articles. She went to her matrimonial house and after some days, she came to her parental house alongwith her husband and after three months, she again went to her matrimonial house where after one month, the petitioner started misbehaving with her and demanded Rs.40,000/- and one Hero Honda Motorcycle to bring from her father. When she said that her father has already given many articles and has incurred expenses in the marriage and he cannot give any more things, the petitioner used to assault her and his friends namely, Vishwanath Singh Yadav and Gopal Sharma used to instigate him to demand dowry

and she was kept hungry for several days together. She further deposed that the petitioner burnt her private part by means of kachhuwa chhap agarbatti and she received treatment from doctor of H.C.L. Company. To a court question, she replied that she had told Dr. Gupta that her husband has burnt her private part by burning kachhuwa chhap agarbatti. When she gave the information regarding the cruelty committed at her matrimonial house to her father, her father came and tried to pacify and compromise, but they did not agree. On 08.10.1994, the accused persons assaulted her and the petitioner and mother-in-law drove her out from her matrimonial house. After some days, the petitioner came to her parental house, but he repeated the demand. Lastly, on 07.08.1997, the petitioner brutally assaulted her and drove her out from her matrimonial house and then she came to her parental house. Her father called a meeting of the panchayat, but the accused persons did not agree with the panchayat and in this way, 4-5 attempts were made, but the matter could not be resolved and finally having no option, she lodged the present case. She exhibited the written report as Exhibit-2. In her cross-examination, she admitted that she has filed a case for maintenance and she had received treatment at Mental Hospital, Ranchi. The learned trial court recorded that the Informant has fully supported the facts stated in the F.I.R.

**19.** The learned trial court further recorded in para 9 and 10 of its judgement that except P.W.-3, the prosecution witnesses P.W.-1 to P.W.-8, in their evidence, have supported the cruelty committed to the Informant by the petitioner and his relatives and they have also supported the facts regarding the demand of Rs.40,000/- and Hero Honda Motorcycle as dowry from the Informant and also the facts regarding Rs.80,000/- in cash, ornaments worth Rs.40,000/-, T.V., Scooter and other household articles taken by the petitioner from the father of the Informant at the time of the marriage. The learned trial court further recorded that P.W.-1 is an independent witness who had seen the swollen cheek of the Informant and has corroborated the efforts of compromise between both the parties. P.W.-2 is also an independent

witness and has also supported the facts of the prosecution case. P.W.-3 has been declared hostile by the prosecution. P.W.-4 is the own brother of the Informant and he has supported the F.I.R. and he exhibited the letter dated 29.06.1994 written by the Informant as Exhibit-1 and also exhibited a small chit of paper in the writing and signature of the petitioner as Exhibit-1/1. P.W.-5 has also supported the F.I.R. and the cruelty committed to the Informant by the petitioner. P.W.-6 has also supported the facts stated in the F.I.R. and has also corroborated the demand of motorcycle and Rs.40,000/- as dowry made by the accused persons and the cruelty committed to the Informant by the petitioner and he is a credible witness. P.W.-8 has also supported the F.I.R. and from his cross-examination, it is clear that the accused persons had tortured the Informant for demand of dowry and he is also a credible witness. P.W.-9 is the Investigating Officer of the case and he has supported the place of occurrence and he has exhibited the signature of the Officer-in-charge on the F.I.R. as Exhibit-3 and the endorsement on the written report with regard to registration of the case as Exhibit-2/1. In his cross-examination, he admitted that in course of investigation, it transpired that the mental condition of the Informant was not sound which created frictions. P.W.-10 has exhibited the College Leaving Certificate of the Informant as Exhibit-3/1 and the delivery receipt of purchasing the Bajaj Scooter issued in the name of the Informant as Exhibit-4.

