

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.7 of 2016

Arising Out of Complaint .Case No. -111 Year- 2006 Thana -null District- KATIHAR

1. Archana Mishra Wife of Subhash Chandra Jha, Daughter of Kapileshwar Mishra,
Resident of Village Mohalla - Laliyahi, P.S. - Katihar (S), District - Katihar.

.... Petitioner

Versus

1. The State of Bihar.
2. Subhash Chandra Jha, Son of Prabhu Narayan Jha, Resident of Village - Bhura,
P.S. -Triveniganj, District Supoul at present resided at Mohalla - C/o Amrendra
Pandey OT Para, Quarter No. 18G, Near South Cabin, P.S. - Katihar(S), District -
Katihar.

.... Opposite Parties

Appearance :

For the Appellant/s : Mr. Bimal Kumar, Adv.

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

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-10-2016

Learned counsel for the petitioner seeks leave to make
necessary correction in the cause title of the present application

2. Leave is granted, let necessary corrections be made in
the course of the day.

3. By way of the present application preferred under sub-
section (4) of Section 378 of the Code of Criminal Procedure (for
short 'Cr.P.C.'), the petitioner seeks leave to appeal against the
judgment dated 23rd December, 2015 passed by the learned Sessions
Judge, Katihar in Criminal Appeal No. 31 of 2014 arising out C.A.
No. 111 of 2006, whereby and whereunder the opposite party no. 2
has been acquitted of the charges under Section 498-A of the Indian

Penal Code (for short 'IPC') setting aside the judgment dated 11th April, 2014 passed by the learned Sub Divisional Judicial Magistrate Katihar, whereby the learned Magistrate had been pleased to convict the opposite party no.2 under the aforesaid Section of the IPC.

4. The petitioner-complainant filed a complaint petition bearing C.A. Case No. 111 of 2006 before the learned Chief Judicial Magistrate, Katihar on 16th January, 2006 alleging, inter alia, that her marriage was solemnized with the opposite party no.2 on 6th July, 2003 according to Hindu custom. After marriage, she went to her sasural (village Bhura) and after stay for a week she came to her Naihar. After certain rituals on 7th November, 2003 she came to the matrimonial home and started living with her husband in the railway quarter allotted in the name of his maternal uncle. It is alleged that while the complainant was residing in the said Railway quarter, the maternal aunt of her husband Dharmsheela Devi started demanding colour T.V. and Freeze from the father of the complainant. The said demand could not be fulfilled by her father due to poor financial condition. It is further alleged that all the accused persons including her husband started pressurizing the complainant to tell her father to purchase two katha of land in Katihar town in the name of her husband to which the complainant disagreed. Thereafter, all the accused persons started torturing her and taking domestic work from



her. In the meantime, when she got pregnant, the accused persons pressurized her to have abortion. Her husband and accused Dharmshila Devi assaulted her due to which she sustained miscarriage. She was sent back to her father's place and cost of her treatment was borne by her father. It is further alleged that she is not being taken to her marital home by her husband. The gift given in the marriage was not returned to her and no relation is being maintained.

5. The learned Chief Judicial Magistrate, Katihar in exercise of power conferred under Section 192 of the CrPC, made over the case to the court of Sub Divisional Judicial Magistrate, Katihar for inquiry and disposal.

6. In course of inquiry, the complainant was examined on solemn affirmation. Finding a prima facie case to be made out only against the husband of the complainant, the learned Magistrate took cognizance of the offence against him for the offence under Section 498-A of the IPC and summoned him to face trial.

7. After appearance, the charge under Section 498-A of the IPC was framed against the accused-opposite party no.2 to which he pleaded not guilty and claimed to be tried. The statement of the accused was recorded under Section 313 of the Cr.P.C. on 29th November, 2012 and 18th June, 2013. In his statement, he has denied the entire occurrence and pleaded his innocence.

8. In course of trial, the complainant examined altogether nine witnesses in support of her case. They are C.W.1 Santosh Kumar Sah, C.W.2 Umesh Kumar Singh, C.W.3 Ramashray Pandey, C.W.4 Ram Dinesh Thakur, C.W.5 Lalan Jha, C.W.6 Yamuna Yadav, C.W.7 Archana Mishra, C.W.8 Manoj Kumar Mishra and C.W.9 Kapileshwar Mishra. The defence did not produce any oral evidence but has produced some documentary evidences.

