

HIGH COURT OF TRIPURA AGARTALA

CrI. Rev. P 107 of 2006

Sri Pradip Chakraborty
S/o late Sudhindra Chakraborty
Radhamadhabpur
P.S. Kanchanpur, North Tripura ... Petitioner

-VS.-

The State of Tripura Respondent

BEFORE THE HON'BLE MR JUSTICE U.B. SAHA

Advocate for the petitioner : Mr. B. Banerji, Advocate

Advocate for the respondent : Mr. A. Ghosh, P.P.

Date of hearing : 17.06.2015
& delivery of the judgment.

Whether fit for reporting : No

JUDGEMENT AND ORDER(oral)

1. The instant Revision Petition is filed under Section 397 read with Section 401 of Cr.P.C. against the judgment and order dated 22.08.2006 passed by the learned Addl. Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No. 20(3) of 2006 wherein the learned Addl. Sessions Judge upheld the judgment of conviction but modified the order of sentence dated 01.07.2006 passed by the learned Judicial Magistrate, 1st Class, Dharmanagar in GR 190 of 2005, from one year rigorous imprisonment with a fine of Rs.5000/- to the extent of simple

imprisonment for one year with fine of Rs. 5000/-, in default to pay fine to suffer further imprisonment for three months as awarded by the trial court.

2. Heard Mr. B Banerjee, learned counsel for the petitioner as well as Mr. A Ghosh, learned PP appearing for the respondent State.

3. The prosecution case leading to the instant revision petition, in brief, is that, on 6th Agrahayana as per Bengali calendar, corresponding to the month of November, 1997 AD, the marriage of the informant, Smt. Kalpana Chakraborty, solemnized with the convict petitioner as per Hindu religious rights and customs and after her marriage, the petitioner and his relatives started mental and physical torture on her on demand of dowry of Rs. 50,000/-. They also tried to kill her by pouring poison on her mouth forcibly. For that reason, she had undergone treatment at Kanchanpur Hospital. Ultimately, she lodged complaint on 09.06.2005 before the learned SDJM, North Tripura, Dharmanagar and on receipt of the said complaint, learned SDJM forwarded the same to the Officer-in-Charge, Kanchanpur PS for investigation which was registered as Kanchanpur PS case No. 28 of 2005 under Sections 498(A)/307/34 IPC.

4. After investigation the police submitted the charge-sheet against the accused petitioner and on receipt of the charge-sheet, learned SDJM took cognizance of the offence against the

accused petitioner for the offence punishable under Section 498(A) IPC and transferred the case before the learned Judicial Magistrate, 1st Class, Dharmanagar, North Tripura.

5. The learned Judicial Magistrate, 1st Class, framed charge against the accused petitioner under Section 498(A) IPC which reads as under:

“

C H A R G E

That you being the husband of the complainant Smti. Kalpana Chakraborty and you married the said Smt. Kalpana Chakraborty in the year 1997, as per Hindu Rites and customs socially and after marriage of 4/5 days later you torture upon Smt. Kalpana Chakraborty mentally and physically on demand of Dowry of Rs. 50,000/- and subjected to cruelty upon her and thereby committed an offence punishable U/S. 498(A) of the Indian Penal Code and within my cognizance.”

6. To substantiate the charge, prosecution examined as many as 12 witnesses and also exhibited some documents. Learned Judicial Magistrate, 1st Class, hereinafter referred to as trial court, after considering the evidence adduced by the prosecution and the statement under Section 313 Cr.PC, convicted the petitioner under Section 498(A) IPC and sentenced him to suffer RI for one year and a fine of Rs. 5,000/-, in default of payment of fine money to suffer RI for three months.

7. Being aggrieved by the judgment of the trial court, the petitioner preferred an appeal before the learned Addl. Sessions Judge, North Tripura, Dharmanagar, which was registered as

Criminal Appeal No.20(3) of 2006. Learned Addl. Sessions Judge after hearing the parties upheld the order of conviction and modified the sentence from one year RI with a fine of Rs. 5,000/- to one year SI with a fine of Rs. 5,000/-, failing of the payment of fine money to suffer further imprisonment for three months as awarded by the trial court.

