

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1179 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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Avinash Kumar Sharma @ Avinash Sharma, son of Late Rajendra Prasad Sharma,
resident of Village- Maker, Police Station- Maker, District- Saran, Chapra.

.... Petitioner/s

Versus

1. The State of Bihar
2. Krishna Chandra Sharma, son of not known, resident of 53/84 Officers' flat,
New Punai Chak, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Parijot Saurav, Adv.

For the Respondent-State: Dr. Kumar Uday Pratap, APP

For the respondent No.2 : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. Rashmi Sharma, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 08-04-2017

The petitioner, who is the brother-in-law (Dewar) of the victim- Ragini Sharma, was put on trial on the charge of commission of offence punishable under Section 498A read with Section 34 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act, in Trial No. 961/10 before the Sub-Divisional Magistrate, Saran at Chapra. The said trial arose out of Maker P.S. Case No. 23/03. Along with him, other co-accused were also put on trial. The petitioner and other accused persons, namely, Mukesh Sharma and Rajendra Sharma stood convicted of the said offence by judgment dated 13.7.2010, recorded by the learned Sub-Divisional Magistrate, Saran at Chapra. Upon conviction of the petitioner, he was sentenced to undergo imprisonment for a term of one year with a fine



of Rs. 5000/- (Rs. five thousand).

2. The petitioner assailed the said judgment and order passed by the learned Sub-Divisional Magistrate, Saran at Chapra along with other co-convicts by preferring Cr. Appeal No. 28 of 2010. The said criminal appeal came to be finally disposed of by judgment and order dated 19.9.2016, upholding the judgment of conviction and sentence recorded by the trial court.

3. The petitioner in the present Criminal Revision application filed under Section 397 read with Section 401 of the Code of Criminal Procedure is aggrieved by the findings of the courts below whereby he has been held guilty of the offence punishable under Section 498A of the I.P.C.

4. Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner has submitted that the findings recorded by the courts below holding the petitioner guilty of offence under Section 498A of the I.P.C. are perverse. He has submitted that if the evidence of witnesses adduced at the trial are considered even without looking into their statements in cross-examination, no offence under Section 498A of the I.P.C. can be said to have proved. He has argued that except the allegation that the petitioner had assaulted P.W. 1 once, when he was drunk, there is no evidence against him of torturing P.W. 1, who is the wife of elder brother of the petitioner. According to him, the case of the prosecution, as narrated in the F.I.R. too, does not make out a case under Section 498A of the I.P.C. against the



petitioner.

5. Mr. Akhileshwar Prasad Singh, learned Senior counsel appearing on behalf of the opposite party no. 2 has, on the other hand, submitted that the prosecution proved at the trial that the petitioner had assaulted P.W. 1 and her son also on 26.7.2003 and, therefore, conviction recorded by the court below of the offence punishable under Section 498A of the I.P.C. cannot be said to be perverse, requiring interference in criminal revisional jurisdiction of this Court. In addition, he has submitted that even D.W.-1, wife of the petitioner, in her evidence deposed that her father had also filed a criminal case against the petitioner alleging commission of offence under Section 498A of the I.P.C. In this background, he has submitted that the findings do not require to interference.

6. Before I consider the rival submissions made on behalf of the parties, I must take note of Section 498A of the I.P.C., which provides for punishment for subjecting a woman to cruelty by her husband or relatives of the husband. Section 498A of the Indian Penal Code read thus :

“498-A. Husband or relative of husband of a woman subjecting her to cruelty:- Whoever, being the husband or the relative of husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

Cruelty, within the meaning of Section 498A of the



IPC has been defined in explanation as follow:

“ Explanation.- For the purpose of this section ‘cruelty’ means-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

7. On bare reading of Section 498A read with the explanation it is evident that husband or the relative of husband of a woman can be said to have subjected a woman to cruelty if the conduct of such person is either of such nature which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health {whether mental or physical) of the woman or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. So far Explanation (B) to Section 498A IPC is concerned, in my view, no cruelty within the meaning of that explanation can be said to be constituted so as to attract Section 498A of the IPC for the purpose of conviction of the petitioner. There is no concrete evidence on record that there was any demand made by the petitioner for any property or valuable security, or any harassment was caused to her by the



petitioner on account of failure to meet such demand.

8. The only evidence, which has come against him, is that on one day he was drunk and he had assaulted the P.W.-1, the daughter of opposite party no.2.

9. That *per se*, in my view, cannot be said to be constituting cruelty within the meaning of Explanation (A) of Section 498A of the IPC. Learned counsel appearing on behalf of the petitioner has rightly relied on Supreme Court's decision in the case of **Noorjahan vs. State**, reported in (2008)11 SCC 55 in support of his submission that no offence under Section 498A of the IPC can be said to be made out on the basis of evidence adduced at the trial.

10. When the petitioner is said to have assaulted, the P.W. 1, he was said to be drunk. No evidence was adduced at the trial that the injury caused to the victim was grave in nature so as to attract Explanation (A) of Section 498A of the IPC. In the background of the evidence on record and submissions advanced on behalf of the parties, I am of the view that interference with the findings recorded by the courts below is made out. The findings, in my view, are palpably erroneous and are fit to be set aside.

11. Accordingly, the judgment and order dated 13.07.2010 passed in Trial No. 961 of 2010 by the learned Sub-Divisional Judicial Magistrate, Saran at Chapra and the judgment and order dated 19.09.2016, passed in Criminal Appeal No. 28 of 2010 by the learned 2nd Additional Sessions Judge, Saran at Chapra are hereby set aside.



12. This criminal revision application is accordingly allowed.

13. The petitioner stands discharged of the bail bonds furnished by him for his release on bail.

(Chakradhari Sharan Singh, J)

BTiwary/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-04-2017
Transmission Date	17-04-2017

