

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 542 of 2012

Mahboob Alam son of Hussaini Mian, resident of village Barkangango, P.O. Barkatta, P.S. Barkatta, District Hazaribagh

... .. Petitioner

Versus

1. The State of Jharkhand

2. Taibun Khaton w/o Mahboob Alam, R/o village Barkangango, P.S. + P.O. Barkatta, District-Hazaribagh At present D/o Md. Hanif, R/o Village-Jamuniatand P.O. + P.S. Tisri, District-Giridih

... .. Opp. Parties

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Anjani Kumar Singh, Advocate
For the State	: Mr. Ashok Kumar, A.P.P.
For the O.P. No. 2	: Ms. Rashmi Kumar, Advocate

Through Video Conferencing

11/06.09.2021

1. Heard Mr. Anjani Kumar Singh, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Ashok Kumar, learned counsel appearing on behalf of the opposite party-State.
3. Heard Ms. Rashmi Kumar, learned counsel appearing on behalf of the opposite party No. 2.
4. This criminal revision has been filed against the judgment dated 17th May, 2012, passed by learned Principal Sessions Judge, Giridih, in Cr. Appeal No. 74/10 whereby the appeal has been dismissed and the learned appellate court has affirmed the judgment passed by the learned trial court.
The learned S.D.J.M. Giridih, vide order dated 30.09.2010 passed the judgment of conviction and order of sentence and convicted the petitioner under Section 498-A of the Indian Penal Code.

Submission on behalf of the petitioner

5. Learned counsel for the petitioner while assailing the impugned judgments has submitted that the case has been

instituted after inordinate delay. He submits that the case was instituted in the year 2003 and at that point of time it was stated that marriage between the petitioner and opposite party No. 2 had taken place 14 years ago. He submits that one other witness has stated that the marriage had taken place 20 years ago. Learned counsel submits that there is no independent witness in the present case and the delay is absolutely unexplained. Learned counsel submits that the learned court below has also not considered the fact that there was separation between the petitioner and the opposite party No. 2 and the document was also prepared on 30.03.2004 and the dispute between the parties had settled. He submits that the said document which was produced by the defence has not been considered by the learned court below. Considering the facts and circumstances of this case the conviction of the petitioner for the offence under Section 498-A of the Indian Penal Code cannot be sustained in the eyes of law. He also submits that the complainant had failed to prove the case against the petitioner for the offence under Section 3/4 of the Dowry Prohibition Act. Accordingly, the petitioner was acquitted from the said charges and was only convicted under Section 498-A of the Indian Penal Code. Without prejudice to the aforesaid submission, learned counsel has also submitted that the petitioner has remained in custody during the pendency of this case from 19.02.2013 to 18.04.2013 and the petitioner is also ready to give victim compensation to the opposite party No. 2 as may be fixed by this court. Learned counsel has also submitted that considering the fact that the complaint case was filed in the year 2003 and the present case is the first offence of the petitioner, the sentence may be modified.

Submission on behalf of the opposite party-State

6. Learned counsel appearing on behalf of the opposite party-State on the other hand has opposed the prayer and stated that

there was compromise between the parties that the complainant was taken back to the matrimonial house and was again thrown out from the matrimonial house within a period of 20 days. He submits that the delay in filing the complaint case is well explained. Learned counsel has also submitted that as long as the said case was pending, the petitioner used to keep the opposite party No. 2, but the moment the case was compromised, the opposite party No. 2 was thrown out within a period of 20 days thereafter she filed the present case. Learned counsel has also submits that the petitioner has performed second marriage but it is not in dispute that the petitioner and the opposite party No. 2 are governed by Muslim law. Learned counsel has also submitted that there are concurrent findings recorded by the learned courts below which does not call for interference in revisional jurisdiction. So far as modification of sentence is concerned, he submits that it is for the court to pass appropriate order. He also submits that victim compensation should also be given to the opposite party No. 2.

