

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 438 of 2003**

Nageshwar S/o Jawahar Lal Deshmukh, aged about 40 years, resident of Sector-7, Street No.14, Quarter No.9-B, P.S. Bhilai Nagar, Tahsil and District Durg, Chhattisgarh

---- Petitioner

Versus

State of Chhattisgarh

---- Respondent

For Petitioner	:	Shri N.S. Dhurandhar, Advocate.
For Respondent/State	:	Shri Majid Ali, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**CAV ORDER****24/06/2016**

1. This revision petition arises out of the proceedings initiated against the Petitioner and other three accused under Section 498-A read with Section 34 of the Indian Penal Code (hereinafter referred to as "IPC") and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The Learned Trial Court vide judgment dated 28.05.1996 delivered in Criminal Case No.882 of 1995 acquitted one of the accused Dinesh, however convicted the other three accused under Section 498-A IPC and Section 4 of the Dowry Prohibition Act and sentenced them to undergo rigorous imprisonment for two years and to pay fine of Rs.1,000/- each and to undergo rigorous imprisonment for one year and to pay fine of Rs.500/- each, respectively. Both the sentences were ordered to run concurrently. In case of default of payment of fine, the accused were required to undergo simple imprisonment for two months and one month, respectively.

2. The three convicts filed an appeal, namely, Criminal Appeal No.83 of 1996 in the Court Special Judge-cum- Additional Sessions Judge, Durg, who vide

judgment dated 23.07.2003 acquitted Jawahar Lal and Nirmala Devi. By the same judgment the Learned Additional Sessions Judge acquitted the present Petitioner- Nageshwar of the offence under the Dowry Prohibition Act, however upheld his conviction under Section 498-A IPC. Keeping in view the fact that services of Nageshwar have been terminated by his employer, the learned Appellate Court also reduced the sentence of rigorous imprisonment for two years imposed upon the Petitioner to sentence till rising of the Court and he was directed to pay fine of Rs.10,000/- only and in default of payment of the fine, he was required to undergo simple imprisonment for nine months.

3. No arguments were raised on the merits of the case. The only point urged by Learned Counsel for the Petitioner is that the sentence imposed upon Petitioner Nageshwar is on higher side and he should be given benefit of provisions of the Probation of Offenders Act, 1958. Learned Counsel submits that an order may be passed that conviction of the Petitioner should not affect his service. Reliance has been placed on two judgments of the Apex Court, namely, *(1981) Supp 1 SCC- 17 - Aitha Chander Rao vs. State of Andhra Pradesh* and *(1985) Supp 1 SCC 272 - Rajbir vs. State of Haryana*. In the first case, the accused was convicted under Section 304-A IPC and in the second case the accused was convicted under Section 323 IPC. In both the cases, conviction was upheld, but benefit of probation was given to the accused.

4. The present is a case of cruelty to the wife. The learned Additional Sessions Judge keeping in view of the fact that the Petitioner had lost his job, reduced the sentence from two years to till rising of the Court. Now, the Petitioner cannot be allowed to argue that he should also be given benefit of service. This Court cannot lose sight of the fact that services of the Petitioner were terminated more than 20 years back and if the benefit as prayed is given, the Petitioner who has not worked for more than 20 years, would be entitled to wages for the period of more than 20 years and the effect would be that a criminal would get benefit of

his crime and get windfall like a lottery. The sentence imposed is already on lower side and, therefore, I see no reason to interfere with the sentence imposed by the Learned Appellate Court.

5. In view of the above discussion, the revision petition is dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

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