

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No.131 of 2012

Sushil Marandi, Son of Lal Marandi, resident of Village- Bishunpur,
P.O.- Bishunpur, P.S.- Littipara, District- Pakur

... .. **Petitioner**

-Versus -

1. The State of Jharkhand

2. Rajina Hansda, D/o Ramu Hansda **Opposite parties**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

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For the Petitioner : Mr. Ranjan Kumar Singh, Advocate

For the State : Mr. Vishwanath Ray, A.P.P.

JUDGMENT

C.A.V. on: 05/04/2021

Pronounced on: 04/06/2021

1. Heard Mr. Ranjan Kumar Singh, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Vishwanath Ray, learned counsel appearing on behalf of the opposite party- State.
3. The present revision petition is directed against the order dated 05.02.2011 passed by the learned Sessions Judge, Pakur in Criminal Appeal No.51 of 2008, whereby he has been pleased to partly allow the appeal by modifying the sentence passed by the learned trial court.
4. The petitioner was convicted vide order dated 17.06.2008 passed in PCR Case No.235 of 1998 (T.R. No.51 of 2008) by the learned Sub-Divisional Judicial Magistrate, Pakur for the offence under Section 498-A of the Indian Penal Code and the learned trial court sentenced him to undergo rigorous imprisonment for three years with fine of Rs.5,000/-. The learned Appellate Court modified the sentence of the petitioner by reducing it to two years instead of three years and the amount of fine was also reduced from Rs.5,000/- to Rs.2,000/-.

Arguments of the petitioner

5. Learned counsel for the petitioner has submitted that the petitioner is the husband of the complainant who was convicted under Section 498-A of the Indian Penal Code and the case of the defence was total denial of the occurrence and it was also argued that the complainant is not the wife of the petitioner. He submits that as the complainant was not the wife of the petitioner, therefore, conviction under Section 498-A of I.P.C. is not sustainable in the eyes of law. He has further submitted that otherwise also the basic ingredients of offence Section 498-A of I.P.C. has not been satisfied. The learned counsel has submitted that the learned courts below have failed to grant benefit of Section 360 of Code of Criminal Procedure.

6. While advancing his argument, the learned counsel has submitted that without prejudice to the aforesaid submission, the present case is of the year 1997-98 and the petitioner has remained in custody for a period from 10.08.2006 to 28.08.2007 and thereafter from 05.01.2012 to 24.07.2012 i.e. more than one year and seven months and the learned appellate court had reduced the sentence of the petitioner from three years to two years and the fine amount was also reduced from Rs. 5,000/- to Rs. 2,000/-. The learned counsel submits that considering the fact that about 22 years have elapsed from the date of incident, the sentence of the petitioner be modified and be limited to the period already undergone in custody.

Arguments of the opposite party- State

7. Learned counsel appearing on behalf of the opposite party-State, on the other hand, opposes the prayer and submits that initially the case was registered under Sections 493, 376, 323, 420 and 313/511 of the Indian Penal Code and the learned trial court found *prima-facie* case under Sections 493 and 323 of I.P.C., but subsequently the charge was framed under Section 498-A of the Indian Penal Code. The learned counsel has also submitted that

there were not only materials on record showing admission of the petitioner that the complainant was his wife, but they also had a son born out of wedlock. It has been recorded in para-8 of the learned appellate court's judgment that the prosecution also filed a copy of the order of Hon'ble Patna High Court in Criminal Miscellaneous Case No. 25303/1999 (Sushil Marandi vs. State of Bihar) dated 08.12.1999, which was the official copy, which showed that at the time of grant of bail, one supplementary-affidavit was filed by the petitioner that he has solemnized his marriage with the girl and therefore they are living as husband and wife and on this ground, the Hon'ble Patna High Court was pleased to grant bail to the petitioner on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties. This bail order was passed in connection with the present case itself.

8. The learned counsel has also submitted that it has been recorded in the evidence of the complainant that a Panchayati was convened, in which, the present petitioner made admission that the complainant is his wife and he had also accepted that they had a son and thereafter, the petitioner took the complainant and her son to his house. The learned counsel submits that considering the nature of offence involved in the present case, the petitioner does not deserve any lenient view of this Court, even in the matter of modification of sentence. He submits that there are consistent findings on record to sustain the conviction and there is no illegality or perversity in the impugned judgments passed by the learned courts below.

