

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 353 of 2014

With

I.A. No.10645 of 2019

Biren Baduk, son of Purna Chandra Baduk, resident of
Sariapara, P.O. & P.S. - Gopiballabhpur, District - West
Medinipur (West Bengal) **Petitioner**

Versus

The State of Jharkhand **Opposite Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

For the Petitioner : Mr. K.S. Nanda, Advocate
For the Complainant : Mr. Niranjan Kr. Sinha, Advocate
For the State : Mr. Ravi Prakash, A.P.P

07/25.06.2020

1. Heard Mr. Kripa Shankar Nanda, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Niranjan Kumar Sinha, learned counsel appearing on behalf of the complainant.
3. Heard Mr. Ravi Prakash, learned counsel appearing on behalf of the State.
4. After issuance of notice to the complainant, Mr. Niranjan Kumar Sinha, learned counsel for the complainant namely Sujata Baduk, w/o Biren Baduk, D/o Nitai Ojha, has appeared through Vakalatnama dated 23.04.2015.
5. This criminal revision application has been filed for setting aside the judgment of conviction and order of sentence dated 12.12.2012 passed by learned Judicial Magistrate, 1st Class, Ghatshila in C - I Case No.151 of 2006/ T.R. No.294 of 2012, whereby and whereunder the aforesaid court has been pleased to convict the petitioner for the offences under Sections 498A/323 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment under Section 498A of the Indian Penal Code for two years and pay a fine of Rs.500/- and

in default of payment of fine, further ordered to undergo simple imprisonment for 7 days; and further sentenced to undergo rigorous imprisonment for 9 months under Section 323 of the Indian Penal Code and all the sentences were directed to run concurrently;

The petitioner has also prayed for setting aside the confirming judgment dated 06.1.2014 passed by learned District & Additional Sessions Judge, Ghatshila in Criminal Appeal No.13/2013, whereby and whereunder the learned District & Additional Sessions Judge, Ghatshila has been pleased to confirm the order of conviction under Sections 498A/323 Indian Penal Code passed by the Judicial Magistrate, 1st Class, Ghatshila, but modified the sentence to the extent of simple imprisonment of 2 years under Section 498A of the Indian Penal Code and 6 months under Section 323 of the Indian Penal Code and both the sentences are directed to run concurrently.

6. Learned counsel for the petitioner as well as the complainant jointly submit that one interlocutory application being I.A. No.10645 of 2019 has been filed in the present case being joint compromise petition on behalf of the petitioner and the complainant. They submit that both the parties have settled their matrimonial dispute outside the court with the help of well-wishers and due intervention of common friends and are living together as husband and wife with their child. They also submit that in this view of the matter, interest of justice would be served if the judgment of conviction and sentence passed by both the courts below are set aside. They also refer to para 5 of the joint compromise petition indicating that the complainant has no objection in setting aside of the judgment of conviction and sentence passed by the learned trial court and affirmed by the learned lower appellate court.

7. Learned counsel for the State on the other hand submits that though the offence under section 498A IPC is not

compoundable, but in view of the judgment passed by Hon'ble Supreme Court, appropriate order can be passed by this Court.

8. Learned counsel for the parties have referred to the judgments passed by Hon'ble Supreme Court reported in (2003) 4 SCC 675 and (2010) 7 SCC 667 and submit that joint compromise petition can be taken into account to grant relief to the parties. Learned counsel for the State has also referred to a judgment reported in (2014) 13 SCC 75 (*Manohar Singh Vs. State of Madhya Pradesh and Anr.*).

9. After hearing the learned counsel for the parties, this Court finds that initially a case was instituted under Section 498A, 323/34 IPC and under Section 4 of the Dowry Prohibition Act who faced the trial.

As per the impugned judgements, the prosecution story is that on 3.07.05, the marriage of the complainant was solemnized with the petitioner. After solemnization of marriage, the complainant went to her in-laws house and lived there peacefully with the accused persons for about six months. It was alleged that all the accused persons used to complain about insufficient dowry and demanded Rs.30,000/- to settle a business and the petitioner gave threatening that if the said amount is not paid, she would be given poison in her food. On 25.07.06, the complainant came to her parents' house with her husband who asked her to make a demand of Rs.30,000/- from her father but when the complainant refused to do so, the petitioner assaulted her in the presence of her parents and took her to his house same day where all the accused persons treated her as their maid and they did not provide her proper food, water, shelter, clothes, medicines etc. It was further stated that the complainant gave birth to a male child. It has been *inter alia* alleged that on 15.8.06, the petitioner became angry and assaulter the complainant with fist, blow & lathi. It is further stated that the complainant sent this information to her parents

who came there and tried to make a compromise and on 16.8.06, the complainant's father took her to Government Hospital at Tapsia where she was given medical treatment. On 16.11.06, a panchayati was called at Dakbunglow, Bahragora in the presence of both the sides and it was decided that the petitioner would keep the complainant with respect & dignity but the petitioner did not take her to his house and she took shelter at her parents' house. The complainant was presented by the complainant on 15.12.06 before the A.C.J.M, Ghatsila.

10. After considering the materials on record, the learned trial court convicted the petitioner by holding that there is a specific allegation & evidence against the petitioner (husband) and found the petitioner guilty for the offences u/s 498A and 323 IPC. So far as the other accused persons are concerned, they were acquitted. The petitioner was sentenced with R.I. for a period of 2 years & 6 months including fine of Rs.500/- u/s 498A IPC and in default of fine, he was sentenced to undergo S.I. for 7 days. He was also sentenced with R.I. for a period of 9 months u/s 323 IPC. Both the sentences were directed to run concurrently.

