

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 465 of 2008**

- Manoj Vankhede S/o Late Sukaji Vankhede, R/o Village-Bhorgarh, P.S.- Rampathri, District-Balaghat, M.P.

---- Applicant**Versus**

- State Of Chhattisgarh, Through : District magistrate, Durg, District-Durg, Chhattisgarh.

---- Respondent

For Applicant	:	Ms. Indira Tripathi, Adv.
For Respondent/State	:	Mr. Akhtar Hussain, PL.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****18/09/2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 11.07.2008 passed by the learned XIIth Additional Sessions Judge, (FTC), Durg, in Cr. Appeal No. 97/2007 whereby, the learned appellate Court below while acquitting the applicant under Section 506-B and affirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Durg, vide its judgment dated 25.08.2007 in Criminal Case No. 1492/2004 convicting him under Section 498-A of IPC and Section 4 of Dowry Prohibition Act and sentencing him to undergo R.I. for 6-6 months with fine of Rs. 500/- - 500/- respectively, plus default stipulation.

2. Brief facts of the case are that complainant Smt. Pragya Vankhede and the applicant are husband and wife and their marriage was solemnized on 27.02.2004. Complainant Pragya Vankhede lodged a complaint with the averment that the applicant harassed her and gave cruel treatment for bringing insufficient dowry as also for not manging the quests of the applicant properly. Further allegation is that the applicant assaulted and sent her with her brother, thereafter she came to her

parental house and narrated the incident to her parents and lodged the report against the applicant. After completion of investigation, charge-sheet was filed and charges were framed against the applicant under Sections 498-A, 506-B of IPC and Section 4 of Dowry Prohibition Act.

3. So as to hold the accused/applicant guilty, the prosecution examined as many as 8 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide judgment of conviction and order of sentence dated 25.08.2007, learned Judicial Magistrate has convicted the accused/applicant for the offence punishable under Sections 498-A, 506-B of IPC and Section 4 of Dowry Prohibition Act and sentenced him to undergo R.I. for 6-6 months with fine of Rs. 500/- - 500/- respectively, plus default stipulation. This order was appealed by the applicant and in the appeal, learned Appellate Court has acquitted the applicant of the offence under Section 506-B of IPC and affirmed the conviction and sentence of the applicant under Section 498-A of IPC and Section 4 of Dowry Prohibition Act. Hence, the present revision.

5. Learned counsel for the applicant submits that the learned Courts below have not properly considered the evidence of the witnesses because the statement of P.W.-1 complainant is not supported by the evidence of other witnesses. There are contradictions and omissions in the statement of complainant (PW-1). He further submitted that the learned Court below has not properly examined the record and wrongly convicted the applicant, though the complainant did not want to reside and she was not happy with the applicant, so, she lodged the false report. The learned Court below has not considered that the marriage has been taken place on 28.02.2004 and just after 2 months, in the month of May, 2004 complainant left the house, so, the question of demand of dowry and ill treatment is not attracted. He also submits that according to the prosecution case applicant demanded the dowry through telephone but the prosecution has not produced the call details to prove its case, hence, the entire prosecution case is doubtful and the applicant is entitled for acquittal. In support of his argument, he placed reliance on the decision of

High Court of Maharashtra in the matter of Ravindra Pyarelal Bidlan and Others Vs. State of Maharashtra reported in 1993 Mh.L.J. 658.

6. Learned counsel for the State has supported the impugned judgment of conviction and order of sentence.

7. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

8. Complainant Pragya Vnakhede (PW-1) stated in her examination-in-chief that on 26.06.2004, applicant slept her and she admitted in cross-examination, in para 10, that it is true that at the time of setting of marriage, applicant did not demand anything. It is also true that her parents have come to know about dowry on 29.05.2004. Complainant's father Sudhakar Rao (PW-2) and mother Kavita (PW-3) have stated in their evidence that their daughter told them about demand of dowry and the torture given by the applicant. Prakash Vaidh (PW-4) stated in his statement that the parents of the complainant (PW-1) had given him information about the matter. Prabhakar (PW-6) admitted in his cross-examination in para 6 that it is true that his niece don't want to go with the applicant and it is also true that at the time of marriage, nothing had been demanded by applicant. Santosh Kumar (PW-7) admitted in his cross-examination that complainant had told him about the matter.

9. Section 498-A dealt with cruelty, which is reproduced herein below:

Husband or relative of husband of a woman subjecting her to cruelty - *Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation. - *For the purpose of this section, "cruelty" means -*

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or the woman: of

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

This Court in *Amru Vs. State of Chhattisgarh*, 2008 (1) C.G.L.J 216 has held that Section 161 statement is foundation of the prosecution case. If

any witness deposes contrary to that in his Court evidence, same cannot be relied upon.

10. Hon'ble apex Court also held in *Meka Ramaswamy v. Dasari Mohan* reported in 126, 498A r/w S. 34- as under:-

“the reasons given by the two Courts for not placing reliance upon the aforesaid two witnesses are not at all improper. PW 1- father of Rajeeva, happened to be a friend of respondent Nos. 2 and 3. His daughter was married to respondent No. 1 at the instance of respondent Nos. 2 and 3. It was also not disputed that while fixing the marriage, no demand for dowry was made. In view of these facts and circumstances, it is not believable that within seven days of the marriage, they would have started demanding such articles. Even in the letter, Ex. P.4 produced by the friend of Rajeeva - PW 5, there is no mention of demand of dowry or ill-treatment, by any of respondents.”

11. In this case complainant also left his matrimonial house within 2 months, complainant and his mother-father admitted in their cross-examination that, at the time of marriage no demand of dowry was made by the applicant. Complainant also admitted this fact that age difference between them is of about 11 years so, the statement of complainant and witnesses cannot be relied. It is well settled principle of criminal law that prosecution has to prove its case beyond all reasonable doubts, but in this case, prosecution has failed to prove its case beyond all reasonable doubts.

12. Thus, in view of aforesaid discussions and in the light of judgment of the Supreme Court in the matter of *Meka Ramaswamy* (Supra), the criminal revision is allowed. Judgment of conviction and order of sentence dated 11.07.2008 is set aside and the applicant is acquitted of the charges levelled against him.

13. Revision is allowed.

**Sd/-
(Rajani Dubey)
JUDGE**