

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.926 of 2018

Arising Out of PS. Case No.-897 Year-2009 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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1. Md. Sakir, S/o Md. Gani,
 2. Md. Gani, S/o late Md. Aziz,
 3. Anisha Khatoon @ Md. Anisha, W/o Md. Gani,
 4. Md. Zakir @ Md. Jakir, S/o Md. Gani,
 5. Zamsaid @ Md. Jamsaid, S/o Md. Gani, all residents of village- Bhairokothi, Lichi Bagan, P.S. Sitamarhi, Dist - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Samina Khatoon, D/o Md. Muslim, residing at village- Belsand, P.S. Belsand, Dist. - Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sangeet Deokuliar, Advocate Mr. Kumar Abhimanyu Pratap, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For Opposite Party No.2 :		Mr. Dinesh Jha, Advocate Mr. Nikhilesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 24-10-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no.2.

2. The petitioners have moved the Court under Sections 397 and 402 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') against the judgment dated 31.05.2018 passed in Criminal Appeal No.52 of 2017 by which the judgment and order of conviction and sentence passed by the



ACJM-IV, Sitamarhi, dated 03.06.2017, corresponding to Trial No.2292 of 2017/ Complaint Case No. C-1/897 of 2009 has been upheld.

3. The complaint filed by the opposite party no.2, who is wife of the petitioner no.1, upon trial, resulted in conviction of the petitioners under Section 498-A of the Indian Penal Code (hereinafter referred to as 'IPC') and they were sentenced to undergo three years rigorous imprisonment and fine of Rs.3,000/- each. Challenge to the same in Criminal Appeal No.52 of 2017 was also rejected.

4. Learned counsel for the petitioners submitted that there is contradiction between version of the complainant herself in the Complaint Petition and during trial in the deposition. It was submitted that in the complaint she has stated that right after marriage on 09.04.2001, she was tortured for non-fulfilling the demand of she-buffalo and colour TV, wherein during deposition she has stated that demand was of Rs.50,000/-. It was submitted that even date of the so called torture does not tally in the two versions, inasmuch as, she has stated that a year prior to filing of the complaint on 16.06.2019, attempt was made to burn her, whereas, in the deposition before the Court in the year 2012, she has stated that a year back such attempt was made.



5. Learned counsel further submitted that in the Complaint Petition she stated that she was ousted from the matrimonial home on 16.12.2007, but in the deposition before the Court she has stated that she had gone to the matrimonial home a year ago. Learned counsel submitted that even the mother of the complainant, who was examined as witness, has stated that after six months of marriage the dispute started, whereas the complainant herself has stated that the demand was made in the year 2008. Learned counsel submitted that the opposite party no.2 has herself taken *Khulla*. It was submitted that judgment of the trial Court is based on presumption only.

6. At this juncture, on a query of the Court to learned counsel for the petitioners as to why such case came to be filed when opposite party no. 2 has two children out of the wedlock and what she would gain from such allegation, he submitted that the opposite party no. 2 wanted to live with the husband, who used to work outside the State as labourer and he not being in the position, such complaint has been filed as he could not meet the demand. On further query of the Court as to whether such explanation is tenable in the light of there being no suggestion made to any of the witnesses during trial, learned counsel fairly submitted that such suggestion was not made to any of the



prosecution witnesses.

7. Learned counsel for the opposite party no.2 submitted that as far as the opposite party no.2 being divorced/ having taken *Khulla* is concerned, the same is absolutely incorrect for the reason that during trial no such document was ever produced, coupled with the fact that there is specific denial by the opposite party no. 2 that she had signed any *Khulla* paper or the same was signed by her father.

8. Learned counsel for the opposite party no. 2 submitted that there is no contradiction in the version of the complainant with regard to time and torture for the reason that even after filing the case, five times she has stated in deposition that she went with the husband and thereafter lastly she has stated that she has been tortured a year back.

9. Learned counsel further submitted that demand of dowry as learned counsel for the petitioners had submitted that the mother had alleged started after six months, the same is factually incorrect. It was submitted that in the deposition, the mother has stated that the dispute started within six months and not the demand.

10. Learned counsel submitted that the opposite party no.2 even after filing of the complaint case having gone five



times to the matrimonial home itself is an indicator that there was still desire for her to resume the relationship, but because of the attitude and conduct of the petitioners she was forced to leave the matrimonial home and, in that background, she not being ready for any compromise cannot be faulted. It was further submitted that not being ready for compromise cannot have any effect, much less, any negative effect on the case as it relates to the allegation of crime being committed under a statutory law. Thus, the same has to be judged on the basis of evidence and material before the Court and not because somebody does not want to compromise. It was further submitted that compromise cannot be demanded as a matter of right and has to be self forthcoming and the opposite party no.2 not being ready to compromise is further indication that she has been tortured to such extent that she has lost confidence of resuming relationship with petitioner no.1.

11. Learned counsel for the opposite party no.2 submitted that in a separate case filed for maintenance in which the Court has ordered for paying Rs.2,000/- per month, the same is not being paid.

12. The Court finds such stand not being relevant in the present case as the matter shall be decided in the concerned proceeding and has no bearing in the present case.



13. Learned counsel further submitted that petitioner no.1 being husband of the opposite party no.2 has remarried.

14. At this juncture, upon a query of the Court as to whether such fact has come during deposition in trial, the answer is in the negative. Thus, the Court finds that such plea, which is a totally factual aspect, cannot be raised at this stage.

15. Learned APP, upon going through the lower court records, submitted that statement of witnesses are enough indication with regard to proving the charge under Section 498-A of the IPC against the petitioners. It was submitted that the so called contradictions are not of a nature, which would prove fatal to the prosecution and in normal course even where persons are not very educated, such variations in depositions are bound to appear, which, in fact, go to prove that the witnesses were not doctored or tutored. It was further submitted that inference drawn by the trial Court are cogent and based on materials before it. With regard to the appellate Court's order, it was submitted that petitioners having canvassed the points available to them, the Court below has rightly rejected the appeal by a reasoned order, which also does not require any interference.

16. In the facts and circumstances of the case and considering the submissions of learned counsel for the parties,



the Court does not find any merit in the present application. Perusal of the trial Court and appellate Court's judgments coupled with the materials available on record before the Court, consideration of the matter on merits appears to be based on the evidence, which has come during trial and the contradictions, as has rightly been submitted by learned counsel for the opposite party no. 2 and learned APP, are not of such nature, which would require any interference by the Court and the charge under Section 498-A of the IPC has been clearly established.

17. Accordingly, the application stands dismissed.

18. The petitioners are directed to surrender before the Court below, within two weeks from today, to serve the remaining period of sentence.

19. The lower court records be returned forthwith.

(Ahsanuddin Amanullah, J)

J. Alam/-

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