

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1 of 2010**

- Khomendra Bhardwaj S/o Manohar Lal Bhardwaj, R/o Village Bheja Maidani, Tahsil And P.S. Gurur, Distt.-Durg, C.G.

---- Applicant**Versus**

- State Of Chhattisgarh , Through P.S.Kurud, District Dhamtari (CG)

---- Respondent

For Applicant	: Shri D.N.Prajapati, Advocate
For Respondent/State	: Shri Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****19/08/19**

The present revision arises out of the impugned order and judgment dated 30.12.2009 passed by the Additional Sessions Judge, (FTC) Dhamtari in Cr. Appeal No. 39/2009 whereby the learned appellate Court below has affirmed the conviction of the accused/applicant as awarded by the learned Magistrate vide its judgment dated 09.11.09 in Cr.Case No. 1106/2005, for the offence under Section 498-A of the IPC and sentencing him to undergo RI for one year with fine of Rs. 1,000/- plus default stipulation.

2. Brief facts of the case are that a report was lodged by the complainant Keerti Bharadwaj PW-1 alleging in it that she was subjected to cruelty by the husband i.e. the present applicant and his

family members for demand of dowry. Based on this FIR police registered the crime for the offence under Section 498-A/34 IPC against the applicant, his father, mother, sisters and filed charge sheet before the trial court. After filing of the charge sheet, charges were framed against the applicant and his family members under Section 498-A/34 IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined 17 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case. This apart, three defence witnesses have also been examined by him in support of his case.

4. After hearing the parties, the trial Court has convicted the accused/applicant for the offence under Section 498-A of the IPC and has sentenced him to undergo RI for one and to pay fine of Rs. 1,000/- and has acquitted the other co-accused. This order was appealed by the applicant and in the appeal, learned appellate Court has affirmed the conviction and sentence of the applicant. Hence the present revision.

5. Counsel for the applicant submits that the judgment dated

6. Counsel for the applicant submits that the judgment impugned dated 30.12.2009 is contrary to law and the evidence available on record deserves to be set aside. Learned courts below ought to have considered the fact that there was delay in lodging the FIR and the complainant kept quiet for such a long period and thereafter a false

report has been lodged. He submits that the court below has committed error in not considering the defence of the applicant wherein a true story has been narrated. He submits that after marriage when the complainant became pregnant, the dispute arose between them and the courts below have failed to consider the fact that the other co-accused have been acquitted on the similar allegations as has been levelled against the present applicant but the present applicant has been convicted. He further submits that there are major contradictions and omissions in the statement of the prosecution witnesses. Learned courts below have failed to consider the basic ingredients of the material produced wherein the complainant ha stated that before marriage the applicant developed sexual relation with her and had taken the policy (LIC) in her name whereas the above fact has been denied by the father of the complainant and stated that he had taken the policy in the name of his daughter. He submits that the impugned judgment is not in accordance with law and therefore liable to be set aside. It has been further contended that there is no explanation worth the name that why complainant kept mum for nearly nine months, if cruelty, if any, was meted to her by the applicant and his family members. Reliance has been placed in the matter of **Krishna Bai & Others Vs. State of M.P. (2002 (3) MPHT 269)** and **Kansraj Vs. State of Punjab and Others (AIR 2000 SC 2324)**.

7. On the other hand, counsel for the State supports the impugned order and submits that the same is in accordance with law and there is no infirmity in the same.

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

6. Complainant Keerti Bharadwaj (PW-1) has stated that after engagement with the applicant, he used to visit her and during that period they developed relations and she became pregnant. She has stated that at the time of marriage she was pregnant. In his examination-in-chief, she has stated about the harassment meted out to her by her in-laws. Neera (PW-2) mother of the complainant has stated that her daughter was harassed by her in-laws. However, in her cross-examination she has stated that she was not aware as to why the report was lodged after four months. She has stated that she is also not aware as to why her in-laws ill treated her. She has further stated that she do not know as to why her daughter has got aborted at Raipur. Omprakash Sen (PW-3), Jitendra Netam (PW-4), Jeev Ram (PW-5), Chova Lal Netam (PW-6) and Anjori Ram (PW-7) have also made similar statement as has been made by PW-2. The defence of the applicant is that the complainant was pregnant at the time of marriage and the documents D-3 and D-14 shows the sonography reports and the abortion undergone by her.

7. As per Section 498-A IPC, to state that cruelty, if any, was required to be proved by the prosecution within the ambit of explanation as provided to Section 498-A IPC, but in the instant case, bare perusal of evidence available on record nowhere suggests that prosecution was able to prove beyond reasonable doubt that cruelty, if any, was meted out to the complainant by the petitioner, as defined under Section 498-A IPC, and, as such, no conviction, if any, could be

recoded by the learned Courts.

After considering arguments of respective counsel for the parties and minutely examining the testimonies of the witnesses and other documentary evidence placed on record, I am of the considered view that there is no iota of evidence suggestive of the fact that complainant was maltreated and dowry, if any, was ever demanded, which could compel her to cause grave injury or danger to her life. The prosecution has failed to prove the guilt of accused beyond reasonable doubt and thus, no case for interference is made out. Accordingly, the revision filed by the applicant is allowed and the judgment impugned convicting and sentencing the applicant as mentioned above is set aside. He is acquitted of the charges levelled against him.

Sd/-

(Rajani Dubey)
Judge