IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 265 of 2012

Dr. Abha Rani, Wife of Dr. Swami Nath Tiwari, Residence of Quarter No. 299, Sector- 3 B, P.O.- Sector 2, P.S.- B.S. City Sector-1, District- Bokaro/Jharkhand

... ... Petitioner

Versus

1. State of Jharkhand,
2. Dr. Swami Nath Tiwari, Son of Uma Shankar Tiwari,
3. Uma Shankar Tiwari, parentage not known to the petitioner,
4. Ramawati Devi, Wife of Uma Shankar Tiwari,
5. Manoj Kumar Tiwari, Son of Uma Shankar Tiwari,
6. Gita Devi, Daughter of Uma Shankar Tiwari,
   All Residents of Quarter No. 1075, Sector- 6/C, Bokaro Steel City, P.O.- Sector-6 (PIN-827006), P.S.- Sector-6, District- Bokaro/Jharkhand

... ... Opposite Parties

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. B. M. Tripathy, Senior Advocate
Ms. Nutan Sharma, Advocate
For O.P. Nos. 2 to 6 : Mr. Yadunandan Mishra, Advocate
For the State : Mr. Md. Hatim, Advocate

Through Video Conferencing

C.A.V. on 01.07.2021 **Pronounced on 06/09/2021**

1. Heard Mr. B. M. Tripathy, learned Senior counsel appearing on behalf of the petitioner along with Ms. Nutan Sharma, Advocate.

2. Heard Mr. Yadunandan Mishra, learned counsel appearing on behalf of the opposite party nos. 2 to 6.

3. Heard Mr. Md. Hatim, learned counsel appearing on behalf of the opposite party- State.

4. This criminal revision petition has been filed by the informant for setting aside the judgement dated 23.01.2012 passed by learned Sessions Judge at Bokaro in Criminal Appeal No. 21/2011 dismissing the criminal appeal filed by the State. The petitioner has also prayed for setting aside the judgement dated 18.01.2011 passed by learned S.D.J.M., Bokaro, whereby the present opposite party nos. 2 to 6 were acquitted for offence

under Sections 498A and 3/4 of Dowry Prohibition Act, 1961 in connection with Harla P.S. Case No. 31/2007 corresponding to G.R. Case No. 219 of 2007 (T.R. No. 587/2011).

5. The Criminal Appeal No. 21/2011 was filed by the State against the judgement dated 18.01.2011 whereby the learned trial court had acquitted the present opposite party nos. 2 to 6 of the charges levelled against them.

6. Learned counsel for the opposite parties, at the outset, have submitted that in view of the earlier orders passed by this Court, the maintainability of the present revision application is required to be decided.

7. The learned counsel for the opposite party Nos. 2 to 6 while advancing their arguments has submitted that the case arises out of an F.I.R. and the opposite party nos. 2 to 6 were acquitted by the learned trial court. Against the order of acquittal, the State had filed an appeal before the learned appellate court, but the so-called victim, who is petitioner before this case, never filed any appeal against the judgement of acquittal. He submits that there is a provision for filing an appeal by the victim against the judgement of acquittal and the appeal lies before the same court before whom the appeal against conviction lies. He further submits that in view of this position, the appeal of the petitioner against the trial court's judgement of acquittal could be filed before the learned appellate court and the revision is not maintainable. He has further submitted that as the petitioner did not file appeal against the judgement of acquittal, therefore she has no locus to challenge the other impugned judgement confirming the acquittal of the accused in an appeal filed by the State. However, he has addressed this court on the merits of the case as well.

8. Learned Senior counsel appearing on behalf of the petitioner, while advancing his arguments, has submitted that

merely because the petitioner, being the victim, did not file her independent appeal before the appellate court, the same will not preclude this Court from exercising the powers of revision. He submits that the victim was pursuing her case through the State and did not file her independent appeal. He has also submitted that in case, this Court finds that the present petition is not maintainable, then it may be observed by this Court regarding appropriate remedy which may be available to the petitioner against the order of acquittal of the accused. He has also submitted that the petitioner should be in a position to challenge the appellate order passed by the learned court below in the appeal filed by the State as well as the order of acquittal passed by the learned trial court.