Findings of this Court

9. The prosecution case, in brief, is that the complainant was the student of Class-VIII and aged about 14 & ½ years and the petitioner was the student of class 10+2 and love affairs developed between them in the year 1997. In the month of July 1997, at about 8:00 PM, the petitioner took the complainant to Jahir Sthan and put the earth soil on her head and declared her to be his wife. He further assured

her that he will also disclose the marriage before the society that the complainant has become his wife. Thereafter the petitioner made physical relationship with the complainant against her will. It was further stated in the complaint petition that the petitioner always made sexual relationship with the complainant and when she became pregnant, the complainant informed her parents. The petitioner and his parents wanted the complainant to abort the child, but the complainant did not accept their request. On 15.08.1998, the petitioner took the complainant to his home after intervention by the village panchayat and after sometime, the accused persons including the petitioner started subjecting the complainant to cruelty, so that the complainant may leave their house. The complainant was terrorized with deadly weapons, forced to take medicine for abortion and out of fear, the complainant went to her parents' house. She narrated the entire story to her parents and thereafter the father of the complainant went to the village panchayat, but no settlement could be arrived. Subsequently, on 08.10.1998, the complainant was blessed with a son and she again went to petitioner's house, but the petitioner and his father assaulted her and drove her out of the house. The complainant reported the matter to police, but the police did not take any action. Thereafter, the complaint case was filed before the Court under Sections 493, 376, 323, 420 and 313/511 of the Indian Penal Code. The witnesses were examined under Section 202 of the Cr.P.C. and a *prima-facie* case under Sections 493 and 323 of the Indian Penal Code was found and summons were issued to the accused. There were altogether three accused, i.e. the petitioner-husband, mother-in-law and father-in-law of the complainant.

10. This Court finds from the record that at the time of framing of charge, it was submitted by the petitioner that since the complainant was his wife, so, at best, charge can be framed under Section 498-A of the Indian Penal Code and not under Sections 493 and 323 of the Indian Penal Code. Accordingly, learned trial court vide order dated

06.08.1999 framed charge against all the accused persons under Section 498-A of the Indian Penal Code.

11. The prosecution had examined altogether five witnesses in support of their case.

12. The complainant was examined as PW-3. She has fully supported the prosecution case and has narrated the allegations made in the complaint case. During her examination, she had further stated that the panchayati was convened, in which the petitioner admitted that the complainant is his wife and also accepted his son and thereafter the petitioner took the complainant and her son to his house, but started subjecting her to cruelty. She proved her signature on the complaint petition, which was marked as Exhibit - 1. She was thoroughly cross-examined from the side of defence and had admitted that her marriage was not solemnized in Church. The learned Lower Appellate Court recorded that the complainant had fully supported the case specifically stating that, it was her husband, Sushil Marandi, who married her and thereafter made physical relationship with her and took her to his house and subjected her to cruelty. The learned Lower Appellate Court also recorded that so far as other accused are concerned, she has not stated anything that they had participated in the occurrence or subjected her to cruelty and the learned Lower Appellate Court found her evidence to be believable.

13. So far as PW - 1 is concerned, he is a witness on the point of panchayati. He has stated that a panchayati was held on 15th August 1998 and a document was prepared and after discussion in the panchayat, the petitioner took the complainant to his house and at that time, the complainant was pregnant. He has stated in his evidence that the petitioner had kept the complainant for a month and thereafter the complainant went to her parents' house and gave birth to a child. In his cross-examination, he has stated that the marriage was solemnized in a church, but the prosecution case is different. The Learned Lower Appellate Court found that the petitioner had

married with the complainant at a religious place and thereafter he accepted her as his wife.

14. PW - 2 is also a witness on the point of Panchayati, who has also stated that the petitioner accepted the complainant as his wife and took her to his home and after physical relationship, she became pregnant. The petitioner kept his wife for some time and thereafter he did not keep her at his house. Consequently, the complainant went to her parents' house and she was blessed with a child. The learned lower appellate court was of the view that there was nothing in the evidence of PW - 2 to disbelieve it.

15. PW-4 is the father of the complainant. He has also supported the evidence of his daughter. He has also mentioned about the Panchayati, which was convened on 15th August 1998, wherein it was decided that the petitioner will take the complainant to his house and his daughter was pregnant. This witness further stated that the accused after keeping his daughter for two months, drove her out of matrimonial house and subsequently she gave birth to a child in his house. In his cross-examination, he has stated that a rape case was instituted by her daughter against the petitioner, but that does not affect his credibility and he has fully corroborated the evidence of his daughter.

16. PW - 5 is also the witness to the Panchayati convened in the village on 15.08.1998. He has proved the Panchayati document, which was marked as Exhibit - 1/1 and he has stated that after Panchayati, the complainant was taken by the petitioner to his house. The Learned Lower Appellate Court was of the view that the marriage of the complainant with the petitioner was fully proved as the petitioner had accepted it. The document of Panchayati, Exhibit - 1, bears the signatures of several persons including the petitioner and the complainant was handed over to the petitioner by the panchayati.

