

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.33 of 2016

Arising Out of Complaint Case No. -105 Year- 2006 Thana -null District- SUPAUL

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1. Renu Devi wife of Shivjee Kumar Yadav resident of village - Bhim Nagar, P.S. Birpur, District - Supaul.

.... Appellant/s

Versus

1. The State of Bihar.
2. Shivjee Kumar Yadav Son of Jagdeo Yadav resident of village - Bhim Nagar, P.S. Birpur, District - Supaul.
3. Lalita Devi wife of Jagdeo Yadav resident of village - Bhim Nagar, P.S. Birpur, District - Supaul.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amarnath Jha, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-10-2016

The present application under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner seeking leave to appeal against the judgment and order dated 3rd June, 2016 passed by the learned Sub Divisional Judicial Magistrate, Birpur, Supaul in C.A. No. 105(C) of 2006/ Tr. No. 773 of 2016, whereby and whereunder the learned Magistrate has acquitted the accused opposite parties no.2 and 3 of the charges under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

2. The complainant-petitioner filed a written complaint in the court of Sub Divisional Judicial Magistrate, Birpur, Supaul on 2nd



May, 2006 vide Complaint Case No. 105 of 2006 for the offences under Sections 498-A, 379, 380, 323, 504 and 497 of the Indian Penal Code as well as under Sections 3 and 4 of the Dowry Prohibition Act. In the complaint petition, the complainant has alleged that she was married to the opposite party no.2 Shivjee Kumar Yadav 4-5 years before as per Hindu rites and after two months of the marriage she went to her *sasural* Bhim Nagar. For one year the accused gave her good treatment. Meanwhile, she gave birth to a female child, namely Nandini Kumari. It is alleged that with the passage of time her husband came in contact with another lady and he used to remain outside without her information. On query being made by the complainant, her husband used to abuse her and assault her physically. When she complained to her mother-in-law and father-in-law, they also abused her. The complainant came to know that her husband had illicit relation with a married lady whose husband has abandoned her. It is alleged that the accused persons changed their behaviour. They started torturing her and demanded rupees One lakh. On information being given, her father and maternal uncle came to meet her. The accused persons abused her father and demanded rupees one lakh. On showing his inability to pay the said amount, the accused persons drove out the complainant from the house and assaulted her. It is further alleged that accused Dina Yadav took the



chain of gold from her neck worth Rs.12,000/- while accused Sanjay Prasad Yadav, Mala Devi and Chanda Kumari took two briefcases containing clothes and ornaments worth Rs. 57,000/-. On alarm being raised, several persons gathered there and saw the occurrence. It is alleged that after the said occurrence the complainant along with her minor child came to her parents home. Her father tried to meet her husband but he demanded rupees one lakh.

3. In course of inquiry, the complainant was examined on solemn affirmation. Three witnesses, namely, Ram Chandra Yadav, Kameshwar Malik and Satya Narayan Yadav were examined on behalf of the complainant during inquiry.

4. After inquiry, the learned Magistrate, finding a prima facie case to be made out against the accused Shjivjee Kumar Yadav @ Shivji Yadav, Jagdeo Yadav and Lalita Devi only, took cognizance of the offence under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act and summoned them to face trial.

5. The accused Jagdeo Yadav, who was father-in-law of the complainant, died during pendency of the trial and therefore, proceeding against him was dropped vide order dated 23rd April, 2009.

6. After appearance of the accused opposite party nos.2 and

3, charges were framed under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. The statement of the accused was recorded under Section 313 of the Cr.P.C. They pleaded not guilty and claimed to be tried.

7. During trial, the complainant produced four witnesses. They are P.W.1 Kameshwar Malik, P.W.2 Ramchandra Yadav, P.W.3 Satya Narayan Yadav and P.W.4 Renu Devi. The defence also produced two witnesses, namely, D.W.1 Ganganand Yadav and D.W.2 Pappu Yadav.

8. Having considered the evidence adduced on behalf of the parties and the arguments advanced on their behalf, the trial Magistrate gave its finding in paragraphs 9 and 10 of the judgment, which read as under :

“8. As far as charge u/s 4 Dowry Prohibition Act is concerned the central point which prosecution has to prove is that there should be demand for dowry and for section 498A I.P.C. the demand of dowry should lead to harassment of the victim woman. Ld. Counsel of defence argued that from plain reading of the complaint petition it is evident that the husband of the complainant is living with another woman and has deserted her. This is the central point of the story or in other words the alleged extra-marital affair of the husband has caused a strain in the matrimonial relationship of the complainant and it has to be seen whether she is trying to seek civil reliefs under pressure of a criminal proceeding because it is evident from order-sheet dated 5.4.10 and 26.5.10 that a compromise was entered between both the parties in which it was stated that there would be no

dispute in their matrimonial relationship and both would live together; and later this agreement was cancelled by the complainant. In the light of above background the allegation of dowry demand coupled with harassment of the complainant is put under strict scrutiny.

9. First of all, all the prosecution witnesses are interested witness and near relative of the complainant from different villages. There is not a single witness from the neighbourhood of place of occurrence where the alleged harassment of the complainant and demand of dowry from her parents took place. Similarly, the defence witnesses are no less interested which is evident from the way they have stated in examination-in-chief itself. From the deposition of P.W.1 it is evident that the accused persons have expressed their willingness to keep the complainant with all honour and dignity as suggested in cross-examination but complainant is not eager to live for obvious reason i.e. her husband's extra-marital affair. This fact find support in the examination in chief of the complainant i.e. P.W.4. From her cross-examination it is evident that after filing of this case she had gone to her matrimonial home twice. Once for three hours and other time for three days on intervention of the court. It is also clear that she had filed a maintenance case in which order has been passed in her favour. The paradox of the case is that the accused persons who are alleged to have been demanding dowry are paying monthly maintenance to the complainant.

10. In the light of above facts, a cloud of doubt has been cast on the whole allegation of dowry demand and resulting harassment of the complainant by the accused persons, accordingly, giving benefit of doubt to the accused persons, no charge u/ss 4 D.P. Act and 498A IPC is being made out against accused persons.”

9. The above reasonings assigned by the learned Magistrate for recording the judgment of acquittal are neither ill founded nor perverse. The learned Magistrate has given plausible reasons for arriving at a conclusion that the complainant has failed to prove her case beyond reasonable doubt.

10. In that view of the matter, I do not see any merit in this application preferred under Section 378(4) of the Cr.P.C. Accordingly, leave to appeal is refused.

11. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

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