

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 10.02.2017

Order passed on : 08.03.2017

Criminal Revision No.163 of 2004

- Surendra Agrawal, S/o Hari Prashad Agrawal, aged about 38 years, Occupation -- Business, R/o Patara Para, Dharamjaigarh, Distt - Raigarh (CG) ---- **Applicant**

Versus

- State of Chhattisgarh, through District Magistrate, Raigarh (CG) ---- **Respondent**

Criminal Revision No.164 of 2004

- Rajendra Kumar Agrawal, S/o Hari Prashad Agrawal, aged about 35 years, Occupation- Business, R/o Civil Line, Dharamjaigarh, Distt- Raigarh (CG) ---- **Applicant**

Versus

- State of Chhattisgarh, through District Magistrate, Raigarh (CG) ---- **Respondent**

For Applicants : Smt Indira Tripathi, Advocate
For Respondent/State : Shri Neeraj Sharma, Dy GA

Hon'ble Shri Justice Anil Kumar Shukla

CAV Order

1. Since these Criminal Revisions arise out of common judgment dated 09.03.2004 passed by the 4th Additional Sessions Judge Raigarh in Criminal Appeals- 17 and 18 of 2003, they are being disposed of by this common order.

2. These revision petitions have been filed against the common judgment dated 09.03.2004 passed by the 4th Additional Sessions Judge (FTC), Raigarh in Criminal Appeals No.17 and 18 of 2003, whereby the learned Additional Session Judge has confirmed the

judgment dated 20.01.2003 passed by the Judicial Magistrate First Class, Raigarh in Criminal Case No.721 of 1998 convicting each of the applicants for the offence punishable under Section 498-A of IPC and sentencing them to undergo one year rigorous imprisonment with fine of Rs.3,000/- with default stipulation.

3. The prosecution case in brief is that marriage of complainant- Uma Agrawal took place on 13.02.1992 and she was residing with her husband- Rajendra Agrawal at her matrimonial house at Dharamjaigarh. Applicant- Surendra Agrawal is her brother-in-law (Jeth). After two days of her marriage, the applicants started demanding dowry and began to harass her. On many occasions, the applicants used to torture and assault the complainant, if their demand of dowry was not fulfilled. Her father tried to pacify them by giving some money every now and then, but the matter could not be settled. The complainant and her husband started living separately after one and half year. A child was born out of their wedlock, even then, she was continuously subjected to cruelty. After six years of her marriage, when her patience reached to an end, she lodged a written complaint on 28.10.1998 against her husband- Rajendra Agrawal and brother-in-law- Surendra Agrawal (Jeth) on the basis of which an FIR bearing Crime No.103 of 1998 has been registered against the present applicants for the offences punishable under Sections 498A of IPC and 4 of Dowry Prohibition Act. After investigation, charge sheet was filed before

JMFC Dharamjaigarh and learned trial Court after conclusion of trial, though acquitted the applicants of the charge under Section 4 of Dowry Prohibition Act, convicted and sentenced them as stated herein above. That finding of learned trial court has been affirmed by learned appellate Court in Criminal Appeals- 17 and 18 of 2003. Against that judgment, these revision petitions have been preferred by the applicants. Applicants have paid the fine amount imposed upon them by the trial Court and the receipt is kept on record.

4. Learned counsel for the applicants at the outset submits that she confines her argument to the sentence part only and prays to reduce the jail sentence awarded to the applicants to the period already undergone by them as they have been facing the case against them since 1998. The applicants have been acquitted from the charge of Section 4 of Dowry Prohibition Act by the trial Court and they are first offenders. Rajendra Agrawal remained in custody for about 11 days, while Surendra Agrawal remained in custody for 03 days during pendency of the *lis*. Learned counsel further submits that there is a decree of divorce between complainant- Uma Agrawal and applicant- Rajendra Agrawal by a competent court on 29.11.2000 in Civil Suit No. 25A/2000 and since then, they are living separately. Hence, learned counsel for the applicants prays to adopt a lenient view regarding their sentence and they may be sentenced to the period already undergone by them. Learned counsel in support of her argument placed reliance in the matters of

Chhoturam Densil Vs State of Chhattisgarh {2010(2) CGLJ 297},
Darbar Singh Vs State of Chhattisgarh {2013(1) CGLJ 583},
Preeti Gupta and another Vs State of Jharkhand and another
{2010(3) CGLJ 406 SC} and **BS Joshi & others Vs State of Haryana and another** {(2003) 4 SCC 675}.

5. On the other hand, learned State counsel opposed the revision and supported the impugned judgment though not disputed the above facts.

6. It is not in dispute that the applicants are now above 50 years; there is a decree of divorce between the parties; the applicants have been acquitted of the charge under Section 4 of Dowry Prohibition Act by the trial Court; applicant- 2 Surendra Agrawal was residing separately and there is no direct evidence of his cruelty on the complainant; there is no criminal antecedent against them and for the present offence, they faced trial, appeal and the present revision for the past 19 years; applicant- Rajendra Agrawal remained in custody for 11 days and applicant- Surendra Agrawal remained in custody for 03 days during pendency of the *lis*; the total sentence awarded to them is one year and the applicants had paid the fine amount imposed upon them by the Court below.

7. Considering all the facts and circumstances of the case, also considering the prayer of learned counsel for the applicants and in view of the above undisputed facts, I am of the considered opinion that ends of justice would be met if, while affirming the conviction

of the applicants, the jail sentence awarded to the applicants is reduced to the period already undergone by them besides enhancing the amount of fine. It appears that no fruitful purpose would be served by sending the applicants back to jail in these circumstances, after a long gap of 19 years.

8. Accordingly, on the basis of the aforesaid discussion, both the revisions (CRR- 163 and 164 of 2004) filed by applicants- Rajendra Agrawal and Surendra Agrawal are hereby partly allowed. The conviction of the applicants under Section 498A of the IPC is hereby maintained and their jail sentence is reduced to the period already undergone by them. So far as the sentence of fine is concerned, each of the applicants shall pay additional fine of Rs.3,000/- within a month of receipt of copy of this order, failing which, they shall be liable to undergo RI for 15 days.

9. It appears that the applicants are on bail. Their bail bonds are not discharged at this stage and shall remain operative for a further period of six months in view of the provisions contained under Section 437-A of the Cr.P.C.

10. A copy of this judgment be sent to the concerning court for necessary compliance.

Sd/-
(Anil Kumar Shukla)
JUDGE