

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.972 of 2012

Arising Out of PS.Case No. -2922 Year- 2004 Thana -null District- PATNA

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Dr. Subhash Kumar @ Subhash Kumar Gupta, son of Late Jai Ram Gupta, resident
of Village-Shokhara, P.S.-Phulwaria, District-Begusarai

.... Petitioner/s

Versus

1. The State of Bihar

2. Shruti Kumari, daughter of Sri Swadesh Narain, resident of House of Dr.
N.P. Sinha, Mohanpur Punaichak, P.S.-Shastri Nagar, District-Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shakti Suman Kumar

For the Opposite Parties : Mr. Chandra Bhushan Prasad

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 18-12-2015

Heard learned counsels for the parties.

The present criminal revision application is directed against the judgment dated 06.06.2012 passed by learned Additional Sessions Judge-IX, Patna in Cr. Appeal No. 488 of 2007 affirming the judgment and order of conviction and sentence dated 29.11.2007 passed by learned Judicial Magistrate, 1st Class, Patna in Trial No. 1120 of 2007, arising out of Complaint Case No. 2922(C) of 2004, whereby the petitioner has been convicted for the charges under Sections 498A and 420 of the I.P.C and sentenced to undergo R.I. for three years and fine of Rs. 3000/- and two years R.I. and fine of Rs. 2000/-, respectively. On non-payment of fine, the convict has further been directed to undergo simple imprisonment for three months. Both

the sentences have been directed to run concurrently. Hence, both the judgments of the learned trial court as well as the appellate court are under challenge in the present proceeding.

O.P. No. 2 had entered appearance in pursuance to the notice issued vide order dated 21.9.2012. Initially, the complainant opposed the prayer of the petitioner made in the present revision application by filing counter affidavit to the effect that the accusation is specific and the charges have conclusively been proved by the prosecution witnesses. More over, the judgment of conviction has been upheld by the learned appellate court.

Subsequently, an application under Section 482 Cr.P.C. has been filed to the effect that the complainant/ O.P. No. 2 has entered into compromise with the petitioner and has received the maintenance amount, permanent alimony amount and the loan amount with interest which was given to the petitioner. Hence, the petitioner be acquitted.

The factual matrix of the case is that the O.P. No. 2 filed Complaint Case No. 2922C of 2004 with accusation against her husband, brothers of the husband and widow mother in law as accused. It was stated that she was married with the petitioner on 24.11.2003 on being conveyed by the accused persons that the petitioner is a doctor, employed in a Government Hospital at Delhi.



The father of the complainant spent Rs.3.5 lacs in the marriage. On 25.11.2003, the complainant went to her in-law's house at Begusarai but from the very second day of the marriage, the accused persons started making satirical comments regarding inadequate ornaments given by her father and demanded additional 12 bhars of gold ornaments. During her brief stay at the in-law's place at Begusarai, the accused persons tortured the O.P. No. 2 as the mother in law confined her in a room and deprived her of even adequate food. The O.P. No. 2, out of sheer frustration and mental agony, claims to have requested her husband to accompany her to Delhi, the place of his employment. The complainant went to Delhi with her husband on 1.12.2003 where the petitioner asked the complainant to demand Rupees Four lacs from her father, as loan, for starting a medical clinic, which would be returned later on. Consequently, the father of the complainant lent Rs.3,97,000/- through four bank drafts to the petitioner but he never started any medical clinic. Subsequently, the complainant/ O.P. No. 2 came to know that the petitioner is not a doctor. O.P. No. 2 was brought back by the petitioner on 22.1.2004 at Patna when demand of Rupees One Lac was made to supplement in the clinic but when the entire fact was disclosed to the parents by the O.P. No. 2, the said amount was not paid, upon which the O.P. No. 2 was given threat to her life. Though the petitioner took a life

insurance policy amounting to Rs.5,00,000/- on 23.2.2004 in his name, but, he named his brother Gopal Prasad Gupta, as the nominee.