**20.** The learned trial court further recorded that the prosecution exhibited the sanction order for prosecution of the accused persons under Section 4 of the Dowry Prohibition Act issued by the District Magistrate, East Singhbhum as Exhibit-5, certified copy of order dated 21.08.2000 passed in C-1 Case No. 35/1999 filed by B.N. Singh Yadav against the father of the Informant as Exhibit-6, certified copy of the orders dated 27.05.2004 and 04.06.2004 passed in C-1 Case No.485/2002 filed by the petitioner against the Informant and her father and six others as Exhibit-7, certified copy of the evidence of Ramji Prasad (D.W.-4) adduced in C-1 Case No.485/2002 as Exhibit-8, certified copy of the evidence of Dayanand Prasad Saw adduced in C-1 Case No.485/2002 as

Exhibit-8/1, certified copy of the Complaint filed in C-1 Case No.485/2002 as Exhibit-9, certified copy of the Complaint filed in C-1 Case No.35/1999 by Bishwa Nath Singh Yadav against the father and brother of the Informant as Exhibit-10, certified copy of the evidence of Vishwa Nath Singh Yadav adduced in C-1 Case No.35/1999 as Exhibit-11 and the certified copies of the evidences of Bharat Prasad, Mukesh Kumar Mandal and Dayanand Saw adduced in C-1 Case No.35/1999 as Exhibits- 11/1, 11/2 and 11/3 respectively.

### **Consideration of evidence of defence by the trial court**

**21.** The learned trial court considered the oral and documentary evidences adduced on behalf of the defence and further recorded its findings in Paras-20 and 21. The learned trial court disbelieved and discarded the evidence of D.W.-1 on the basis that she is a relative of the petitioner and the court also observed that the defence had not submitted any list of defence witnesses and all the defence witnesses were produced on their own. The trial court took note of the fact that the informant had completed her graduation in the year 2002 and her mental condition was fit. The learned trial court also disbelieved and discarded the evidences of D.W.-2 to D.W.-9 on the basis that they are interested witnesses and their evidences are not believable. The learned trial court also noted that most of them are hearsay witnesses and none of them was issued any summons from the court. The learned trial court further recorded that the defence has exhibited the reply dated 27.06.1998 sent on behalf of Narendra Prasad to Sri Suresh Chandra Choudhary, Advocate of the petitioner to the notice dated 16.05.1998 as Exhibit-B and the legal notice dated 16.05.1998 sent by the petitioner to Narendra Prasad as Exhibit-B/1.

### **Findings of the trial court**

**22.** The learned trial court considered the arguments advanced on behalf of the parties and summarized its findings in Paras-24 and 25 and recorded that except P.W.-3, the rest prosecution witnesses, P.W.-1 to P.W.-8, have supported the facts stated in the F.I.R. With regard to the petitioner, the learned trial court recorded that Exhibit-1 is sufficient

with regard to the cruelty committed to the Informant and Exhibit-1/1 is sufficient with regard to the demand of dowry made by the petitioner in which there are evidences that the petitioner assaulted the Informant by means of belt, called her mad and tortured her mentally and no cross-examination has been made on behalf of the defence in relation to the aforesaid letter and the said evidences remained unassailable. In the Complaint filed in C-1 Case No.485/2002 (Exhibit-9), the petitioner has alleged sexual activity and adultery against the father of the Informant which is cruelty against the Informant and is indicative of distorted mentality of the petitioner and is culmination of cruelty, whereas in the reply to the legal notice, the petitioner has not stated anything regarding the sexual activity of his father-in-law with the Informant. In Exhibit-B, it is stated that if the petitioner would not torture the Informant, physically or mentally, and would not demand dowry, the Informant is ready to live with him. The petitioner burnt the private part of the Informant by means of kachhuwa chhap agarbatti which has been supported by P.W.-5 and P.W.-6 in their evidences and the argument advanced on behalf of the defence that the Informant has not stated anything in this regard in the F.I.R. and in her statement before the police is not acceptable.

The learned trial court further recorded that so far the mental condition of the Informant is concerned, the order dated 19.05.2000 is sufficient in which the court itself made conversation with the Informant on the family matters and found her of sound mind. The petitioner has not filed any application in court for issuance of summons to the private doctor issuing the certificate for recording his evidence in defence for declaring the Informant of unsound mind. The petitioner has also not filed any treatment paper of the Informant received in the Railway Hospital. The sanction order for prosecution under Section 4 of the Dowry Prohibition Act issued by the District Magistrate, East Singhbhum has been granted against six accused persons which has been exhibited as Exhibit-5. The accused persons in their defence have themselves produced all the witnesses without issuance of notice and without submitting any list of witnesses in court who are either their relatives or interested witnesses

and are witnesses in different cases and some accused persons have given evidence with regard to the unsoundness of mind of the Informant, whereas it is apparent from Exhibit-3/1 that the Informant had graduated in the year 2002 from B.S.C.T. Mahila College, Ghatsila and passed in second division and she received her education in the said college from 1998 to 2001 which creates doubt over the document related to her treatment by psychiatrist produced by the defence.