7. Learned counsel appearing on behalf of the opposite party No. 2 also supports the argument advanced by the State.

Findings of this court

8. After hearing the learned counsel for the parties and considering the materials available on record, this court finds that complaint in the present case was filed on 27.02.2003 by the present opposite party No. 2 stating that she was married with the petitioner about 14 years ago as per the Muslim rights and customs and at the time of marriage, cash and other articles were presented to the petitioner by the complainant's father. After some days of marriage, the petitioner and her in-laws started demanding one milch cow and cash of Rs. 12,000/- which was not fulfilled by the complainant's father due to paucity of fund. The accused persons started harassing and assaulting the complainant and in the meantime, she

became pregnant but she was driven out of her matrimonial house by the accused persons. Thereafter she came to her parents house and gave birth to a dead child and Rs. 10,000/- was spent by her father after selling his land for her operation. The complainant along with her father went to her matrimonial house in the month of June, 2000, then accused persons ill treated them and caught hold of hair of the complainant in front of her father and pushed her down. The accused persons also snatched her clothes and drove them out of their house. It has also been stated that the petitioner has performed second marriage with one Muneja Khatoon and the petitioner does not want to keep her. It has been stated in the complaint that a Panchayat was also held but in vain. The complainant filed a case before the learned Chief Judicial Magistrate, Giridih and after getting knowledge about the case, the accused persons called for a Panchayati on 19.01.2001 and took the complainant with them and kept her properly till the disposal of the earlier complaint case. As soon as the earlier complaint case was disposed of, they again started subjecting the complainant to various kinds of cruelty and on account of non-fulfilment of their previous demand, they drove the complainant out of their house and snatched all her articles in the night. After enquiry under Section 202, the cognizance was taken only against the present petitioner who was the husband who summoned for the offence under Section 498-A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. The petitioner denied the charges levelled against him and claimed to be tried.

9. The prosecution examined altogether four witnesses including the complainant who was examined as C.W. 3. She was examined on 07.02.2008 and deposed that she was married to the petitioner 18 years ago and lived in her matrimonial house for some days. Thereafter she became pregnant and gave birth to a dead child. Her parents spent money on her treatment. In

the meantime, the petitioner performed second marriage with Muneja Khatoon. She stated that when she went back to her matrimonial house, she was driven out after assault and the petitioner demanded Rs. 12000/- as dowry. She has also stated that when the petitioner came to take her, she went with him but was driven out of her matrimonial house after assault once again. She did not go to the police station, rather a Panchayati was held and she had filed a case in the court. Prior to the present case, the complainant had lodged a case regarding dowry demand and assault in which the accused persons had compromised the case and took her but she was again assaulted and driven out of her matrimonial house. She was suffering from some disease but no treatment was done. In the year 2004, she had informed the petitioner that she had recovered from the disease but in spite of that the petitioner did not take her. In her cross examination she had stated that 30 years had elapsed since her marriage and she was residing in her parents house since 20-25 years. After her marriage, she had resided in her matrimonial house for 6-7 years with certain intervals. During her cross examination, she had specifically deposed that the petitioner had demanded Rs. 12000/- from her in presence of her father. Thus the complainant had supported the prosecution case regarding illegal demand of money and consequent torture meted out to her on account of non-fulfilment of the demand.

10. C.W. 2 is the father of the complainant who has corroborated the prosecution story. He has specifically stated that after 6 months of marriage, the accused persons started demanding Rs. 12000/- and one milch cow. Due to non fulfilment of the said demand, his daughter (C.W. 3) was frequently assaulted and at last she was driven out of her matrimonial house. He has also stated that she gave birth to a dead child but the petitioner did not turn up to see her. This witness has also stated that prior to the case, another case was lodged by the

complainant which was compromised and after Panchayati complainant went to her matrimonial house, but within 20 days the accused persons had assaulted her and drove her out of her house.

11. So far as C.W. 1 is concerned, he has also supported the prosecution case and has stated that marriage between the petitioner and the complainant had taken place around 20 years ago and after marriage, she went to her matrimonial home and child was begotten to her. After 10 years, she went to her parents house and at that time she was pregnant. She was admitted to the hospital by her parents. The petitioner did not come to see the complainant on receipt of the information, rather he performed the second marriage. He has also supported that the Panchayati which was held in which the accused persons were asked to keep the complainant at their house, but the petitioner drove her out after assaulting her. This witness has also been fully cross examined. So far as C.W. 4 is concerned, he is the formal witness who has proved the signature of the writer and the complainant over her complaint petition which was marked as exhibit.

12. The petitioner was examined under Section 313 Cr. P.C. and he denied the allegation though specific question was put to him with regard to demand of milching cow and Rs. 12,000/- as dowry. The petitioner had examined only one defence witness who was the formal witness who proved the paper of separation of the petitioner and opposite party No. 2 by Panchayat dated 30.03.2004 containing the signature of one Hanif, Taibun and D.W. 1 (Md. Liyaquat) which was marked as Exhibit A, A/1 and A/2.