In support of the accusations made in the complaint, the complainant was examined on S.A. and after the examination of witnesses, process was directed to be issued after cognizance being taken for the offences under Sections 498A,406 and 420 IPC. Accordingly, charges were framed against the accused persons. During trial, five witnesses were examined, of which C.W. 1 is complainant Shruti Kumari, while C.W.2 is Swadesh Narain (father of the complainant), C.W. 3 is Anita Devi (mother of the complainant), C.W. 4 is Devendra Singh (neighbour of the complainant) and C.W. 5 Raghavendra Singh is an Advocate's clerk who has proved the letter of the Bank Manager hence is a formal witness. No witness has been examined on behalf of defence.

Admittedly, C.W. 1, who is the complainant herself, is the only direct witness to the actual occurrence, as alleged by her, while CWs 2 and 3 are only hear say witness with regard to the occurrence, which as per the allegations has taken place at the 'sasural' of the complainant i.e., at Begusarai and at Delhi, where the complainant stayed with her husband from 1.12.2003 to 21.01.2004. The deposition of C.W. 4 is mainly confined to the occurrence, alleged to have taken place on 22.1.2004 at Patna.



The learned Trial Court has found that the charges under Section 406 of IPC has not been proved against any of the accused, but so far as Sections 498A and 420 of the IPC are concerned, the same has been found to be not proved against all the accused persons except the husband i.e., the petitioner. The allegation that the petitioner is not a Doctor has specifically been held by the learned Trial Court to be not proved, since the persons, who negotiated the marriage and conveyed the bridal side about the qualification of the petitioner, namely Nand Kishore, Sanjay and Manoj Choudhary were not examined during trial and also since the Medical Degree was exhibited Ext-A by the defence. The petitioner was convicted for the charges under Sections 498A and 420 IPC on the ground that C.W. 1 proved the charge of torture against the petitioner and the lending of loan amount to the tune of Rs.3,97,000/- through four bank drafts to the petitioner. Accordingly, the petitioner was sentenced to undergo RI for three years along with fine of Rs.3000/ for the charge under section 498A IPC and further sentenced to undergo RI for two years along with fine of Rs.2000 for the charge under Section 420 IPC.

The judgment of the learned trial court was challenged in Cr. Appeal No. 488 of 2007. The learned Additional Sessions Judge, Patna vide judgment dated 6th June, 2012, upheld the

judgment of conviction and sentence passed by the learned trial court, hence the present revision.

On perusal of the records of the case, it has come forth that the petitioner had filed H.M.A. Petition No. 873 of 2004 for restitution of conjugal rights on 12.10.2004 at Delhi but the same was dismissed for default on 26.10.2005 (Ext.4), whereas, the O.P. No. 2 filed Matrimonial Suit No. 72 of 2005 on 15.3.2005 with a prayer for divorce. An application under Section 24 of the Hindu Marriage Act was also filed for grant of interim maintenance in the said Matrimonial Suit wherein the learned Principal Judge, Family Court, Patna vide order dated 14.2.2006 granted interim maintenance of Rs.8000/- per month along with Rs.10,000/- as litigation cost. Matrimonial Suit No. 72 of 2005 was decreed vide judgment dated 11.5.2007 whereby decree of divorce was granted in favour of the O.P. No. 2 and the marriage was dissolved between the petitioner and the complainant/O.P. No. 2 on the ground of cruelty and desertion being proved and the petitioner was directed to make payment of permanent alimony of Rupees Three Lacs along with Rupees Thirty Thousand interest. The petitioner filed Miscellaneous Appeal No. 305 of 2007 challenging the judgment passed in the Matrimonial suit but the same was dismissed by a Division Bench of this Court vide order dated 6.1.2011, since the payments of permanent alimony were made



and the petitioner did not press the said Misc. Appeal. Though decree of divorce was granted in favour of the complainant, on the grounds of cruelty and desertion but the ground of cruelty was founded on the premise that the petitioner was not a doctor, without having any evidence to that effect or proving the same. While the ground of desertion has also been wrongly decided, without taking into consideration the fact that the ground of desertion can be taken only after actual desertion period of two years.

During the pendency of the Miscellaneous Appeal, the petitioner paid Rupees Three Lacs as permanent alimony along with interest of Rupees Thirty Thousand to the O.P. No. 2 but in the meantime, O.P. No. 2 filed Execution Case No. 6 of 2007 for realization of interim maintenance amount to the tune of Rs.1,78,000/- . Thereafter, on receiving the permanent alimony, O.P. No. 2 filed a petition on 9.5.2011 before the learned court below to the effect that the amount of permanent alimony has been received along with interest and only interim maintenance amount of Rs.1,78,000/- remains due.