9. After hearing the parties, the learned Magistrate held that the complainant has been able to prove the charge under Section 498-A of the IPC beyond shadow of reasonable doubt. Therefore, he has recorded the order of conviction under the said Section of the IPC against the opposite party no.2 Subhash Chandra Jha and sentenced him to undergo R.I. for two years and to pay fine of Rs. 2000/- and in default in payment thereof, to undergo imprisonment of two months.

10. Being aggrieved by the said order of conviction and sentence dated 11th April, 2014, the accused Subhash Chandra Jha moved the learned Sessions Judge in Cr. Appeal No. 31 of 2014.

11. Learned Sessions Judge, Katihar heard the appeal. After hearing the parties and having perused the materials available on record, the learned appellate court came to the conclusion that the complainant has not been able to prove the case and the judgment and order passed by the trial court is not just and legal. Accordingly, he

allowed the appeal filed by the accused and acquitted him of the charge leveled against him. The learned Sessions Judge has recorded his finding in paragraphs 9 and 10 of the judgment, which read as under :

“9. ... On perusal of the record, I find that this case was filed in the court of Chief Judicial Magistrate, Katihar on 16.01.2006 and on perusal of the exhibits of the appellant I found that the appellant filed Matrimonial case for restitution of conjugal rights in 2004 bearing No. 50/2004 and in that case compromise took place between the complainant and the appellant. But the appellant has alleged that inspite of compromise the complainant did not go in his house. So, lastly he filed divorce case in the year 2005, the Divorce Case number was 53/2005. It is clear that after filing that divorce case the complainant filed the present case U/S 498(A) of Indian Penal Code against the appellant and his maternal relatives, but during the inquiry, the case was not found true against the relatives of the appellant. On perusal of other documents as Ext.G I found that before the present case, the appellant had filed a petition before the Officer-in-Charge of Sahayak thana Katihar, alleging that the complainant may implicate him or his family members in false case, because she is committing atrocities in whole family. As per Ext.C the then District Judge Katihar has written in his Order sheet dated 27.11.2006 that he tried his best, but both parties did not come on the compromise term. The complainant has also alleged that she was pregnant and in that pregnancy she was assaulted by the appellant and his maternal relatives, so bleeding started and her father took her to Sadar Hospital Katihar for the treatment of her pregnancy and bleeding. But Ext.D, the Civil Surgeon, of Sadar Hospital Katihar has given opinion that in the year 2004 there was no Pathology Centre in the Hospital for test of pregnancy. On 17.07.2004 the case of the restitution of conjugal rights of the appellant was dismissed on the basis of

compromise. It is clear that compromise took place between the complainant and appellant on 17.07.2004, then how the complainant may allege and file a case for the allegation earlier than 17.07.2004, because on that date they have compromised and so they have forget and forgiven to each other.

10. On perusal of the evidence and all the documents I found that the five witnesses did not turn up after charge including the own brother and bahnoi of the complainant. The statement of P.W.1 is not believable and P.W.6 is stated another story. The statement of P.Ws.7 and 9 is also not believable because they filed the case when the appellant filed divorce case, because she was not ready to live with the appellant. It is not clear from the evidence of any witness that whether the appellant is doing any work or not. But the complainant is Angan Bari Sevika. So, it is also clear that the complainant is financially stronger than the appellant. The statement of any witness is not believable in the light of the document filed by the appellant. Therefore, the judgment of conviction and order of sentence passed by the learned court below is not just and legal. Therefore, the impugned judgment of conviction and order of sentence dated 11.04.2014 is hereby set aside. The appellant is acquitted and set free from the liabilities of his bail bonds.”

12. Having heard learned counsel for the petitioner and perused the records of the case, I find that the appellate court has given clear, cogent and convincing reasons for acquitting the opposite party no.2. The reasons assigned are neither illegal nor perverse. It is well settled that once a court has taken a plausible view in order to acquit an accused, the Revisional Court or the Appellate Court should not interfere with the judgment of acquittal even if it is of another

view.

13. In that view of the matter, I find no merit in this application. Accordingly, leave to appeal is refused.

14. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	----
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