23. The learned trial court held that the prosecution has been able to prove the charges against the accused persons beyond reasonable doubts and convicted the petitioner alongwith Ram Pyari Devi @ Ramdeiya Devi, Muniya Devi @ Meena and Phulpati Devi @ Phulmati Devi under Section 498(A) of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, but did not hold them guilty under Section 109 of the Indian Penal Code. The learned trial court convicted Vishwanath Singh Yadav and Gopal Sharma under Section 109 of the Indian Penal Code for abetting the offences under Sections 498(A) of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. The learned trial court sentenced the convicts accordingly and further directed the petitioner to pay compensation of Rs.2,00,000/- to the Informant for the physical and mental cruelty committed to her by the petitioner.

**Findings of the Appellate Court.**

24. The relevant findings of the appellate court are as under: -

**Findings regarding documentary evidences/exhibits**

- a. The learned appellate court in Para-9 recorded that the documents marked on behalf of the prosecution as Exhibits-1, 1/1, 2/1, 3/1, 4, 6, 1/a and 7 have been proved in accordance with law, but the rest documents (i.e., Exhibits- 5, 8, 8/1, 9, 10, 11, 11/1, 11/2 and 11/3) marked into exhibits have not been proved in the manner prescribed under the provisions of Sections 67 to 73 of the Evidence Act and accordingly, all findings based solely on those documents, not properly proved, are illegal. However, no such specific finding of the learned trial court was pointed out which could be said to have been based solely on aforesaid exhibits. The learned appellate

court in Para-10 recorded that similarly, the documents filed by the accused which have been marked as Exhibits-A to A/4 & B to B/1 have also not been properly proved by any of the defence witnesses and discarded the documents of the defence marked as exhibits except exhibit-A though not proved but its contents were indirectly admitted by the informant(P.W-7) .Thus, as per appellate court the documents which could be read into evidence were Exhibits-1, 1/1, 2/1, 3/1, 4, 6, 1/a and 7 from the side of the prosecution and exhibit-A though not proved but its contents were indirectly admitted by the informant(P.W-7).

**Finding regarding sanction for prosecution under Dowry Prohibition Act.**

- b. So far as sanction for prosecution under Sections 3 & 4 of the Dowry Prohibition Act i.e. exhibit -5 is concerned, it was held that the same was not proved in accordance with law and accordingly conviction under section 4 of the Dowry Prohibition Act was set-aside against all the accused persons including the petitioner by holding that the sanction for prosecution is non-existent rendering the conviction under Section 3 & 4 of the Dowry Prohibition Act for giving, taking or demanding the alleged dowry as illegal.

**Findings regarding gifts given during marriage from the side of the bride-informant.**

- c. In Para-13, the learned appellate court recorded that the allegation and the case of prosecution in the written report is that the father of the Informant in her marriage gave cash, ornaments, T.V., scooter, etc. in the form of "Tilak" (and not in the form of dowry) and agreed with the submissions advanced on behalf of the petitioner that 'Tilak' covers the articles given by way of gift to bridegroom and his family members from the side of the bride and there is no allegation that at or before marriage, the bride & bridegroom parties negotiated & agreed solemnization of the marriage fixing the said kind as the price of marriage. The learned appellate court further recorded that P.W.-7 (Informant), P.W.-5

(mother of Informant) and P.W.-4 (brother of Informant) in their evidence have also not deposed that before marriage, the price of marriage was negotiated and it was agreed that said amount of cash & articles would be the price of the marriage and P.W.-6 (father of Informant) has also not deposed about any such negotiation prior to the marriage settling the price of the marriage and he has simply deposed that in absence of said presents (or Tilak), bridegroom would not have been ready & agreeable to marry. It is not the specific case that giving of said kind and cash was condition precedent for marriage which may legally be termed as 'Dowry'. The learned appellate court further held that there is neither any allegation, nor any evidence to show to prove the ingredients of Section 3 of the Dowry Prohibition Act and the learned court below erred in law in counting the traditional presents in the marriage or before the marriage in the form of 'Tilak' as the giving & taking of dowry in terms of Section 3 and hence, the conviction and sentence of the appellants under Section 3 of the Dowry Prohibition Act was legally not sustainable and the same was accordingly set aside. The learned appellate court also observed in para 13 that the demand of dowry (motorcycle & cash) also stands not proved and this aspect of the matter was to be considered in subsequent paragraphs of the appellate court judgement. It is relevant to note that demand of motor cycle and Cash of Rs.40,000/- was alleged to have been made by the accused after marriage.