9. On the merits of the case, the learned Senior counsel has submitted that the impugned judgment passed by the learned appellate court is perverse and fit to be interfered with. He submits that the petitioner was subjected to acute mental cruelty. He submits that the petitioner came back from her matrimonial house after a period of one week from the date of her marriage and had undertaken further study at the instance of her in-laws and when she finished her further study, she was not permitted to enter her matrimonial house. He submits that the petitioner as well as the husband of the petitioner are medical doctors and the behaviour of the opposite party No.-2 has subjected the petitioner to mental cruelty falling under Section 498-A of the Indian Penal Code. He has made specific reference to explanation (a) to Section 498-A of IPC. The learned counsel submits that the judgements passed by the learned courts below are perverse and fit to be set-aside.

10. At this, the learned counsel for the opposite party Nos. 2 to 6 has also referred to sub-Section 4 of Section 401 of Cr.P.C. Both the counsels have referred to the judgments passed by the Hon'ble Supreme Court reported in ***AIR 2018 SC 5206*** as well

as the judgment passed in ***Cr. Appeal (S.J.) No. 1281/2016*** disposed of on 19.09.2018 and reported in ***(2018) 4 JBCJ 327*** on the point of maintainability of the present revision application.

11. Learned counsel for the opposite party Nos. 2 to 6 has also referred to the scope of interference in revisional jurisdiction against judgment of acquittal in the judgment reported in ***(2003) (1) East Criminal Cases 201 (SC)***.

Findings of this Court

12. The case of the prosecution, in brief, is that the informant Dr. Abha Rani was married with the accused Dr. Swami Nath Tiwari on 17.04.2000 in which the father of the informant had given Rs. 5,00,000/- and jewellery worth of Rs. 1,00,000/- including the marriage expenses of Rs. 2,00,000/- to the accused persons. After marriage, the informant went to her in-laws house where the accused persons started demanding Rs. 5,00,000/- and a car as dowry and on account of non-fulfillment of demand they assaulted and tortured the informant when inability was expressed. After a week the accused persons threw out the informant from her matrimonial house with threatening to complete her medical course and bring the dowry as demanded by them. After that the informant went to Russia to complete her medical course and when she returned back then again the accused persons started torturing her to join as doctor. Again the informant went to her matrimonial house but the accused persons again threw her out after assaulting her. Later on the informant informed about the occurrence to the police by a written report on 20.02.2007.

13. On the basis of written report of the informant, a case under Sections 498(A)/34 of IPC along with 3/4 of the Dowry Prohibition Act, 1961 was registered against the accused persons being Harla P.S. Case No. 31/07 and investigation was taken up. After completion of investigation charge-sheet under Section 498(A) of Indian Penal Code was submitted only

against the husband Dr. Swami Nath Tiwari, but the learned C.J.M. took cognizance against all of the accused persons for the offence punishable under Section 498(A)/34 IPC.

14. Charge under Section 498(A) IPC and under Section 3/4 of the Dowry Prohibition Act, 1961 was framed against the accused persons on 18.03.2008 which were read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.

15. Before the learned trial court, the prosecution examination altogether five witnesses. P.W. 1 is Madan Mohan Diwedi – father of the informant, P.W. 2 is Dr. Manish Kumar – the brother of the informant, P.W. 3 is Dr. Abha Rani – the informant herself, P.W. 4 is Beni Madhav Prajapati – an independent witness and P.W. 5 is Somra Oran who is the investigating officer of the case.

16. After closure of the evidence of the prosecution, statements of the accused persons were recorded under Section 313 of Code of Criminal Procedure, wherein they denied the material questions put to them.