O.P. No. 2 also filed Misc. Appeal No. 10 of 2011 for return of the personal articles, ornaments and also Rs.3,97,000/- given as loan to the petitioner through bank drafts. Subsequently, an application under Section 482 Cr.P.C. has been filed in the present



proceeding to the effect that the issue has been compromised as the petitioner has already paid Rs.4,50,000/- to the O.P. No. 2 through Demand Draft no. 039697 dated 16.6.2014 drawn on Axis Bank, New Delhi and the same has been encashed by the O.P. No. 2. Hence, the O.P. No. 2 has prayed for setting aside the judgment of conviction of the petitioner and for recording acquittal of the petitioner with the undertaking that the Execution Case No. 6 of 2007 and Misc. Case No. 10 of 2011 pending before the court of the learned Principal Judge, Family Court, Patna shall be withdrawn.

In view of the peculiar and inconsistent stand of the complainant/ O.P. No. 2, this court has to consider the prayer of the petitioner in the present revision application coupled with the subsequent prayer of O.P. No. 2, which has been pressed through an application under Section 482 Cr.P.C., for compromise in view of conviction for the charge under Sections 420 and 498A IPC, of which offence under Section 420 IPC is compoundable with the permission of the court and consent of the person cheated.

This is not in dispute that offence under Section 498A IPC is not compoundable though in a series of cases, viz., Sushil Kumar Sharma Vs. Union of India and others (2005) 6 Supreme Court Cases 281, Preeti Gupta & Anr v. State of Jharkhand & Anr. AIR 2010 SC 3363, the Apex Court recommended the Law



Commission of India and the Government to make appropriate change in the provision. The 243rd Report of the Law Commission of India has also recommended for making this provision of Section 498A IPC as compoundable. The Supreme Court of India, in the case of Ramgopal Vs. State of M.P. and Anr. (2010) 13 Supreme Court Cases 540 suggested the Law Commission to send a suitable proposal to the Union Government for making suitable amendment in the statute and in the 154th Report of the Law Commission also there was a clear recommendation to make the offence under Section 498A IPC compoundable. Justice Mallimath Committee on Criminal Justice Reform also recommended that this provision should be made compoundable as well as bailable. The Committee of Petitions (Rajya Sabha), in the report presented on 7.9.2011, observed at para 13.2 under the heading “Making the offence under Section 498A IPC compoundable” which reads as follows:

“The Committee notes that the offence under Section 498A IPC is essentially a fallout of strained matrimonial relationship for which there might be various considerations. Since there can be various causes leading to an offence under Section 498A, IPC and parties to the marriage could be responsible for the same in varying degrees, it would be appropriate if the remedy of compromise is kept open to settle a matrimonial dispute. In this context, the Committee feels that in case of any marital discord which has

reached the stage of a complaint under Section 498A, IPC, it would be better if the parties have the option of a compromise whereafter they can settle down in their lives appropriately for a better future rather than diverting their energies negatively by pursuing litigation. The Committee recommends to the Government to consider whether the offence under Section 498A, IPC can be made compoundable.”

The Law Commission of India, in 243rd Report on 498A IPC, recommended for making the offence under Section 498A as compoundable with permission of the court and with the consent of the woman subjected to cruelty and also recommended that necessary amendment should be made in Table 2 forming part of Section 320 Cr.P.C. but till date the same has not been made compoundable.

This Court is conscious of the fact that sub-Section (9) of Section 320 Cr.P.C. mandates that no offence shall be compounded except as provided by this Section. Obviously, an offence can be compounded in no other manner but only in accordance with the provision under Section 320 Cr.P.C.

The question with regard to the inherent powers of the High Court in quashing criminal proceeding against an offender who has settled his dispute with the victim of the crime but the crime in which he is involved is not compoundable under Section 320



Cr.P.C., in that situation the power under Section 482 Cr.P.C. can be exercised in the interest of justice, provided the offences alleged are not serious, heinous or the offences of moral turpitude, like, offence under the provision of the Prevention of Corruption Act. The issue was considered by the Apex Court in the case of B.S. Joshi and others Vs. State of Haryana and another (2003) 4 Supreme Court Cases 675 where it has been held that for the purpose of securing the ends of justice, quashing of FIR become necessary, Section 320 would not be a bar to the exercise of power of quashing. Paragraph 8 reads as follows:

“It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.”