- d. The learned appellate court considered the allegations made in the written report in para 14 and recorded at para 15 of the judgement that a critical appreciation of the written report indicates the period of stay of the informant at the house of her husband and that duration of stay was not more than 3 to 4 months after marriage which had admittedly taken place on 18.05.1994. The appellate court also recorded that the informant, after being driven out by the husband, had been residing at her father's house. In the light of

the allegations made in the written report, the evidences have been examined from para 16 onwards in the appellate court's judgement.

**Finding regarding the date of ouster of the informant from the house of the petitioner**

- e. The appellate court scrutinized the evidence of the informant (P.W. 7) and recorded that in paragraph 3 to 9, she has deposed about the demand of motorcycle and cash and assault. The learned appellate court in paragraph 16 itself recorded that the informant i.e. P.W. 7, nowhere deposed that her mother-in-law and two Nanads ever made any demand of dowry and considering the fact that the informant was the best and sole-witness of the demand of dowry and being a graduate, by no view of imagination it can be said that it was just an omission. The learned appellate court recorded in paragraph 17 that in para 8 of the evidence-in-chief, P.W. 7 has given specific date i.e. 08.10.1994 when she was driven out from her matrimonial house, but against this specific case in the written report, she has made certain more allegations and stated that finally on 07.08.1997, the petitioner assaulted her and kicked her out of her house. The learned appellate court was of the view that there was material addition in allegation over and above what was mentioned in the written report drafted by a graduate girl - the informant. The learned appellate court held that 08.10.1994 was the true date on which the informant was ousted from the house of the petitioner and 07.08.1997 being the date of ouster of the informant from the house of the petitioner was seriously doubted by the appellate court.

**Finding regarding mental state of the informant**

- f. The appellate court considered the mental state of the informant and recorded that the informant in paragraph 15 of her evidence clearly deposed that her treatment continued for 15 to 16 days in a private mental hospital at Ranchi and that she has further stated that during her said mental treatment, her father and husband,

both were with her. In the light of the aforesaid statement made by the informant in paragraph 15 of her evidence, the appellate court appreciated Exhibit A which was a certificate from Davis Institute of Neuropsychiatry, Kanke, Ranchi issued under the seal & signature of Dr. P.K. Choudhary which though was not proved by the doctor or any competent person, but was held to be admitted by the informant in her evidence that she was treated at private mental hospital at Ranchi. Accordingly, the appellate court was of the view that the said certificate Exhibit-A though not proved, can be used against the prosecution and this certificate indicated that the informant was hospitalized w.e.f. 25.08.1994 to 04.09.1994 in cottage ward of said Neuropsychiatry. It was also held that the husband of the informant was all along with the informant in course of her treatment at Ranchi. The learned appellate court also recorded that the accused had filed medical prescriptions showing purchase of medicines and that the expenses were borne by the husband of the informant.

- g. This court finds that on the one hand, the learned appellate court doubted the evidence of the informant that she was finally ousted from the house of her husband on 07.08.1997 on the ground that this fact was not mentioned in the written report although the informant was a graduate and on the other hand the appellate court held at para 22 of the impugned judgement that the informant was suffering from some mental ailment. It is important to note that the learned trial court had rejected the plea of insanity of the informant by referring to the order dated 19.05.2000 wherein it has been recorded that upon conversation with the court the informant was found to be mentally sound and the learned trial court also considered the fact that no doctor was examined to prove insanity of the informant.

**Finding regarding allegation of torture regarding burning of private part of the informant**

- h. So far as the allegation of torture regarding burning of her private part by the petitioner is concerned, it has been held by the appellate court to be an afterthought and not proved as the same was never stated earlier and not even before the investigating officer of the case under Section 161 of the Code of Criminal Procedure. The appellate court also considered that the informant had stated that the injury was treated by a doctor, but neither any medical prescription was filed nor the doctor who treated the injury had been examined.