17. The defence had also adduced altogether three witnesses out of them, D.W. 1 is Birendra Kishore Prasad, D.W. 2 is Dr. Swami Nath Tiwari and D.W. 3 is Jwala Prasad Pathak. The defence also filed some documents in which greeting card has been marked as Exhibit- A, appointment letter of Dr. Swami Nath Tiwari has been marked as Exhibit- B whereas certificate issued by Dr. D. Y. Patil Medical College is marked as Exhibit- C.

18. The learned trial court referred to the materials on record including the prosecution as well as the defence evidences and recorded the arguments of the parties and recorded that the circumstances clearly showed that there was no demand of dowry made by the accused persons and the witnesses have also stated that there was no demand of dowry or torture to the

informant. The father of the informant had also stated that he had given money and jewellery to the accused persons voluntarily as gift. The learned trial court recorded its finding as follows:

> *"16……..However, from the evidences of the entire prosecution witnesses it is crystal clear that there is also no evidence against the accused Swami Nath Tiwary to torture his wife and demand of dowry. He has further submitted that this is a case of ego of the prosecution party and their status is more higher than the accused persons and they want to demorlise the accused persons. But the ego of the accused persons also collided with the prosecution party as the ovarion cyst of the informant has already been removed and she has filed a medical certificate of her pregnancy check up before the Family Court whereas she did not remain in the house of the accused persons. From the evidences, I also agree with the argument advanced by the defence counsel. In this way there is no sufficient evidence against the accused persons to connect them in the alleged offences and as such, case of the prosecution becomes doubtful."*

The learned trial court accordingly acquitted all the accused persons vide judgement dated 18.01.2011.

19. Against the judgement of acquittal, the State had filed an appeal before the learned Sessions Judge, Bokaro which was dismissed vide judgement dated 23.01.2012. The learned appellate court also scrutinized all the materials on record and formulated the point for determination in para 20 – *"as to whether the learned court below was proper in acquitting the respondent in the facts and circumstances of the case."* The learned appellate court considered the judgement passed by the Hon'ble Supreme Court reported in (2008) 2 SCC 561 as well as the judgement reported in 2009 (4) JLJR (SC) 133 and recorded that it is well- settled that in an appeal against acquittal, unless the judgement of the trial court is perverse, the appellate court would not be justified in substituting its own view and reverse the judgement of acquittal.

20. The learned appellate court considered the evidences on record and recorded its finding at para 22 of the impugned

judgement and concluded that the judgement of acquittal passed by the learned trial court cannot be termed as perverse warranting interference of the court in exercise of jurisdiction of appeal against acquittal. Paragraph 22 of the appellate court judgement is quoted as under:

"22. Now, coming to the facts of the case PW 1 and PW 2 as well as the PW 3 have deposed excessively beyond their statement recorded u/s 161 Cr.P.C. as well as the FIR. Though their attention were drawn in their cross-examination in which they stated that they deposed in the court to police as well in their statement recorded u/s 161 Cr.P.C but the PW 5 has categorically stated that these witnesses have not stated the same to him. The I.O. has categorically stated that in the investigation, he did not find any material to suggest that the informant/PW 3 went to her matrimonial house for the second time but PW 1, PW 2 and PW 3 have narrated several instances of the informant going to her matrimonial house. Thus, the testimony of PW 1, PW 2 and PW 3 suffers from the vice of exaggeration, embellishment and improvement. It is settled principle of law that if truth and falsehood are so inextricably mixed up down to the core that disengagement is impossible. Court can reject evidence in toto, as has been held by the Hon'ble Apex Court in its judgment in the case of Bhagwan Tana patil v. State of Maharastra AIR 1974 SC 21 (15). It is also settled principle of law that where evidence in court contradicts statement before police on vital points the evidence is unreliable as has been held by the Hon'ble Apex Court in its judgment in the case of Namdeo Dulata Dhayagude v. State of Maharastra AIR 1977 SC 381.