Similar view was taken by the Apex court in the case of Nikhil Merchant Vs. CBI (2008) 9 SCC 677 and Manoj Sharma Vs. State and ors. (2008) 16 SCC 1, but Hon'ble Mr. Justcie Markandey Katju who was one of the members of the above two decisions doubted the exercise of jurisdiction under Section 482 Cr.P.C. of quashing the prosecution on the basis of compromise in



non-compoundable offences as the court cannot amend statute and statutory provision under Section 320 Cr.P.C. as something which cannot be done directly cannot be done indirectly. Hence, the matter was referred to larger bench in case of Gian Singh Vs. State of Punjab and another, (2010) 15 Supreme Court Cases 118. The issue was ultimately decided by Three Judge Bench of the Apex Court, reported in 2012(10) Supreme Court Cases 303 where it is held that the compounding can only be done as per the provisions of Section 320 Cr.P.C. but in the interest of justice non-compoundable offences can also be quashed in exercise of power under Section 482 Cr.P.C. subject to the guideline engrafted in the provision under Section 482 Cr.P.C. viz. (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court but such power can only be exercised in the case pre-dominantly having civil flavour, commercial, financial, mercantile, civil partnership or arising out of matrimonial disputes and not the heinous crime affecting the society or a case of moral turpitude. The concluding ratio laid down in paragraph no. 61 reads as follows:

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the



offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of



matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

Hence, in view of the above ratio laid down by the Apex Court, the cases under the matrimonial proceeding can be quashed in the interest of justice in exercise of jurisdiction under Section 482 Cr.P.C.



So far as the merits of the case is concerned, admittedly the marriage of the petitioner with the complainant was performed on 24.11.2003. The complainant went to her matrimonial house at Barauni, Begusarai on 25.11.2003 and she claims that additional demand of 12 bhars of gold ornaments was made on the very next day i.e., 26.11.2003. The complainant herself admits that being frustrated she persuaded her husband and went to his place of employment at Delhi on 1.12.2003. Hence, she altogether remained in her matrimonial house for five days. The complainant alleges to have come back to her parents house on 22.1.2004 and thereafter, she never returned back. Hence, she remained with the petitioner for less than two months after the marriage but she has alleged torture against the entire in-laws family including the widow mother-in-law within less than a week of stay at her in-laws house and hence the torture inflicted by in-laws at her in-law's place has rightly been disbelieved by the learned court below.

Altogether five witnesses have deposed as complaint witnesses, of which, only the complainant is the direct witness and P.Ws 2 and 3 being the parents and P.W. 4 being neighbour of the complainant, have deposed as hear say witnesses. P.W. 5 being Advocate's clerk has proved the letter of the banker. The complainant admittedly has not brought anything specific on record to

suggest that actually torture was inflicted upon her.

The provision of Section 498A IPC reads as follows:

“498A. 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 wilful 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.]

‘Cruelty’ has been defined by the explanation added to Section itself. The basic ingredients of Section 498A IPC are cruelty and harassment. In the instant case, the accusation is of



demanding 12 bhars of gold at matrimonial house at Begusarai but the complainant does not suggest that any such demand was made at Delhi and ultimately she alleged that Rupees One Lac was demanded when the husband came to drop her on 22.1.2004 to her parents house. The demand of loan of Rupees Four Lacs was made on 3.12.2003 at Delhi. The same cannot be treated to be a dowry demand since the complainant herself claims that the said amount was borrowed as loan. The loan amount was paid on 4.12.2003, 5.12.2003 and 10.12.2003 through different bank drafts, meaning thereby there was no such coercion for the same. Hence, the evidence of P.W. 1 with regard to the torture does not inspire confidence.