**Finding regarding allegation of demand of Rs.40,000/- after marriage for construction of house**

- i. The appellate court, vide paragraphs 24 and 25 of its judgement, was of the view that the letter dated 29.06.1994 (Exhibit 1) regarding demand of dowry and assault was never a part of the case-diary and accordingly, was not produced before the investigating officer and rejected the same by holding that it was created much after, only to make the prosecution case strong. Thereafter the appellate court went ahead and considered the contents of Exhibit 1 and found that there was nothing in Exhibit- 1 against the mother-in-law and two sisters-in-law regarding any demand of dowry or assault. The learned appellate court also considered the allegations made against the petitioner -husband in Exhibit-1 wherein it was alleged that the petitioner being the husband, had once assaulted the informant by a belt for no reason and recorded that it was not alleged that the husband assaulted her by belt on account of the fact that she refused to put before her father the demand of husband with regard to motorcycle and cash of Rs. 40,000/- for construction of house, as alleged in the written report. The appellate court, on the one hand, held that Exhibit 1 was a created document and simultaneously appreciated the contents of Exhibit 1 to hold that the contents of Exhibit- 1 lead to discredit the prosecution case of demand of Rs. 40,000/- for construction of house. The appellate court found that the Exhibit 1

also contains the fact that the informant was sometimes addressed as 'Pagli' (mad) and was of the view that such statement of address appeared to be factually correct.

The appellate court, on the one hand, held Exhibit 1 as an afterthought and, on the other hand, referred to Exhibit-1 itself to record a finding that the contents of the letter do not support the prosecution evidence of demand of Rs. 40,000/- for construction of house and it does not speak about torture and assault on account of non-fulfillment of demand of dowry. The appellate court, in para 30 of the judgement, also considered the evidence of the investigating officer and rejected the allegation of demand of Rs.40,000/- for construction of house by recording that there is no evidence that the house of the petitioner was in delapidated condition not fit for habitation or required construction of any more room.

Thus, in totality, the allegation of demand of Rs.40,000/- after marriage for construction of house was rejected by the learned appellate court.

**Finding regarding allegation of demand of motor-cycle after marriage .**

- j. Vide paragraph 29, the learned appellate court considered the demand of motorcycle after marriage and was of the view that in support of demand of motor-cycle, Exhibit 1/1 was marked in the evidence of P.W. 4. The learned appellate court held that upon perusal of the Exhibit- 1/1, it appears that there is no demand of motorcycle or any article rather Exhibit- 1/1 appears to have been written in reply to return the scooter and this letter is dated 15.01.1995. In the said letter, it was mentioned that the scooter would be returned to the father of the informant within a week and the father of the informant may get it transferred in his name or in the name of his son (P.W. 4). It is further not in dispute that the said scooter was purchased in the name of the informant. The appellate court recorded that from the contents of Exhibit- 1/1, it

was satisfied to find that the same was not a letter containing any demand of cash or kind. The learned appellate court further considered the evidence of the father of the informant – P.W. 6, who in his evidence, had stated that the scooter was purchased prior to marriage in the name of the informant and the said scooter was returned by the petitioner husband in the year 1994 and was again taken back by the petitioner who sold the scooter through documents though the documents are in the name of the informant.

- k. The appellate court ultimately recorded its findings at paragraph 31 and 32 of the judgement as follows:

*“31. After careful & legal appreciation of the prosecution evidences (oral & documentary), in above paragraphs and findings arrived at this court is absolutely satisfied to further find and hold (1) that the prosecution has utterly failed in proving beyond shadow of reasonable doubt any of the allegations of demand of dowry, taking of dowry, assault and/or torcher to the informant by (a) the mother-in-law and (b) by two nanads of the informant. Charge U/s 498A I.P.C. and charge U/Ss. 3 & 4 of the D.P. also fails and stand not proved against (i) mother-in-law (Ram Pyari Devi) of the informant and against (ii) two nanads of informant (Smt. Phul-patti Devi & Smt. Meena Devi). The charge U/s. 4 of the D.P. Act has also been held to have failed against all appellants due to sanction of prosecution required being not proved & brought into evidence in the manner required by law.*

