

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.261 of 2015

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1. Pappu Raut, S/o Late Nanhak Raut
2. Raju Raut, S/o Late Nanhak Raut
3. Umesh Raut, S/o Late Nanhak Raut
4. Anita Devi, W/o Raju Raut All are Resident of Village Prataptand, P.S. Bhagwanpur, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nitu Devi, D/o Ramkewal Raut Resident of Village Yarpur Patna, P.S. Gardanibagh, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Grinandan Pd. Singh, Advocate
Mr. Ashok Kumar, Advocate
Mr. Manish Kumar, Advocate
For the Informant : Mr. Arvindra Kant Jha, Advocate
For the Respondent/s : Mr. Rajendra Pd.Nat, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 18-11-2016 The petitioners are aggrieved by the judgment and order dated 21.07.2014 passed by learned Ad hoc Additional Sessions Judge, Vaishali at Hajipur in Criminal Appeal No. 26 of 2010 whereby he has affirmed the judgment of conviction and order of sentence passed by learned S.D.J.M., Vaishali at Hajipur in Trial No. 435 of 2010 in C.R. No. 2096 of 2000. Learned Sub Divisional Judicial Magistrate, Hajipur by his judgment of conviction and order of sentence dated 23.08.2010 after having recorded conviction of these petitioners under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act,



sentenced them to imprisonment and fine. For the offence punishable under Section 498A of the Indian Penal Code, sentence of three years imprisonment with a fine of Rs. 1,000/- has been imposed whereas for the offence punishable under Section 4 of the Dowry Prohibition Act, the sentence is of two years imprisonment. Fine of Rs. 1,000/- for each of the offences has been imposed and in the event of nonpayment of fine in respect of each of the offences proved, the judgment stipulates that the petitioners shall undergo imprisonment for a further period of four months. The sentences are to run concurrently.

2. Petitioner No. 1 is the husband of the informant/opposite party No. 2. Petitioners No. 2 and 3 are brothers of petitioner No. 1 whereas petitioner No. 4 is the wife of petitioner No. 2.

3. I have heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned Additional Public Prosecutor for the State.

4. There is concurrent finding of fact by the courts below leading to conviction of these petitioners under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

5. Learned counsel appearing on behalf of the



petitioners has attempted to persuade me that the judgment and order passed by the trial court, which has been affirmed by the appellate court suffer from the vice of perversity inasmuch as evidence of hearsay witnesses has been relied for the purpose of recording conviction of the petitioners. His particular reference is to evidence of prosecution witnesses No. 1 and 4. He has next submitted that the petitioners were charged of commission of offences under Sections 323 and 406 of the Indian Penal Code also which could not be proved. He accordingly submits that since the courts below did not find the charge of commission of offence under Sections 323 and 406 of the Indian Penal Code as proved, the entire case of the prosecution became doubtful and therefore the evidence on the point of offence punishable under Section 498A of the IPC ought to have been disbelieved. According to him, the Courts below wrongly relied evidence of ear-witnesses, supporting the charge of offence punishable under Section 498A and Section 4 of the Dowry Prohibition Act.

6. Learned counsel appearing on behalf of opposite party No. 2 has submitted that findings recorded by the court below do not require any interference since the same are based on adequate evidence available on record. She has submitted that the sentence imposed upon the petitioners are not harsh and, therefore,

the judgment of conviction and order of sentence recorded by the trial Court affirmed by the appellate Court order do not require any interference by this Court.

7. This Court has very limited scope in exercise of power under Section 397 of the Code of Criminal Procedure in the matter of re-appreciation of evidence for interfering with the concurrent findings of fact recorded by the courts below. Learned counsel for the petitioners has himself admitted that unless the findings can be shown to be perverse or patently wrong, same cannot be interfered with in a proceeding under Section 397 of the Code of Criminal Procedure. I do not find much force in his submission that only because learned trial court has referred to evidence of P.Ws. 1 and 4, who are hearsay witnesses, while recording conviction of the petitioners, the findings can be said to be perverse since other witnesses have supported the case of the prosecution and in that circumstance, the statement of ear witnesses can be treated to be corroborative in nature. On the basis that the guilt of the petitioners, for the offence punishable under Sections 323 and 406 of the Indian Penal Code could not be proved beyond all reasonable doubt, the conviction of the petitioners under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act cannot be held to be bad.

Once it is shown that ingredients of Section 498A of the Indian Penal Code are established on the basis of evidence adduced at the trial, conviction under that Section cannot be said to be bad on the ground that other charges could not be proved.

8. Learned counsel for the petitioners has lastly submitted that from the records it would appear that it was basically matrimonial dispute between the petitioner No. 1 and the opposite party No. 2 that the situation worsened leading to lodging of the criminal case which finally culminated into conviction of all the petitioners. According to him, considering the nature of dispute and other mitigating circumstances, the sentence imposed should be reduced. He has also submitted that at least cases of petitioner Nos. 2 to 4 need to be considered leniently.

9. It has transpired from the records that the petitioners No. 2 to 4 had surrendered after the dismissal of appeal by the court below on 28.02.2015 (Petitioner No. 2) and 10.03.2015 (Petitioners No. 3 and 4). They were subsequently released on bail on 24.05.2016 by virtue of an order of this Court dated 07.05.2015 passed in this case. They appear to have thus, remained in custody for nearly three months.

10. Considering the submissions advanced on behalf of the petitioners to the extent it relates to petitioners No. 2 to 4,

while not interfering with the finding of their conviction, the sentence of imprisonment is hereby reduced to the period of custody already undergone by them. While reducing their sentence, I have taken into account the circumstance that they are brothers/wife of the brother of petitioner No. 1, who is the husband of the opposite party No. 2.

11. As regards petitioner No. 1, who is the husband of opposite party No. 2, in the facts and circumstances of the case and considering the nature of dispute between petitioner No. 1 and opposite party No. 2, the sentence is hereby reduced to one year. It appears that he has remained in custody from 10.03.2015 till his release on 24.05.2015. So far as imposition of fine is concerned, the same requires no interference and remains unaltered. The petitioners are directed to deposit the fine within a period of two months from today.

12. Petitioner No. 1 is directed to appear before the court below within one month from the date of communication of the present order whereafter he will be taken into custody for the purpose of serving remaining period of sentence. The bail bond and sureties furnished by him by virtue of order of this Court dated 07.05.2015 stand cancelled.

13. The petitioner Nos. 2 to 4 stand discharged of

their liabilities of bail bonds furnished by them before the court below.

14. This application stands disposed of.

(Chakradhari Sharan Singh, J)

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