It is a settled legal proposition that if two courts below have recorded a finding of fact, the question of re-appraisal of evidence by the High Court does not arise unless it is found to be totally perverse. It appears from the record that both the learned trial court and the appellate court passed the orders after dissolution of marriage and the payment of permanent alimony but failed to appreciate the evidence in the background of changed marital status of the parties. Both the learned Courts below have also failed to appreciate the admitted fact that the complainant stayed with the petitioner for less than two months, she stayed for five days at in-laws house and thereafter went along with the petitioner to his place of



work at Delhi. The last and the main incident which the complainant talks about has taken place on 22.1.2004 but the complaint was filed on 30.11.2004, much after filing of the case for restitution of conjugal rights which, apparently, suggests that the complaint was filed as a retaliatory measure in order to harass and the complainant was not willing to resume the conjugal life. The complainant filed Matrimonial Case No. 72 of 2005 on 15.3.2005 with a prayer for divorce and the matrimonial suit was decreed, marriage was dissolved with a direction to the petitioner to pay permanent alimony of Rupees Four Lacs. But all these circumstances which are vital for deciding the charge of cruelty or cheating have not been considered by both the learned courts below. The learned trial court has rightly held at page 16 of the judgment that the torture was not expected to be inflicted within few days of the marriage. The parents of the complainant who were conveyed about the torture have admitted that they did not verify about the same from any source. Hence, the accusation levelled and the evidence led with regard to the charge of torture has not been properly appreciated by both the learned courts below. More over, the learned courts below on same set of evidence disbelieved the accusation against other in-laws as well as accusation under Section 406 IPC against the petitioner. The charges found proved against the petitioner under Section 498A and 420 IPC are contrary to the

evidence on record.

So far as charge under Section 420 IPC is concerned, it deals with cheating and dishonestly inducing delivery of property by inducing the person so deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security. Cheating has been defined in Section 415 IPC. The essential ingredients of the offence of “cheating” are ---(i) deception of a person either making a misleading representation or other commission or omission (ii) to fraudulent and dishonest inducement to either deliver any property to any person or to consent of retention thereof of which he would not do or omit if he were not deceived and which act or the omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Having gone through the complaint petition, the deposition of complaint witnesses and the judgments of the learned courts below, along with other materials on record, it comes forth that the accusation of torture, cheating and breach of trust against the petitioner has been levelled in the backdrop of the allegations that the petitioner's marriage was performed with the complainant, claiming the petitioner to be a Doctor and on the pretext of being a Doctor, the



petitioner borrowed Rs.3,97,000/- as loan from the father of the complainant for opening a Medical Clinic at Delhi and thus the petitioner committed offence of cruelty, cheating and breach of trust, since he did not open the clinic. Here, the relevant and alleged dates again need to be examined, so as to find out whether in the backdrop of the charges, the findings of the learned Trial Court are in the correct perspective or are perverse.

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| 24.11.2003 | Marriage of petitioner and complainant |
| 25.11.2003 | Bidai of complainant, after which she reached her 'sasural'. |
| 26.11.2003 | As per the allegations by complainant taunts and satirical comments were passed against her by in-laws and additional 12 bhar of gold ornaments were demanded. |
| 1.12.2003 | Being frustrated, the complainant persuaded her husband to take her along to Delhi, which he complied. |
| 3.12.2003 | Petitioner sought loan of Rs.4,00,000/- from complainant's father on phone. |
| 4.12.2003 | Two Demand Drafts of Rs.49,000/- each issued in favour of petitioner. |
| 5.12.2003 | One Demand Draft of Rs.49,000/- issued in |

favour of petitioner.

10.12.2003	Rs.2,50,000/- issued to petitioner through Demand Draft.
19.12.2003	Complainant enquired about opening of clinic from petitioner, who allegedly stated that he was not a Doctor and that he was having an affair with a girl named Nafisa, whom he has married.
22.1.2004	Petitioner and complainant reach Patna, where it is alleged that the petitioner demanded additional amount of Rupees One Lakh, and on refusal, he threatened the complainant.
23.2.2004	Petitioner took an L.I.C. policy in his name, but made his brother a nominee.
12.10.2004	Petitioner filed a case for Restitution of conjugal rights at Delhi – HMA Petition No. 873 of 2004.
30.11.2004	Complaint case instituted by complainant
15.3.2005	Divorce case filed by complainant
26.10.2005	Petition for restitution dismissed for default
11.5.2007	Divorce case allowed on grounds of cruelty

and desertion.