The DW 1 and DW 2 have categorically stated that the informant never visited her matrimonial house for the second time. This statement of fact in the testimony of DW 1 and DW 2 has remained unchallenged in their cross-examination. It is settled principle of law that in absence of cross-examination the evidence of witnesses remained unchallenged and it ought to have been believed as has been held by the Hon'ble Apex Court in the case of State of U.P. Vs. Nahar Singh (AIR) 1998 SC 1328 paragraph 13. Thus, the testimony of the prosecution witnesses of the occurrence of alleged torture after 25.04.2000 is certainly not trustworthy. There is no specific overt act attributed to any of the accused persons in the allegation of torture or treatment of cruelty. The PW 1 did not state before police of giving cheques to the accused Uma Shankar Tiwari. It is not the case of the prosecution that DW-2 took dowry. The character of the witnesses, their extent and manner of

interestedness the animus of the witnesses and also keeping in view that they have not fared in their respective cross-examination in an unimpeachable manner as well as keeping in view that the allegation against the accused/respondents were omnibus in nature without any specific date and time. I have no hesitation in holding that the impugned judgment of acquittal cannot be termed perverse warranting interference of this court in exercise of its jurisdiction of appeal against acquittal."

21. This Court finds that the victim of the case i.e. the petitioner herein did not choose to take any steps against the judgement of acquittal of the accused persons and the appeal was filed by the State in the year 2011 which was numbered as Criminal Appeal No. 21 of 2011. Admittedly, the petitioner was not a party to the said appeal. The petitioner has filed the present case challenging the appellate order upholding the judgment of acquittal passed in favour of the present opposite party nos. 2 to 6 and in this revision application, as well as the judgment of acquittal passed by the learned trial court.

22. The point of maintainability of the present revision petition has been seriously raised by the learned counsel appearing on behalf of the opposite party nos. 2 to 6. There is no dispute that the victim who is the petitioner before this Court, had a right to file independent appeal against the judgement of learned trial court acquitting the opposite party nos. 2 to 6. The Hon'ble Supreme Court, in the judgement reported in AIR 2018 SC 5206 has clearly crystalized the rights of victim of the crime and has held that proviso to Section 372 of the Cr.P.C. must be given life, to benefit the victim of an offence and by referring to the interpretation on the basis of plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear that a victim as defined in Section 2(wa) of the Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. The Hon'ble Supreme Court

also held that the right to the victim will also be available when the alleged offence took place prior to coming into force of amendment in section 372 Cr.P.C. on 31.12.2019 but the conviction was recorded later, which is also the situation in the present case where the informant is also the victim of the case.

23. In the present case, there is no dispute that for offence under Section 498A of Indian Penal Code as well as Section 3/4 of Dowry Prohibition Act, 1961 which were the provisions under which the First Information Report was instituted and the accused were facing the trial, if they had been convicted, the appeal could have been filed only before the appellate court i.e. the Sessions Judge before the learned court below. Thus, appeal, if any, which could be filed by the victim or the State against the judgement of acquittal could have been filed only before the learned Sessions Judge. Admittedly, the petitioner did not file the appeal and it was only the State who had filed the appeal and had lost the case before the appellate court and the State did not challenge the appellate order. The victim/informant has filed the instant revision application challenging the appellate order confirming the acquittal of the opposite party nos. 2 to 6 and has also challenged the judgement of the learned trial court acquitting opposite party nos. 2 to 6 in the present revision application.

24. So far as the power of revision under Section 401 of Cr.P.C. is concerned, sub-Section (4) thereof clearly provide that where under the code of Cr.P.C. an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. Accordingly, the revision filed by the petitioner challenging the order of acquittal passed by the learned trial court having not been challenged by the petitioner by way of appeal before the learned appellate court, cannot be permitted to be challenged by the petitioner in revisional jurisdiction. Accordingly, the

revision petition, to the extent, it challenges the trial court's judgement of acquittal, is not maintainable.

25. So far as the revision filed against the appellate court's judgement is concerned, Section 401 of Cr.P.C. clearly provides that in case of any proceedings, the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and dispose of the matter in the manner provided under Section 392.