*32. This court further holds that the prosecution has been able to prove the allegation of subjecting the informant (wife) to cruelty by the husband Durga Prasad (appellant no. 1). The informant (P.W. 7), P.W. no. 4, 5 & 6 have deposed supporting the evidence of one another that husband used to assault the informant and in spite of several attempts as deposed by almost all the PWs, he has not managed to keep & maintain his wife (informant Jayanti) properly & has also not taken, since long, any step for any treatment of her mental ailment. Undoubtedly omissions & commissions alleged & proved against the appellant Durga Prasad are sufficient for a deserted wife to commit any act dangerous to her life. Hence, charge U/s. 498A of the I.P.C. stands proved. This court also holds him guilty for the said charge. This court accordingly confirms the conviction of appellant/convict Durga Prasad. The conviction & sentence of Ram Pyari Devi, Smt. Phul-patti Devi & Smt. Meena Devi- awarded by Ld. Court below stand set-aside. These three appellants are set-at*

*liberty. They are also discharged from the liability of their bail bond filed in this case."*

**25.** The appellate court in its penultimate findings at para 31 recorded that the prosecution has utterly failed in proving beyond shadow of reasonable doubt any of the allegations of demand of dowry, taking of dowry, assault and/or torture to the informant by the family members of the petitioner-husband and accordingly charge U/s 498(A) I.P.C. and charge U/Ss. 3 & 4 of the Dowry Prohibition Act failed and stood not proved against the family members of the petitioner-husband. The only finding at para 31 in favour of the petitioner is the acquittal of the petitioner with all his family members under Section 4 of Dowry Prohibition Act due to sanction for prosecution having not been proved. The appeal was partly allowed so far as the petitioner is concerned and the conviction under Section 498(A) was upheld.

**26.** The appellate court at para 32 upheld the conviction of the petitioner -husband under Section 498(A) of Indian Penal Code by holding that the prosecution has been able to prove the allegation of subjecting the informant to cruelty by the husband -petitioner. The informant (P.W. 7) and P.W. Nos. 4, 5 & 6 have deposed supporting the evidence of one another that husband used to assault the informant and in spite of several attempts as deposed by almost all the PWs, he has not managed to keep & maintain his wife (informant) properly & has also not taken, since long, any step for any treatment of her mental ailment. The appellate court held that undoubtedly omissions & commissions alleged & proved against the petitioner-husband are sufficient for a deserted wife to commit any act dangerous to her life.

**27.** As already discussed above, the appellate court refused to considered a large number of documentary evidences filed by both the sides which were held to be not proved. The appellate court also held that there was attempt from the side of the prosecution to add/improve upon the allegations made in the FIR and rejected such additional allegations/evidences. This court finds that as per the finding of the

learned appellate court, the marriage was solemnized on 18.05.1994; the informant was mentally unstable and was treated at the mental hospital Ranchi from 25.08.1994 to 04.09.1994 and she was driven out of her matrimonial home on or about 08.10.1994. The appellate court has also recorded a finding that the items given during marriage i.e. T.V, scooter, etc. were gifts voluntarily given at the time of marriage and were not a result of any demand as dowry or as a condition precedent to marriage and held that court below erred in law in treating the gifts at the time of marriage as dowry and accordingly held that there is neither any allegation nor any evidence to show and prove ingredients of section 3 of Dowry Prohibition Act. So far as conviction under section 4 of Dowry Prohibition Act is concerned, the appellate court has set aside the same on the ground that the sanction was not proved in accordance with law. The appellate court also rejected the allegation of burning of private parts of the informant by the petitioner-husband. The appellate court was of the view that allegations regarding post marriage demand of Rs.40,000/- for construction of house could not be proved beyond all reasonable doubts.

However, while considering the post marriage demand of motorcycle in para 29 of the impugned judgement, the appellate court recorded that the prosecution relied upon Exhibit 1/1 in support of the allegation of demand of motor-cycle. The appellate court heavily relied upon Exhibit 1/1, which is a letter 15.01.1995 regarding return of the scooter, and recorded that the same was not a letter containing any demand of cash or kind and in the evidence of the father of the informant it has come that the scooter was purchased prior to marriage. By relying upon Exhibit-1/1, the appellate court held that the demand of motor-cycle after marriage was also not proved. Upon perusal of the judgements passed by the learned courts below and also the records of the case, this Court finds that Exhibit-1/1 had nothing to do with demand of motor-cycle and it relates to return of scooter. It is not in dispute that a scooter, which was purchased prior to marriage, was given as gift at the time of marriage which was sought to be returned vide Exhibit 1/1. The