13. The learned trial court recorded the findings in para-13 and also noticed that the defence document regarding separation was dated 30.03.2004 and the present case was lodged as back as in the year 2003. Learned trial court considered the materials on record and vide paragraph nos. 13,14 and 15 held as

follows:

13." After critical analysis of the evidences produced by both the parties, in my considered view, definitely the husband of the complainant Mahboob Alam has tortured the complainant Taibun Khatoon physical as well as mental. Though the defence has claimed separation between the parties but it is apparent from the record that the case was lodged in the year, 2003 and the paper produced by the defence for separation is of 30/03/2004 which creates ample doubts about the genuineness of this paper and it is admitted fact that the complainant is the legally married wife of Mahboob Alam who is fully responsible to maintain her at all stage as social, mental and physical. But it is apparent from the record that repeatedly Mahboob Alam tortured to the complainant Taibun Khatoon, when she was in her Sasural, he enforced her to sell out the bangles by moving hither and thither and when she was in her house, she tortured her by beating and abusing. It is pertinent to mention here that she was in hospital by family way and gave birth to a dead child then it was prime and pious duty of Mahboob Alam who is the husband of the complainant Taibun Khatoon to take care of her but he refused and ignored to her, which is much disgusting act of her husband Mahboob Alam and it is amounting to mental torture by Mahboob Alam towards the complainant and without any doubt and second thought it comes into the purview of provision of Section 498A I.P.C.

14. Though the defence has tried to establish his case of divorce and separation by panchayat but badly failed and in my considered view on the basis of the above discussions, the complainant become able to prove the charge for the offence under Section 498A of the I.P.C. levelled against the accused Mahboob Alam.

15. So far charge under Section 3/4 of the D.P.Act is concerned, though the complainant has stated in her complaint petition as well as her examination and the father of the complainant has also supported in his examination but in my opinion the complainant could not prove this charge against the accused person beyond reasonable doubt and the accused is liable to the acquitted from the aforesaid charge."

14. So far as learned appellate court is concerned, the appellate court upheld the conviction of the petitioner for the offence under Section 498-A IPC by holding that the materials on record categorically proved that there was harassment and torture meted out to the complainant due to non fulfilment of illegal demand of Rs. 12000/- and one milch cow and the defence document and plea of divorce in the year 2004 was rejected on the ground that the signature of the witnesses were exhibited, but the Farkatinama was not exhibited which was the main document and also recorded that the oral divorce given by the petitioner to the complainant should have been communicated to the complainant and in this regard the petitioner is silent. The findings recorded by the learned appellate court is at para-13 which is quoted as under:

“Para-13 From the aforesaid discussions of evidence available on record, I find that there is unrebutted testimony of complainant proving the ingredients of offence u/s 498-A IPC. Her testimony has not been rebutted to cast any doubt on her veracity rather, it has been corroborated by the evidence of CW 1 & CW 2 also. The insistence upon independent witnesses in matrimonial cases does not stands to reason. The matrimonial affairs are usually not disclosed to anybody else for the sake of relationship. The complainant is rustic illiterate lady and she cannot be expected to tell every minute details with date, day, time and year of incident of assault and torture meted to her rather, the whole prosecution story as disclosed by the witnesses categorically proves the harassment and torture meted to informant due to non-fulfilment of illegal demand of Rs. 12000 and one milch cow. It further appears that defence has relied upon the Farkatinama to show that complainant was divorces in the year 2004 but the defence had failed to draw any attention of the prosecution witnesses towards the divorce. It is also apparent that

signatures of witnesses has been exhibited as Ext. A, A/1 and A/2 over the Farkatinama without exhibiting the main document i.e. Farkatinama and the same is not sufficient to prove its contents. It also appears that the oral divorce given by the accused to the complainant should have been communicated to the complainant, in this regard appellant is mum."

