

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 888 of 2008

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1. Manoj Kumar, Son of Rajendra Prasad @ Rajendra Sah.
 2. Rajendra Sah @ Rajendra Prasad, Son of Late Ram Kishun Sah.
- Both R/o Village-Raxaul Mauje, Near-Mai Asthan, P.S.-Raxaul,
District-East Champaran.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Virendra Kuar, Adv.

For the Respondent/s : Mr. Nawal Kishore Prasad, APP

Mr. Sanjeev Kumar-1, Adv.

Mr. Rana Ranvijay Pratap, Adv.

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

ORAL JUDGMENT & ORDER

Date: 27-04-2017

Petitioners stood convicted of the offence punishable under Section 498A of the Indian Penal Code (*hereinafter referred to as the 'IPC'*) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (*hereinafter referred to as the 'D.P. Act'*) and sentenced to undergo rigorous



imprisonment for three (3) years and a fine of Rs. 3,000/- for the proved offence punishable under Section 498A of the IPC and for six (6) months with a fine of Rs. 2,000/- for the proved offence punishable under Sections 3 and 4 of the D.P. Act, by the judgment and order, dated 01.03.2006, passed by the learned Sub-Divisional Judicial Magistrate, Bettiah (West Champaran, in Trial No. 27 of 2006, arising out of Bettiah (Town) P.S. Case No. 293 of 1999, corresponding to G.R. No. 1719 of 1999. In default of payment of fine, they were directed by the learned trial Court to undergo additional imprisonment for a period of three (3) months. The sentences were required to run concurrently. The said finding of conviction and order of sentence, dated 01.03.2006, has been affirmed by the judgment and order, dated 31.05.2008, passed by the learned Additional Sessions Judge, Fast Track Court No.-V, Bettiah, West Champaran, in Cr. Appeal No. 36 of 2006.

2. Feeling aggrieved by the aforesaid judgments and orders, the present criminal revision application, under Sections 397 and 401 of the Code of Criminal Procedure (*hereinafter referred to as the 'Cr.P.C.'*), has been preferred.

3. The grounds, which have been taken on behalf



of the petitioners in the present criminal revision application, are that the courts below could not appreciate that the materials, in the form of evidence, adduced at the trial, could not establish commission of offence punishable under Section 498A of the IPC inasmuch as cruelty, within the meaning of Section 498A of the IPC, could not be established against the petitioners. It is also the case of the petitioners that since according to the case of the prosecution certain demands were made for business purpose, no offence, under Section 498A of the IPC nor under Sections 3 and 4 of the D.P. Act, can be said to be made out on that basis. According to the petitioners, the courts below missed to take note of glaring contradictions in the evidence of the witnesses, who are highly interested witnesses, before holding them guilty of the offence and the findings recorded by the courts below are, therefore, perverse.

4. Petitioner No. 1 is the husband of the informant (P.W.-9), whereas, petitioner No. 2 is the father of petitioner No. 1. Briefly narrated, the case of the prosecution is that petitioner No. 1 and the informant were married on 03.07.1998. Before marriage, the father of the informant had given to the petitioner an amount of Rs.



1,20,000/-, through bank draft, for purchasing motorcycle, washing machine, refrigerator etc. and for meeting the expenses of *Barat*. Further, the informant and her relatives had spent additional sum of Rs. 50,000/- and gave furniture and other house holds articles etc. It was alleged in the First Information Report that after marriage, the petitioners insulted the informant on various occasions for failure on the part of her family members to give motorcycle and colour T.V. It was also alleged that they demanded a sum of Rs. 50,000/- for running a business. It was further alleged that a sum of Rs. 50,000/- was paid in cash through P.W.-1 and P.W.-2. There was allegation of repeated demand of dowry, ill-treatment and torture, in the complaint petition.

5. The informant is said to have finally returned to her paternal place on 16.08.1999 at Bettiah, West Champaran, whereafter, she did not return to her matrimonial home at Raxaul. This is to be noted that it is prosecution's case that after her marriage, on 03.07.1998, the informant had lived in her in-laws' house untill 03.11.1998, whereafter, she had gone to her parents' house on 04.11.1998. Thereafter, on 22.04.1999, the petitioners had taken her back to the matrimonial home. It was



alleged in the complaint petition that she was again tortured, whereafter, on 12.08.1999, her father and brother came to her in-laws' place and took her back to parents' house on 16.08.1999. Subsequently, she filed a complaint case, which came to be registered as a police case, under Section 156(3) Cr.P.C.

6. The police, after investigation, submitted *charge-sheet*, whereafter, after taking cognizance, trial commenced against three persons, since other two members of the family were found to be minor.

7. On careful scrutiny of the complaint petition, which is the basis of registration of the First Information Report, it can be easily noticed that the entire occurrence of demand of dowry and torture etc., is said to have taken place in the matrimonial home at Raxaul, whereas, the First Information Report was registered in Bettiah (Town) police station, which is not under the district Judgeship of West Champaran. At the trial, altogether twelve witnesses were examined. They all supported the case of the prosecution that there was demand of dowry and torture, meted out to the informant.

8. However, what I have noticed from the evidence of the witnesses is that there is no concrete



evidence, adduced at the trial, showing date, time and place of the occurrence of demand of dowry and torture therefor. The evidences in this regard are non-specific and vague in nature. There is no evidence to show that any demand of dowry was made as consideration for marriage. There is no allegation of demand of dowry made before marriage as consideration for marriage.

9. Learned counsel, appearing on behalf of the petitioners, in my view, is correct in his submission that the prosecution, on the basis of evidence, adduced at the trial, could not establish that the informant was subjected to '*cruelty*' within the meaning of Section 498A of the IPC. The evidences, in my view, are vague, unspecific and could not have formed basis of recording finding of conviction. The findings recorded by the courts below, holding petitioners guilty of commission of offence punishable under Section 498A of the IPC, in my view, is not sustainable, which is based on vague and general evidence of the witnesses. The prosecution, in my view, miserably failed to bring home the charge against the petitioners.

10. The impugned judgments and orders, dated 01.03.2006 and 31.05.2008, are, accordingly, set-aside. The petitioners, as consequence thereof, stand acquitted of



the charge under Section 498A of the IPC and Sections 3 and 4 of the D.P. Act.

11. This criminal revision application is allowed.

12. The petitioners, above named, stand discharged of the liabilities of their bail-bonds.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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