

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.406 of 2017

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

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Suresh Mahto, Son of Sri Rambali Mahto, Resident of Village Barkagaon, P.S.
Karza, District Muzaffarpur

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar Mishra, Advocate
Mr. Piyush Saurav, Advocate

For the State : Smt. Reena Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 28-11-2017

The petitioner by judgment and order dated 28.11.2014, passed by learned SDJM (West), Muzaffarpur in Karja P.S. Case No.13 of 2005 has been convicted under Section 498A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act and respectively sentenced to undergo RI for a period of two years and also pay fine of Rs.2000/- and in default of making payment of fine to further undergo SI of two months and for committing offence under Section 4 of Dowry Prohibition Act sentenced him for a period of six months of SI and also fine of Rs.500/- and in default of making payment of fine to further undergo SI of 15 days.

2. Criminal Appeal No.86 of 2014 was preferred by the petitioner in the sessions court and the same was decided by Additional Sessions Judge-XI, Muzaffarpur by judgment dated



21.07.2015 whereby he has affirmed the conviction and sentence passed by the trial court. Being aggrieved by both the concurrent findings, the petitioner has preferred the revision application.

3. Learned counsel for the petitioner submits that all other accused except the petitioner have been acquitted by the trial court. The petitioner has been convicted without cogent evidence. The complainant herself admits that other family members used to harass her for demand of dowry but the husband never objected harassment and torture being committed by other family members. Further submission is that the complainant herself was suffering from mental illness, therefore, herself had deserted the husband and some of the prosecution witnesses have stated that the complainant was mentally retarded prior to the marriage and this fact was also admitted by her father Jitan Mahto examined in this case as PW2. Learned counsel for the petitioner places reliance in the case of *Ram Deo Paswan v. State of Bihar*, reported in 2001 (3) PLJR 363. In the said case the husband was convicted and others were acquitted merely on the ground that he happened to be the husband of the complainant and that cannot be a ground for conviction.

4. Contrary to that the learned counsel appearing on behalf of the State submits that altogether seven prosecution witnesses have been examined and only three PWs.4, 5 and 6 have turned



hostile but rest of the witnesses have supported the prosecution case.

5. Having considered rival submissions and on perusal of the evidence on record the Court finds that PWs.1, 2, 3 and 7, the mediator in the marriage have stated that the accused persons made a demand of motorcycle in the marriage and in that connection she was harassed and ousted from the matrimonial home by the mother-in-law and *Nanad* but trial court disbelieving the evidence has acquitted them. They have said in their testimony that petitioner never objected action of family members. The father of the complainant PW2 has admitted that her daughter is mentally retarded prior to the marriage. There is no cogent evidence given by any of the prosecution witnesses that the demand of motorcycle was made by the husband or any kind of specific act of harassment or torture was committed by him rather PW1, the complainant has also not stated that any act of torture or harassment was committed by the husband rather she only stated that her husband never interfered and objected while other family members used to torture and harass her, so there is lack of cogent evidence against the petitioner making demand of further dowry and also any specific act of committing torture or doing any kind of harassment to the complainant. This fact is also revealed from the deposition of the father of the complainant PW2 that her daughter was mentally retarded prior to the marriage, so in this background of the



evidence produced by the prosecution, it cannot be conclusively held that the prosecution is able to prove the charge under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against the petitioner beyond all reasonable doubt, so the petitioner becomes entitled for acquittal giving benefit of doubt, accordingly, he is acquitted from the charge under Section 498A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act consequently conviction and sentence passed by both the courts below i.e. the trial court as well as appellate court are hereby set aside. The petitioner is already on bail, so he is discharged from liability of the bail bond.

6. The criminal revision application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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