

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 718 of 2018

Arising Out of PS. Case No.-150 Year-2006 Thana- NAGARNAUSA District- Nalanda

1. Sarun Kumar, Son of Dwarika Prasad @ Dwarika Prasad Singh.
2. Bijendra Prasad, Son of Dwarika Prasad @ Dwarika Prasad Singh.
3. Manju Devi, Wife of Bijendra Prasad,
All Resident of Village- Bhadarudih, P.S.- Nagarnausa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sweta Sinha, Wife of Sarun Kumar, daughter of Arjun Prasad, resident of village-Bhadru, P.S.-Nagarnausa, District- Nalanda, At present resident of village- Kokulchak, PS- Noorsarai, District- Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar and Mr. Amit Kishore Sinha, Advocates
For the Opposite Party/s :		Mr. Shyamal Prakash and Ms. Sushma Kumari, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 19-09-2019

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 401 of the Code of Criminal Procedure, 1973, against the
judgment dated 19.04.2018 passed in Cr. Appeal No. 11 of 2014,
by the 1st Additional Sessions Judge, Hilsa, Nalanda by which
the judgment and order of conviction and sentence dated



23.05.2014 passed by the Sub Divisional Judicial Magistrate, Hilsa, Nalanda in Nagarnausa PS Case No. 150 of 2006/GR No. 554 of 2006/Trial No. 65 of 2014, has been upheld.

3. The petitioner no. 1 is the husband of the opposite party no. 2, whereas petitioners no. 2 and 3 are the elder brother and wife of the elder brother of petitioner no. 2. They were accused in a case filed by the opposite party no. 2, along with three other persons. Upon trial, all the accused persons were convicted under Sections 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs. 5,000/- each under Section 498A of the Indian Penal Code and in default to undergo simple imprisonment for five months each and rigorous imprisonment for six months under Section 3 of the Dowry Prohibition Act and fine of Rs. 5,000/- and in default to undergo simple imprisonment for two months each and further to undergo rigorous imprisonment of six months under Section 4 of the Dowry Prohibition Act and Rs. 5,000/- fine and in default to further undergo simple imprisonment for two months each. The appellate Court has acquitted the petitioners under Section 3 of the Dowry Prohibition Act.



4. Learned counsel for the petitioners submitted that the allegation is general and omnibus and *prima facie* appears to be unbelievable. It was submitted that on behalf of the petitioners, certain letters written by the second husband of the opposite party no. 2 were brought on record as also a compromise petition between the parties much prior to filing of the criminal case where they had mutually agreed to dissolve the marriage and expressing the desire to live separately and also be free to marry any other person of their choice. It was submitted that in the said compromise, it was also stipulated that the parties would not file any civil or criminal case against each other. Learned counsel submitted that the letter written by one Ajay Kumar, to the opposite party no. 2 shows that he has married the opposite party no. 2 and was her lover from before. It was submitted that the Court has summarily rejected all these evidences without any cogent reason despite the same being exhibited through witnesses produced on behalf of the petitioners. Learned counsel submitted that even the allegation in the criminal case as well as the deposition of the witnesses, the husband is said to have demanded dowry and tortured and the money was also asked for by the husband as also demand of transfer of land belonging to the father of the opposite party no. 2, in which transaction the petitioners no.



2 and 3 were not involved as they had nothing to gain from the same. It was further submitted that the witnesses have also in very vague and general terms stated with regard to demand of dowry and torture as far as the petitioners no. 2 and 3 are concerned.

5. Learned APP and learned counsel for the opposite party no. 2 submitted that the witnesses have been consistent in their allegation relating to demand of dowry and torture. It was further submitted that the opposite party no. 2 has categorically denied that there was any such compromise and that she was married to Ajay Kumar, which the Court below has rightly accepted.

6. However, at this juncture, when the Court called upon learned APP and learned counsel for the opposite party no. 2 to point out any material which would specifically indicate with regard to the direct role of the petitioners no. 2 and 3 in the alleged demand of dowry or torture; even with the help of the Lower Court Records, they were not able to show any material which would specifically fasten liability of the petitioners no. 2 and 3.

7. Having considered the facts and circumstances of the case, submissions of learned counsel for the parties and taking into account the materials on record, as per the Lower Court



Records received in the Court, in the considered opinion of this Court, the conviction of the petitioners no. 2 and 3 appears to be on tenuous grounds which cannot stand the scrutiny in such matters where the guilt/charge has to be proved against the person beyond any shadow of reasonable doubt. In the present case, at the cost of repetition, the Court finds the contention of learned counsel for the petitioners that as far as petitioners no. 2 and 3 are concerned, the allegations are totally omnibus, vague and general. Thus, the Court finds that their conviction cannot be sustained. Coming to the case of petitioner no. 1, who is the husband, the Court finds that there is sufficient material, including the deposition of witnesses which directly implicate the petitioner no. 1 in the crime alleged to convict him and the appellate Court has also rightly upheld the conviction.

8. Accordingly, the application stands disposed off upholding the conviction and sentence of the petitioner no. 1, but interfering with the conviction and sentence awarded to petitioners no. 2 and 3. The impugned judgments and orders, as far as they relate to the petitioners no. 2 and 3, stand set aside. They are also discharged from the liability of their bail bonds.



9. The petitioner no. 1 shall surrender before the Court below within two weeks from today to serve the remaining sentence.

10. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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