Further, Section 397 of Code of Criminal Procedure clearly provides that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, - recorded or passed, and as to the regularity of any proceedings of such inferior Court.

26. This Court finds that the power under Section 397 (1) of Code of Criminal Procedure, 1973 is inherent power and can be exercised suo-moto as held by the Hon'ble Supreme Court in the judgement reported in ***(1981) 2 SCC 758***. Thus, this Court is of the considered view that although the revision filed by the petitioner challenging the judgement of acquittal by the learned trial court directly before this Court, is not maintainable, but the challenge to the appellate court's judgement confirming the judgement of acquittal by the learned trial court in an appeal filed by the state is certainly amenable to revisional jurisdiction once the impugned appellate court's judgement is brought to the notice of this court at the instance of the informant - petitioner , though the grounds for interference will certainly be very limited and confined to exercise of power by the appellate court.

27. In the judgement passed by the Hon'ble Supreme court reported in ***(2002) 9 SCC 393 (Thankappan Nadar and others versus Gopala Krishnan and Another)***, the de facto complainant had filed revision under Section 397 read with Section 401 of Cr.P.C. against the order of acquittal passed by the appellate court, wherein it was held that the law does not empower the court exercising revisional jurisdiction to reappreciate the evidence. The Hon'ble Supreme Court referred to the earlier judgement reported in ***(1973) 2 SCC 583 (Akalu Ahir v. Ramdeo Ram)*** as well as judgement passed in the case of "***Vimal Singh versus Khuman Singh"*** reported in ***(1998) 7 SCC 223*** and reiterated, by way of illustration, the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

> *(i) Where the trial court has* ***no jurisdiction to try*** *the case, but has still acquitted the accused;*
> *(ii) Where the trial court has* ***wrongly shut out evidence*** *which the prosecution wished to produce;*
> *(iii) Where the appellate court has* ***wrongly held the evidence which was admitted by the trial court to be inadmissible****;*
> *(iv) Where the* ***material evidence has been overlooked*** *only (either) by the trial court or by the appellate court; and*
> *(v) Where the* ***acquittal is based on the compounding of the offence which is invalid under the law****.*
> *These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal****."(emphasis supplied)***

28. In the aforesaid judgement ***(2002) 9 SCC 393 (Thankappan Nadar and others versus Gopala Krishnan and Another)*** the Court further observed:

> *"8. In Vimal Singh v. Khuman Singh this Court after considering various decisions, observed as under:*
> *"9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring*

illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

29. Considering the very limited scope to interfere with the appellate court's judgement confirming the judgement of acquittal by the learned trial court, this court finds that the evidences on record have been fully appreciated by the learned appellate court within the limited scope of the appellate court's jurisdiction to interfere with the judgement of acquittal on the basis of the arguments advanced by the learned counsel for the appellant- State. The learned counsel for the petitioner has not advanced any such arguments so as to satisfy this court on the point of any glaring illegality or causing miscarriage of justice or absence of jurisdiction of the learned trial court, which has not been considered by the learned appellate court or any other glaring or material irregularity or perversity or error in exercise of jurisdiction by the appellate court or refusal or wrongful exercise of power as vested in the appellate court in the matter of appeal against acquittal. The argument of the learned counsel for the petitioner would certainly require reappreciation of evidences on record which is not permissible in the limited jurisdiction being exercised by this court in revisional jurisdiction dealing with appellate court's confirming judgement of acquittal by the trial court.

30. As a cumulative effect of the aforesaid findings, this petition is dismissed ***as not maintainable against the judgement of acquittal of the learned trial court*** AND ***devoid of merits against the judgement of the appellate court confirming the acquittal of the accused in an appeal filed by the State***.

31. This case was admitted on 16.05.2012 and the issue of maintainability was raised much later in the year 2018. It is observed that it will be open to the petitioner to proceed as per law.

32. Pending interlocutory applications, if any, are closed.

33. Let the Lower Court Records be immediately sent back to the court concerned.

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

(Anubha Rawat Choudhary, J.)

Pankaj