demand of motor cycle after marriage and torture of the informant upon non fulfillment of the demand of motorcycle has been fully supported by the informant (P.W.-7) as well as other prosecution witnesses except P.W-3 and the independent witness P.W-1, in para 10 of his deposition, has also mentioned in support of the cruelty meted out to the informant that he had seen her swollen cheeks and that there were efforts to settle the matter between the parties. Specific discussions have been made in para 9 and 10 of the trial court's judgement as already mentioned above. This Court finds that in the F.I.R., it was interalia alleged that after marriage the informant was asked by the petitioner to put demand of one Hero-Honda Motorcycle, but she refused to put the said demand for which she was subjected to cruelty by way of assault and torture and drove out of her matrimonial house. P.W.-7 is the Informant herself who has clearly deposed that after one month of marriage, the petitioner started misbehaving with her and interalia, demanded one Hero Honda Motorcycle to bring from her father and on expressing inability of her father to fulfill the demand, the petitioner assaulted her and she was kept hungry for several days and then on 08.10.1994, the petitioner and her mother-in-law drove her out from her matrimonial house. **P.W.-1** has interalia corroborated the evidence of the informant (P.W-7) on the point of assault, torture and demand of Hero Honda Motorcycle after marriage and had seen the swollen cheek of the Informant. **P.W-2** has also corroborated the aforesaid evidence of the informant (P.W-7) and also stated that informant was also denied food. **P.W-4**, brother of the informant, has also corroborated the aforesaid evidence of the informant (P.W-7) and has also stated that the petitioner had assaulted the Informant by means of belt. **P.W.-5**, mother of Informant, and **P.W.-6**, father of Informant, have also corroborated the aforesaid evidence of the informant (P.W-7). **P.W.-8**, has also stated that the informant was assaulted and tortured in her matrimonial home, the Informant had told him that she was being assaulted by belt on her whole body and was not provided food and she had also told him that she was interalia, asked to put demand of one Hero Honda Motorcycle to her father. **P.W.-9**,

Investigating Officer, has also deposed that P.W.-8 had stated that the petitioner used to assault the Informant and drove her out. The oral evidences in support of the allegation of demand of motor cycle after marriage has not been considered by the learned appellate court and the evidence regarding scooter given at the time of marriage has been mixed up with the independent allegation regarding post marriage demand of motor-cycle by the petitioner. This court finds that there are sufficient and cogent evidences on record with respect of demand of motor-cycle and torture of the informant on account of non-fulfillment of such demand.

28. Thus, the trial court fully believed the prosecution story and upheld the allegation of demand of dowry/property but the appellate court totally discarded the allegation of demand of dowry/property. Both the learned courts below upheld the allegation of torture and assault of the informant at the hand of the petitioner. However, the appellate court disbelieved the allegation of burning of private parts of the informant by the petitioner but in spite of that the learned appellate court held that undoubtedly omissions & commissions alleged & proved against the petitioner-husband are sufficient for a deserted wife to commit any act dangerous to her life and upheld his conviction under section 498(A) of IPC. The trial court did not specifically mention as to whether it was convicting the accused including petitioner under clause (a) or clause (b) of explanation to Section 498A of IPC or both, but the appellate court while upholding the conviction of the petitioner under section 498 (A) of IPC clearly referred to the element of cruelty as mentioned in clause (a) of explanation to section 498(A) IPC and the element of cruelty as mentioned in clause (b) of explanation to section 498(A) IPC stood disbelieved as the allegation of any demand of dowry/property was rejected by the appellate court.

29. Section 498(A) of the Indian Penal Code reads as under:

**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 purpose of this section, “cruelty” means—

- (a) any willful 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.

**30.** The elements of cruelty so far as clause (a) is concerned, are as follows:

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

**31.** The trial court convicted the petitioner inter alia, under section 498(A) of IPC by holding that the cruelty meted out to the informant by the accused including petitioner husband was on account of unlawful demand for dowry/property and failure by the informant/her family members to meet such demand.

