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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1329 of 2016**

1. Sakil, S/o Tajuddin, Aged About 36 Years, R/o Near Maveshi Bazar, Khatal, Pratappur Naka, Ambikapur, Police Station And Tahsil- Ambikapur, District Surguja, Chhattisgarh.
2. Rustam, S/o Tajuddin, Aged About 40 Years, R/o Near Maveshi Bazar, Khatal, Pratappur Naka, Ambikapur, Police Station And Tahsil- Ambikapur, District Surguja, Chhattisgarh.
3. Fariyad, S/o Tajuddin, Aged About 34 Years, R/o Near Maveshi Bazar, Khatal, Pratappur Naka, Ambikapur, Police Station And Tahsil- Ambikapur, District Surguja, Chhattisgarh.
4. Suhail, S/o Tajuddin, Aged About 22 Years, R/o Near Maveshi Bazar, Khatal, Pratappur Naka, Ambikapur, Police Station And Tahsil- Ambikapur, District Surguja, Chhattisgarh.
5. Masihuddin, S/o Tajuddin, Aged About 40 Years, R/o Jarhi Mod, Police Station Bhatgaon, Tahsil-Pratappur, District Surajpur, Chhattisgarh.
6. Kaimun Bibi, W/o Tajuddin, Aged About 68 Years, R/o Village Sakarkoni, Police Station Manjhiyao, District Gadhwa, Jharkhand.
7. Samsul, D/o Tajuddin, Aged About 28 Years, R/o Village Sakarkoni, Police Station Manjhiyao, District Gadhwa, Jharkhand.
8. Sambul, W/o Sahjaha, Aged About 35 Years, R/o Chopra Colony, Vishrampur, Police Station Vishrampur, Tahsil And District Surajpur, Chhattisgarh.
9. Shahjaha, S/o Riyaz, Aged About 45 Years, R/o Chopra Colony, Vishrampur, Police Station Vishrampur, Tahsil And District Surajpur, Chhattisgarh.

---- Petitioners

Versus

1. Samsu Khan, S/o Late Kabaddin Khan, Aged About 65 Years, Caste- Musli, R/o Village Kunjnagar, Police Station Jaynagar, Tahsil And District Surajpur, Chhattisgarh.
2. State of Chhattisgarh, Through Collector, Surajpur, District Surajpur, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Sunil Tripathi, Advocate.
For Respondent No. 1	: Shri Rahul Mishra, Advocate.
For State/Respondent No. 2	: Shri Vaibhav A. Goverdhan, P. L.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

13.11.2018

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), by the in-laws of the deceased namely, Majhabi, the complainant, by questioning the order dated 26.10.2016 passed by 3rd Additional Sessions Judge, Surajpur, District Surajpur, in Criminal Revision No. 44/2013, by which, the learned Revisional Court, while reversing the order dated 16.01.2013 passed by the Judicial Magistrate First Class, Surajpur, in Criminal Complaint No. 637/2009, has remanded the matter to the concerned trial Court.

2. Shri Sunil Tripathi learned counsel for the petitioners submits that the order impugned reversing the order of the trial Court is apparently contrary to law. He submits further that the trial Court has rightly discharged the petitioners while observing in its order dated 16.01.2013 that the matter was pending since 2000,

and no evidence before framing of charges was recorded and no evidence is available on record so as to implicate the petitioners under Section 498-A of IPC. Therefore, the order as passed by the trial Court ought not to have been reversed by the Revisional Court without meeting its reasoning in its proper manner. He submits further that father of the complainant has no right to prefer the revision without prior permission of the Court, and therefore, revision petition itself was not maintainable at the behest of the father of the complainant and the order impugned as passed by the Revisional Court is apparently without jurisdiction. He submits further that the matter is pending since 2000, therefore, there is no purpose of sending the matter back to the trial Court. The order impugned is, therefore, liable to be set aside.

3. On the other hand Shri Rahul Mishra learned counsel for Respondent No. 1, while supporting the order impugned, submits that the Magistrate has committed an illegality while discharging the petitioners in relation to the offence punishable under Section 498-A of Indian Penal Code 1860 (hereinafter referred to as 'IPC'), as the same is a cognizable offence and the Magistrate has, therefore, no power to discharge the petitioners. He submits further that the complainant, Majhabi expired on 08.11.2012 and without following the procedure prescribed under Section 256 of the Cr.P.C., the trial Court has erred in discharging the accused persons, therefore, the same has rightly been reversed by the Revisional Court vide impugned order dated 26.10.2016 in a revision preferred by complainant's father.

4. I have heard learned counsel for the parties and perused the entire record carefully.

5. Undisputedly, the marriage of the complainant was solemnized with Petitioner No. 1, namely, Sakil on 20.04.1998 at Vishrampur under the Muslim law. After the marriage, the complainant went to her in-laws' house at village Sakarkoni, P. S. Manjhiyao, District Gadhwa (Jharkhand). After the marriage, the complainant spent some time in her in-laws' house. However, her in-laws' made a demand of Rs. 1,50,000/- and also subjected her to cruelty, therefore, the complainant, Majhabi has been constrained to file the complaint before the concerned trial Court on 22.03.2000. Based upon the said complaint, the Criminal Case was registered by the concerned trial Court, as the Complaint Criminal Case No. 637/2009 for an offence punishable under Section 498-A of IPC. In the said proceeding, the statement of complainant, Majhabi and her witnesses namely, Mohammad Ayub and Mohammad Kalam was recorded under Sections 200 & 202 of Cr.P.C. and, thereafter notices were issued to the Petitioners for their appearances. During the pendency of the trial, the complainant, Majhabi expired on 08.11.2012 and this fact is not in dispute.

6. The trial Court by its order dated 16.01.2013 has discharged the petitioners on the ground that since no evidence has been recorded before framing of charges and as the matter is pending since 2000 and whatever the evidence has been collected would not be sufficient to attract the provision prescribed

under Section 498-A of IPC and based upon such an observation, has discharged the accused persons.

7. Being aggrieved with the aforesaid order, the father of the complainant has preferred the revision, as his daughter, the complainant has expired on 08.11.2012. It is pertinently to be noted here that the alleged complaint was lodged by the wife of Petitioner No. 1, Sakil, herself and who expired on 08.11.2012, therefore, under such circumstances, her father is a competent person to assail the order of the trial Court, dated 16.01.2013 and no prior leave is required for it. The contention of Shri Tripathi in this aspect regarding maintainability of revision at the behest of complainant's father is, therefore, not acceptable.

8. While entertaining the revision, the Revisional Court has observed that the Magistrate has no power to discharge the accused persons in relation to the offence punishable under Section 498-A of IPC, as the said offence is cognizable and not compoundable under Section 320 of Cr.P.C. It was, therefore, not open for the Magistrate to discharge the accused persons and observed further that discretion of discharge would be available to the Magistrate only with regard to the offences which are non-cognizable in nature. The observation as made by the Revisional Court is duly supported by the principles laid down in the matter of '*Ramkishan Vs Smt. Premlata reported in 1997 CriLJ 3365*'. Besides, by virtue of Section 256 of Cr.P.C., the Magistrate ought to have proceeded further with the matter even upon the death of the complainant and without following the said provisions, the trial

Court has certainly committed an illegality in discharging the petitioners. The Revisional Court has, therefore, rightly set aside the order impugned, while remanding the matter to the concerned trial Court.

9. In view of the foregoing discussion, I do not find any legal ground so as to warrant any interference in the order impugned.

10. The Revision Petition is, accordingly dismissed. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge