

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.721 of 2014

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1. Farooque Ahmad @ Chunnu Son of Late Syed Wajih Ahmad resident of village- Pinjora, Police Station- Kako, District- Jharkhand

.... Petitioner/s

Versus

1. The State of Bihar

2. Sofia Anwar daughter of Kaliur Ahmed Anwar resident of village-sheikhpura, P.S.- Kako, District- Jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Faiz Ahmad, Advocate.

For the Respondent/s : Mr. Anil Kumar (App)

For the O.P. No. 2 : Mr. Syed Asgher Najmit, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 09-11-2016

1. Heard learned counsel for the parties.

2. The petitioner was put on trial on the charge of commission of offences under Section 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. On the basis of appreciation of evidence adduced at the said contested trial, learned Sub Divisional Judicial Magistrate, Jehanabad, recorded petitioner's conviction of offences punishable under Section 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, and sentenced him to undergo rigorous imprisonment for a period of two years for the offences punishable under Section 498A of the Indian Penal Code and for a period of five months for the offences punishable under Section 3 of the Dowry Prohibition



Act. A fine of Rs. 6,000/- (Rs. Six Thousand) was also imposed upon him by learned Trial Court. Sentences were directed to run concurrently. The petitioner's appeal preferred against the judgment and order of conviction and sentence, dated 16.08.2010, passed by learned Sub Divisional Judicial Magistrate, Jehanabad in the said Sessions Trial No. 304 of 2010, met its fate, with the passing of judgment and order, dated 21.06.2014 in Criminal Appeal No. 25 of 2010/21 of 2014, by Learned Additional Sessions Judge –III, Jehanabad whereby he upheld the conviction and sentence recorded by the Trial Court in relation to commission of offence under Section 498A of the Indian Penal Code. The appellate court, however, upset the conviction of the petitioner of offence punishable under Section 3/4 of the Dowry Prohibition Act and, accordingly, modified the conviction recorded by learned Trial Court to that extent.

3. The present petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been preferred by the petitioner, feeling aggrieved by the judgment and order, dated 16.08.2016, passed by learned Additional Sessions Judge-III, Jehanabad, in Criminal Appeal No. 25/2010/21/2014.

4. I have heard learned counsel for the petitioner and



learned counsel, appearing on behalf of Opposite Party No. 2. The petitioner is the husband of Opposite Party No. 2. Opposite Party No. 2 happens to be the informant of case, which had given rise to GR No. 1712 of 1998. Learned counsel, appearing on behalf of the petitioner has submitted that learned Court below wrongly sustained the conviction of the petitioner under Section 498A of the Indian Penal Code after having set aside his conviction recorded by the learned Trial Court under Section 3/4 of the Dowry Prohibition Act. He has submitted that the entire case of the prosecution was based on the demand made by the petitioner in the form of dowry from the informant and her family members, and torture for non payment of the said dowry amount. According to him, when the very foundation of the case of the prosecution has been held to be not proved, petitioner's conviction under Section 498A should be interfered with, in the present proceeding.

5. Learned counsel, appearing on behalf of the informant (O.P. No.2) on the other hand, has argued that learned Appellate Court did not uphold the petitioner's conviction under Section 3/4 of the Dowry Prohibition Act, but on that basis, accusation and evidence in support thereof, to the effect that the informant/O.P. No. 2, was subjected to harassment and cruelty and other kinds of torture, both physical and mental, does not vanish. He has also

submitted that there being concurrent findings recorded by the Courts below on the point of the petitioner's conviction under Section 498A, this Court may not interfere with such finding in the present proceeding because such findings cannot be said to be without any evidence or contrary to the evidence on record.

6. I find substance in the submissions made on behalf of the informant that this is not a case where concurrent findings of facts recorded by the Courts below can be said to be perverse, there being evidence on record, adduced at the trial to the effect that the informant was subjected to cruelty and harassment at the hands of the petitioner. I, therefore, do not feel inclined to upset the findings recorded by the learned Courts below of petitioner's conviction of the offence punishable under Section 498A of the Indian Penal Code and the same is upheld.

7. However, considering the background and the facts and circumstances in its totality and also the submissions made on behalf of the petitioner that disputes between the petitioner and the informant had erupted because they could not maintain their matrimonial harmony and evidently, there had been no demand of dowry made by the petitioner, period of sentence of imprisonment, awarded by the learned Court below needs to be modified. Learned counsel for the petitioner has informed this Court that at

the stage of investigation, the petitioner had remained in custody for more than four months i.e. from 14.12.1998 to 20.04.1999. Further after rejection of his appeal by impugned order passed by learned Additional Sessions Judge –III, Jehanabad, the petitioner had surrendered and he was released subsequently on bail by virtue of an order passed by this Court on 18.09.2014.

8. Considering the facts and circumstances in its entirety, while upholding petitioner's conviction under Section 498A, sentence of imprisonment is modified to the period of custody already undergone by the petitioner, as indicated above.

9. The petitioner stands discharged of his liabilities of bail bonds furnished by him before the Court below.

10. This application is, accordingly, disposed of.

(Chakradhari Sharan Singh, J)

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