Thus, the factual matrix which emerges, gives a clear picture that the allegation of additional demand of 12 bhars of golden ornament was made only at Begusarai and not thereafter. At Delhi, the petitioner only sought a loan of Rs.3,97,000/-, which seems and appears to be readily given to the petitioner within no time and the same thereby negates any coercion. Even the complainant has not suggested any torture being meted out to her for seeking the loan amount. Hence, the accusation of torture in this regard is not at all made out against the petitioner.

Moreover, in view of the specific finding of the learned Trial Court that the allegation against the petitioner of not being a Doctor has not been proved, has been rightly held by the learned Trial Court, in view of the inconsistent stand of C.Ws 1,2 and 3 who specifically submit of not having made any verification in this regard. Rather, the complainant has herself stated in her cross-examination that her husband had shown his Medical Degree to her.

Non-opening of a Medical clinic within a month and a half of taking loan does not at all amounts to cheating under Section 420 of the IPC, nor it amounts to cruelty of any sort.

Now, coming to the final leg of allegation with regard to occurrence dated 22.1.2004, it has been alleged that the



petitioner threatened the complainant on refusal of giving additional amount of Rupees One Lakh. C.W. 4 has supported the occurrence, but at the same time, he has stated that this occurrence took place on 26.1.2004. Such inconsistency, coupled with the fact that the complaint case was instituted on 30.11.2004 for occurrence of 22.1.2004 only after the filing of Matrimonial Suit by the petitioner for restitution of conjugal rights vide HMA Petition No. 873 of 2004 on 12.10.2004, do not at all inspire confidence or supports the allegation of cruelty being meted out to the complainant.

In the present case, both the learned courts below have come to a definite finding that the petitioner possessed a valid medical degree which has been brought on record as Ext. A and there is nothing on record that the petitioner ever claimed that he was in Government Service. The complainant in paragraph 4 of the complaint petition and in her evidence has admitted that Rs.3,97,000/- was lent to the petitioner on promise to return. Neither there is any averment in the complaint nor any evidence has been led to the effect that either any request was made to the petitioner to return the said amount or that the petitioner denied to return the amount. Hence, if the medical clinic was not started, after having borrowed money for the said purpose, the same would not amount to cheating. The intention of cheating has to be at the very inception of the promise. Even according to accusation in the complaint the money was taken to



start a medical clinic. The petitioner admittedly being a doctor, was capable of starting a medical clinic, hence it cannot be said that at the time of taking money the petitioner had any intention to cheat as he was capable to fulfill his promise of not only starting the medical clinic but also to return the loan amount. Moreover, the complainant has herself claimed, which the learned Trial Court has also appreciated that she enquired on 19.12.2003 with regard to the clinic, on which the petitioner allegedly claimed that he was not a Doctor. The final installment of loan amount having been received on 10.12.2003, it cannot be said that substantial time had passed after having received the loan. It appears that the accusation has a civil flavor arising out of some or the other matrimonial disputes. Hence, the finding recorded by both the learned courts below and the consequent conviction for the charge under Sections 498A and 420 IPC are not only perverse but contrary to the evidence on record.

Both the learned courts have not appreciated the evidences nor have inferred the presumptions in correct perspective, particularly the fact that the complainant has levelled the allegation from the very next date of her having come to her matrimonial house, her having stayed there only for five days, having stayed with the petitioner for less than two months. The very fact that the decree of divorce was granted to the complainant and permanent alimony was paid to her prior to the order of conviction being passed, coupled with

the fact that the case for restitution was filed by the petitioner, much before the institution of the complaint case. More so, there is no evidence of any torture being meted out to the complainant.

In view of the perversity of findings, non appreciation of evidence on record in true prospective, subsequent development i.e. (i) the loan amount having been returned to the extent of four lacs fifty thousand (ii) the payment of permanent alimony amount with interest, in order to do complete justice, in the peculiar facts and circumstances of the case, the judgment of conviction and sentence dated 29.11.2007 passed by learned Judicial Magistrate, 1st Class, Patna in Trial No. 1120 of 2007, arising out of Complaint Case No. 2922(C) of 2004 and the judgment dated 06.06.2012 passed by learned Additional Sessions Judge-IX, Patna in Cr. Appeal No. 488 of 2007 are hereby set aside.

Accordingly the criminal revision application is allowed. The petitioner stands discharged from the liabilities of bail bonds.

Let the lower court records be returned.

(Dinesh Kumar Singh, J)

Shageer/Anil/-

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