17. Thus, this Court found that there are altogether three independent witnesses. So far as the panchayti is concerned, i.e. PW- 1, PW - 2 and PW - 5, who have fully supported the fact that the petitioner had accepted the complainant as his wife and taken her home and at that time, she was pregnant. The panchayti document has also been exhibited. On the basis of the evidence regarding panchayti as well as the evidence of the complainant and the father of the complainant, learned lower appellate court was of the view that the petitioner accepted having marriage with the complainant. Learned lower appellate court further recorded that the prosecution also filed a copy of the order of the Hon'ble Patna High Court passed in Cr. Misc. No.25303 of 1999 (Sushil Marandi Vs. State of Bihar) dated 8.12.1999, which was official copy of the Hon'ble High Court, which shows that at the time of granting bail, one supplementary affidavit was filed by the petitioner that he has solemnized the marriage with the complainant and thereafter they are living as husband and wife. On this ground, the Hon'ble Patna High Court was pleased to grant the bail to the petitioner in the present case and the learned lower appellate court was of the view that this document also proves the fact that the petitioner is the husband of the complainant, but he had driven out the complainant of his house subjecting her to cruelty, mentally and physically. Learned lower appellate court found that so far as father-in-law and mother-in-law of the complainant are concerned, the complainant had not specifically stated about these two persons and the learned lower appellate court acquitted them of the charges under Section 498-A of the Indian Penal Code. Learned Lower Court upheld the conviction of the petitioner and modified his sentence to two years instead of three years and also modified the fine amount to Rs.2,000/- instead of Rs.5,000/-. Learned lower appellate court also recorded from the evidence of PW - 3 i.e. the complainant that after she was taken by the petitioner to his house, she was subjected to

cruelty and the accused tried to administer medicine for abortion, terrorized her to abort the child, but she did not agree.

18. The only argument, which has been advanced by learned counsel for the petitioner is that the complainant is not the wife of the petitioner and accordingly he could not have been convicted under Section 498-A of the Indian Penal Code. This Court finds that the aforesaid argument of the petitioner was advanced before the learned lower appellate court at para - 3, wherein the argument of the defence in short was recorded that the defence is in total denial of the occurrence and it was argued that the complainant was not the wife of the petitioner. The said argument was considered by the learned lower appellate court and it rejected the arguments of the petitioner by a well-reasoned order. This court also finds that even at the time of framing of charge, it was submitted by the petitioner that since the complainant was his wife, so, at best, charge can be framed under Section 498-A of the Indian Penal Code and not under Sections 493 and 323 of the Indian Penal Code. Accordingly, learned trial court vide order dated 06.08.1999 framed charge against all the accused persons under Section 498-A of the Indian Penal Code. As a cumulative effect of the aforesaid facts and circumstances, there is no scope of re-appreciating the evidences on record on the point of marriage of the petitioner with the informant. The finding of marriage between the petitioner and the informant is supported with materials on record.

19. Considering the nature of allegation and the manner in which the offence has been committed by the petitioner, this Court is of the considered view that the learned courts below have rightly convicted the petitioner under Section 498-A of the Indian Penal Code. This Court also finds that the learned trial court rejected the plea of the petitioner to grant the benefit of Probation of Offenders Act, 1958 by recording that the offence has been committed against the woman and the accused persons wanted miscarriage of the

pregnancy of the complainant, which is a cruel form of the torture. Learned trial court as well as learned appellate court had also recorded their finding after considering the materials on record and the factum of cruelty on the complainant was proved beyond all reasonable doubts. There being no perversity or illegality in the impugned judgement, no interference is called for in revisional jurisdiction by this court.

20. Considering the nature of allegation, which has been proved against the petitioner and the manner in which the same has been committed, this Court finds that the learned courts below have rightly convicted the petitioner under Section 498-A of the Indian Penal Code. This Court further finds that the petitioner has been rightly held not entitled to benefit of Probation of Offenders Act, 1958. The crime committed by the petitioner is not only against the woman, i.e., his wife, but also against the society. This Court is of the view that the learned lower appellate court has already taken a lenient view by modifying the sentence and therefore no further modification of sentence is called for in exercise of revisional jurisdiction of this Court.

21. Accordingly, the present criminal revision petition is hereby dismissed.

22. Interim order, if any, stands vacated.

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

24. Let the lower court records be immediately sent back to the court concerned.

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

(Anubha Rawat Choudhary, J.)