11. The learned lower appellate court held that the petitioner regularly assaulted his wife, demanded money Rs.30,000/- for business and ousted from her sasural with her minor son, she was residing in her father's house. Therefore, held that offence is made out against the petitioner u/s 498A IPC and 323 I.P.C. and upheld the Judgment of conviction passed by learned Judicial Magistrate Ghatsila. However the learned appellate court modified the punishment of the petitioner u/s 498A IPC up to two years simple imprisonment and under Section 323 IPC six months simple imprisonment and both the sentences were directed to run concurrently.

12. This Court finds that during the pendency of this case a joint compromise petition has been filed and it has been stated

by the petitioner as well as complainant jointly, that both the parties have settled their dispute outside the court as well as in a proceeding before the learned Family Court and the petitioner as well as the complainant are leading happy conjugal life and the complainant has stated that the complainant has no objection in setting aside the judgment and sentence passed by both the learned courts below.

13. Para - 3 and 4 of the joint compromise petition are as under:

"3. That the present case is arising out of a matrimonial dispute between parties and as such during pendency of the revision application, both the parties have compromised the case outside the court with the help of well-wisher and due to intervention of common friends and are living together as husband and wife with their child.

4. That both the parties do not want to proceed further with the case as both have settled their dispute outside the court as well as in a proceeding before learned family court. Petitioner and the complainant are leading happy conjugal life."

14. This Court finds that both the learned courts below have arrived at a concurrent finding of facts while convicting the petitioner under Section 498A and under Section 323 Indian Penal Code. The learned trial court convicted the petitioner for two years and six months and Rs.500/- fine under Section 498A and for 9 months under Section 323 IPC and both the sentences were directed to run concurrently. The learned lower appellate court modified the sentence and reduced the sentence under Section 498A IPC to two years and under Section 323 IPC for a period of 6 months simple imprisonment.

15. This Court finds that the petitioner had surrendered before the learned court below at the time of filing the revision application on 02.05.2014 and was directed to be enlarged on bail vide order dated 06.05.2014. Considering the concurrent

findings of facts recorded by both the courts, this Court does not find any illegality or perversity in the impugned judgments of conviction of the petitioner.

16. The Hon'ble Supreme Court in the judgment reported in *(2014) 13 SCC 75 (Manohar Singh Vs. State of Madhya Pradesh and Anr.)*, has held that section 498A of Indian Penal Code is non-compoundable and while considering the request for compounding of offence the court has to strictly follow the mandate of section 320 of the Code and accordingly if there is a genuine compromise between the husband and the wife, criminal complaints arising out of matrimonial discord can be quashed, even if the offences alleged therein are non-compoundable. Because such offences are personal in nature and do not have repercussions on the society unlike heinous crime, the Hon'ble Supreme Court also held that if it is necessary to quash the proceedings to prevent abuse of the process of any court or to secure ends of justice, the High Court can do so. The inherent power of the High Court under Section 482 of the Code is not inhibited by Section 320 of the Code.

17. The Hon'ble Supreme Court has further held in para 8 of the said judgment about the fact that the appellant of the said case was convicted inter alia, under Section 498 A IPC. The Hon'ble Supreme Court was of the view that even though the husband and the wife had arrived at a compromise, the order of conviction cannot be quashed on that ground because the offences involved were non-compoundable. It was also held that in such a situation, if the court feels that the parties have a real desire to bury the hatchet in the interest of peace, it can reduce the sentence of the accused to the sentence already undergone. The Hon'ble Supreme Court has also taken into consideration that Section 498A IPC does not prescribe any minimum punishment and therefore the Hon'ble Supreme

Court ultimately reduced the sentences to the period already undergone.

18. So far as the judgements reported in *(2003) 4 SCC 675* and *(2010) 7 SCC 667* are concerned, this Court finds that the said judgements were passed at the stage of cognizance of offence / quashing of F.I.R and the parties had entered into settlement prior to their conviction by the trial court. The present case is at the stage of revision after conviction of the petitioner and rejection of his appeal by the learned courts below and the joint compromise petition has been filed in this court during the pendency of this revision petition.

19. The conviction under section 323 IPC, is compoundable, and 498 A I.P.C is non compoundable. This Court is not inclined to quash the conviction of the petitioner under section 498 A of Indian Penal Code in revisional jurisdiction and is also not inclined to exercise its inherent powers to grant such relief to the petitioner. However, conviction and sentence under section 323 IPC is fit to be set-aside on account of compromise.

20. Taking into consideration the judgment passed by Hon'ble Supreme Court reported in *(2014) 13 SCC 75 (Supra)* and also the compromise entered into between the parties and that they are living as husband and wife, this Court, for the ends of justice, modifies the sentence of the petitioner under section 498A IPC to the period of custody already undergone by the petitioner in jail and conviction and sentence under section 323 IPC is set-aside.

21. This criminal revision application as well as I.A. No.10645 of 2019 are accordingly disposed of.

22. The bail bond furnished by the petitioner stands discharged.

23. Pending interlocutory applications, if any, are dismissed as not pressed.

24. Office is directed to send back the lower court records to the court concerned.

25. Let a copy of this order be communicated to the court concerned through FAX.

(Anubha Rawat Choudhary, J.)

Saurav/