15. This court finds that the learned trial court had convicted the petitioner for the offence under Section 498-A by holding that the petitioner had tortured the complainant physically as well as mentally and had rejected the plea of separation on 30.03.2004. The learned trial court while considering the charge under Section 3/4 of the Dowry Prohibition Act recorded that though the complainant had stated in her complaint as well as her examination and the father of the complainant has also supported in his examination but in view of the learned trial court, the complainant could not prove charge under Section 3/4 of Dowry Prohibition Act against the accused persons beyond any reasonable doubt and acquitted the accused persons for offence under Section 3/4 of the Dowry Prohibition Act. This court finds that although the learned trial court had recorded that charge under Section 3/4 of the Dowry Prohibition Act was supported by the complainant in her complaint petition as well as her examination as well as supported by the father but no reason as such was assigned as to why in spite of such evidences on record the complainant was said not to have been able to prove the case beyond reasonable doubt. However, the learned appellate court upheld the conviction of the petitioner under Section 498-A of the Indian Penal Code on the ground of illegal demand of Rs. 12,000/-, one milch cow and torture meted out to the complainant on account of non fulfilment of the said demand. So far as offence under Section 3/4 of the Dowry Prohibition Act is concerned, the same remained untouched by the learned appellate court as apparently no

cross appeal was filed in connection with acquittal of the petitioners for offences under Section 3/4 of the Dowry Prohibition Act. This court also finds that acquittal of the petitioner for the offence under Section 3/4 of the Dowry Prohibition Act by the learned trial court has no bearing in the present case. The ingredient of offence under Section 498-A IPC read with explanation(b), inter alia, is demand of property and harassment of woman on account of non-fulfilment of such demand. Further, the demand of such property may or may not be in the nature of dowry.

16. This court finds that there are cogent materials on record that there was a demand of Rs. 12,000/- and milch cow from the complainant and having not been able to meet the said demand the complainant was thrown out of her matrimonial house. This court also finds that on earlier occasion a criminal case was filed by the complainant but subsequently the same was compromised on the ground that the complainant was taken back to her matrimonial house but as soon as the said criminal case was disposed of, the complainant was again kicked out of her matrimonial house within 20 days of the closure of the earlier case and thereafter the present case was filed. Considering the sequence of events there is not much delay in filing the present case. Merely because the marriage had taken place 14 years prior to filing of complaint case, the same is not sufficient to say that the complaint was a delayed complaint. There are well explained intervening circumstances including efforts for settlement through Panchayat as well as filing of earlier case and its settlement when the complainant was taken back to her matrimonial home and also the fact that the moment the earlier case was closed the complainant was thrown out of her matrimonial house again with the earlier demand and was assaulted on account of non fulfilment of the said demand. She was ousted within a period of 20 days from the date of closure of the earlier case. This court finds that the

delay if any in filing the case is well explained. So far as the reliance of the petitioner on Farkatinama, which is an oral divorce is concerned, the same has been rejected by the learned trial court inter alia by referring that the same was of sentence date i.e. 30.03.2004 and accordingly after filing of the complaint case and the appellate court has also rejected the same by holding that the contents of the said document was never exhibited and what was exhibited was only the signatures of three persons on the said document. The learned appellate court also observed that the oral divorce given by the petitioner to the complainant should have been communicated to the complainant but the petitioner is totally silent on that point. This court finds that the learned courts below have appreciated the materials on record and convicted the petitioner for offence under Section 498-A of IPC. This court also finds that the trial court had convicted the petitioner on the ground of physical and mental cruelty and the learned appellate court has convicted the petitioner for the offence under Section 498-A on the ground of demand and non fulfilment of the said demand and consequent torture of the complainant on account of non fulfilment of the said demand. Upon perusal of the materials on record this court finds that there are sufficient materials to support the conviction of the petitioner for the offence under Section 498-A of the Indian Penal Code as it has been proved by cogent evidence on record that there was a demand of property and the petitioner was tortured on account of non fulfilment of the said demand. Accordingly, this court does not find any illegality or perversity in the impugned judgment of conviction.

17. So far as prayer of the petitioner for modification of sentence is concerned, this court finds that the present case was instituted as back as in the year 2003 and 18 years have elapsed from the date of institution of the case and the petitioner has faced the rigorous of the criminal case for a long time. Considering the

totality of the facts and circumstances, this court is of the considered view that ends of justice would be met if the sentence of the petitioner is modified to some extent and some fine amount is imposed. Accordingly, sentence of the petitioner is hereby modified and reduced to the period of one year with fine of Rs. 50,000/- to be deposited by the petitioner before the learned court below within a period of three months from the date of communication of this order. If the fine amount is not deposited by the petitioner within the stipulated time, the petitioner will serve the sentence as awarded by the learned trial court. The fine amount so deposited by the petitioner shall be handed over to the victim (opposite party no.2) on proper identification.

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

19. Accordingly, with the aforesaid findings and modification in sentences of the petitioner, the present criminal revision petition is hereby **disposed of**.

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

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

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

(Anubha Rawat Choudhary, J.)