**32.** The appellate court upheld the conviction of the petitioner under section 498(A) of IPC upon consideration of cruelty as defined under clause (a) of explanation to section 498(A) IPC by holding that the cruelty meted out to the informant by the petitioner husband was sufficient for a deserted wife to commit any act dangerous to her life. The learned appellate court disbelieved the allegations levelled against the petitioner with regard to allegations of cruelty to the Informant to meet any

unlawful demand of any property and non-fulfillment thereof. This court finds that there is specific evidence of the informant (P.W-7) at para 5 of her evidence and also mentioned in the trial court's judgement that the informant was kept without food for days together during her stay at her matrimonial house and it has also come in evidence that she was also assaulted all over her body using belt. This court is of the considered view that the nature of cruelty upon the informant was sufficient to cause grave danger to her life and was certainly sufficient for a deserted wife to commit any act dangerous to her life. This Court is of the considered view that the appellate court concerned does not appear to have committed any illegality or material irregularity or impropriety in holding that the cruelty meted out to the informant by the petitioner husband was sufficient for a deserted wife to commit any act dangerous to her life. On the aforesaid point the impugned order is apparently presentable and there is no failure of justice calling for any interference in favour of the petitioner in exercise of revisional jurisdiction.

**33.** The arguments of the petitioner on Section 313 Cr.P.C is required to be considered. On 01.09.2005, the statements of the petitioner were recorded under Section 313 of Cr.P.C. wherein the petitioner denied the incriminating evidences put to him and stated that the allegations are false and he claimed to be innocent. Upon perusal of the questions put to the petitioner under section 313 of Cr.P.C., this Court finds that the petitioner claims to have heard evidences of all the witnesses. Specific questions were put to him regarding physical and mental torture of the informant during her stay in the matrimonial house to which he denied. Specific question was put to him regarding demand of Rs.40,000/- and Hero Honda motorcycle after marriage during her stay in matrimonial house to which he denied. Specific question was also put to the petitioner regarding demand of dowry at the time of marriage to the extent of Rs.80,000/- cash, jewellery worth Rs.40,000/-, T.V, scooter etc., which was also denied by the petitioner. Question was also put to him that he on one hand tortured the informant during her stay at her matrimonial home and also instigated others to torture, to which the

petitioner denied. The petitioner refused to furnish any explanation and simply stated that he was innocent in connection with the allegations although he was extended an opportunity to say something in his defence. This court finds that essential questions in relation to torture of the informant during her stay in matrimonial house as well as demand of dowry at the time of wedding and demand of Rs.40,000/- and Hero Honda motorcycle after marriage during her stay in matrimonial house have been put to the petitioner during his examination under section 313 of Cr.P.C. The arguments of the learned counsel for the petitioner that essential questions/facts/circumstances were not put to the petitioner during his examination under section 313 Cr.P.C which was the reason for upholding the conviction of the petitioner under Section 498(A) of IPC by the appellate court, is devoid of any merits, hence rejected.

34. In the judgement reported in *(2003) 2 SCC 401(supra)* at para-10 it has been held that the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. The Hon'ble Supreme Court held that in the first two categories there may be no difficulty in accepting or discarding the testimony of the single witnesses and the difficulty arises in the third category of cases. It was held that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of the single witness. The Hon'ble Supreme court was of the view in the facts of the said case that it was difficult, almost impossible, to sift the grains of truth from out of the mass of chaff of falsehood and exaggerations and allowed the appeal.

This Court is of the considered view that the aforesaid judgment does not help the petitioner in any manner in view of the fact that the trial court found the evidence of the witnesses including the victim as wholly reliable and the appellate court found some additions in the evidence of

the witnesses and such additional allegations were segregated as unreliable and benefit was given to the accused.

35. The Hon'ble Apex Court has explained the power of revisional court in the case of "*Jagannath Choudhary and others Vs. Ramayan Singh and Another*" reported in (2002) 5 SCC 659 at para. 9 as under: -

*"9. 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 applicant 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."*

36. As a cumulative effect of the aforesaid findings and considering the scope of the revisional jurisdiction, this court is not inclined to interfere with the impugned judgement of conviction of the petitioner under section 498(A) of Indian Penal Code and accordingly the present revision petition is dismissed.

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

38. The office is directed to send back the Lower Court Records to the court concerned.

39. Let a copy of this Judgement be communicated to the court concerned through 'FAX /email'.

**(Anubha Rawat Choudhary, J.)**

Saurav/Pankaj