8. Aggrieved by the judgment of the Addl. Sessions Judge, petitioner preferred this Revision petition.

9. When the instant revision petition was pending before this Court, the petitioner has filed an affidavit along with the affidavit of the victim informant Smt. Kalpana Chakraborty (Sharma). In the affidavit, it is stated that they have settled the dispute and the informant-victim has also stated that she has no grievance against the petitioner as the matter has been settled before the Women's Commission and the petitioner agreed to pay an amount of Rs. 90,000/- to the informant-victim and upon receipt of the said amount, the informant-victim would withdraw the case lodged against the petitioner. Accordingly, the petitioner has paid Rs. 90,000/- on different dates. Informant-victim also in her affidavit, Annexure-2 to the additional affidavit, filed by the petitioner specifically stated that she has no grievance against the petitioner at present and she has withdrawn all allegations lodged by her against her husband.

10. Mr. Banerjee, learned counsel for the petitioner, submits that though the instant revision petition is filed under Section 397 read with Section 401 of the Cr.PC, but the same may be treated as an application under Section 482 of the Cr.PC due to subsequent settlement between the parties. He further submits that this Court in Criminal Revision petition No. 05 of 2013 has considered almost similar situation wherein this Court exercised its jurisdiction under Section 482 Cr.PC and finally upheld the conviction and interfered with the sentence providing with the benefit of Section 360 of the Cr.PC, i.e., release on probation of good conduct. Therefore, in the instant case also the petitioner may be provided the similar benefits.

11. Mr. Ghosh, learned PP submits that the offence under Section 498(A) IPC is not compoundable. In **Ramgopal and Anr. Vs. State of Madhya Pradesh and Anr., (2010) 13 SCC 540**, the Apex Court requested the Law Commission and the Government of India to examine whether the offence punishable under Section 498(A) of the Indian Penal Code could be made compoundable as it has not been made compoundable as yet.

12. In a matrimonial matter, always the court encourages for settlement of the matrimonial disputes, but in a case of 498(A) IPC which is a non-compoundable offence, the court's jurisdiction is very limited, particularly, when an application is filed under Section 397 read with 401 of the Cr.PC.

13. This Court has gone through the earlier decision of this Court in Criminal Revision Petition No.05 of 2013 wherein this Court considering the fact that the matter has been amicably settled between the parties upheld the order of conviction and interfered with the order of sentence and finally the petitioner was provided with the benefit of Probation of Offenders Act in terms of Section 360 of the Cr.PC and directed that the petitioner shall be released on execution of a bond of good conduct for one year by the trial court if the said bond was submitted within a period of two months from that day on obliging that he would maintain the good conduct. It was clarified that if the Probation Officer would make any adverse report against the petitioner within the period of probation, he would be immediately booked for undergoing the sentence in terms of the order impugned.

14. In the instant case also, admittedly there is a settlement between the parties during the pendency of the Revision petition and as the matter has already been settled with the informant-victim, it would not be proper to send the petitioner in jail after 1997, almost after a decade from the date of occurrence. This court is of considered opinion that it is a fit case where the Court should exercise its power under Section 482 Cr.PC.

15. Accordingly, in exercising the power under Section 482 CrPC, the order of conviction is upheld and the order of

sentence is interfered with. As the petitioner committed the alleged offence for the first time, it would be proper to allow the petitioner the benefit of Probation of Offender Act in terms of Section 360 of the Cr.PC. As it is stated that the petitioner is on bail, therefore, it would suffice the matter, if the petitioner is asked to execute a bond on good conduct for one year. Hence, it is directed that the petitioner shall execute a bond of good conduct for one year before the trial court within two months from today obliging that he would maintain good conduct during the period of probation.

16. It is also clarified that if the Probation Officer makes any adverse report against the petitioner within the period of probation, he shall be immediately booked for undergoing the sentence in terms of the impugned order passed by the appellate court. In the event of failure for whatever the reason in submitting the bond of good conduct as above within the stipulated time, the petitioner shall have to suffer sentence in terms of the impugned judgment and order.

17. With the modification as above, the Revision Petition is disposed of. Send down the LCRs.

JUDGE

Mdn/s