

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 689 of 2006**

- Smt. Urmila Manu D/o Naher Das Dhritlahre aged about 24 years, R/o Village-Darri Police Station-Darri, District Korba, Chhattisgarh.

---- Applicant**Versus**

1. Sanjay Manu S/o Budaluram Manu aged about 33 years R/o Village-Bodsara Thana & District-Janjgir Champa, Chhattisgarh.
2. Kaleshwar Prasad S/o Budaluram Manu aged about 50 years R/o Qt. No. F 240, M.P.E.B. Darri, District Korba, Chhattisgarh.
3. Kaleshwari Bai W/o Uttarakumar aged about 45 years R/o Village-Bodsara Thana & District-Korba, Chhattisgarh.
4. Sukrita Bai W/o Samelal Kurre aged about 40 years, R/o E-587 Kailash Bihar Darri, District-Korba, Chhattisgarh.
5. Samelal Kurre S/o Firturam Kurre aged about 49 years, R/o E-587 Kailash Bihar Darri, District-Korba, Chhattisgarh.
6. State of Chhattisgarh, Through : P.S. Darri, District Korba, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Rahil Kochar, Adv.
For Respondents	:	Mr. A.K. Prasad, Adv.
For State/respondent	:	Ms. Akshara Amit, PL.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****16/09/2019**

1. The applicant/complainant has preferred this revision against the order dated 12.10.2006, passed by the Judicial Magistrate First Class Korba (C.G.) in Criminal Case No. 567/2004 whereby the learned Judicial Magistrate First Class acquitted the respondent Nos. 1-5 from the offence under Sections 498-A of the IPC.

2. Brief facts of the case are that, applicant is the wife of Respondent No. 1 and daughter-in-law of Respondent Nos. 2-5. The complainant/applicant was married to respondent No. 1 on

25.06.2002, complainant was harassed and tortured by the respondents for the demand of Rs. 1,00,000/- as dowry. So she filed report against his husband and other family members. After completion of investigation charge-sheet was filed and charge was framed under Section 498-A of the IPC against respondent Nos. 1-5.

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

4. After hearing the parties, the learned trial court by impugned order dated 12.10.2006, acquitted the accused/respondent No. 1-5 from the charge under Section 498-A of the IPC. Hence, this revision.

5. The learned counsel for the applicant/complainant submits that the learned trial Court grossly erred in acquitting the accused persons under section 498-A of IPC. He further submits that it should have been held that the respondent Nos. 1-5 used to demand of Rs. 1,00,000/- and for fulfillment of the same used to harass and tortured the applicant, the judgment and findings of the learned trial Court are perverse and contrary to law as also facts on record therefore, liable to be set aside. He next submits that the learned trial Court did not place the reliance upon the evidence and erred in not holding the respondent guilty for the offence under Section 498-A of the IPC. It is also submitted that it is admitted fact that the accused persons have demanded Rs. 1,00,000/- towards dowry and the presumption ought to have been drawn that the persons who have demanded Rs. 1,00,000/- ought to have demanded after marriage amount of Rs. 1,00,000/- from the applicant and tortured her, even demanding of dowry as an offence but learned trial Court has not drawn any adverse conclusion against the accused persons. Thereafter, he submits that the evidence of the petitioner and other prosecution witnesses have remained unrebutted therefore, finding in this regard drawn by the learned trial Court is perverse and contrary to the facts of the case. Learned trial Court misinterpreted the evidence of the prosecution

witnesses and came to the wrong conclusion. Therefore, judgment of acquittal is bad in law and liable to be set aside.

6. Learned counsel for the respondent Nos. 1-5 have supported the impugned order passed by the learned trial Court and submitted that the order passed by the learned trial Court is based on oral as well as documentary evidence and therefore, the revision is liable to be dismissed.

7. On the other hand learned counsel for the state/respondent No. 6 supported the submission of the applicant/complainant.

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

8. Before trial Court the prosecution has examined complainant Urmila Manu (PW-1), complainant's mother Smt. Satrupa (PW-2), Roopsingh Ratre (PW-3), Nahardas Lahre (PW-4), Rangnath Jangde (PW-5), Badri Prasad (PW-6), G. R. Kurre (PW-7) and A. R. Kureshi (PW-8). The learned trial Court, acquitted the respondents of the charge under Section 498-A of the IPC on the ground that, prosecution has failed to prove its case beyond reasonable doubt.

9. Hon'ble Supreme Court in **Vimal Singh v. Khuman Singh** reported in **(AIR 1998 Supreme Court 3380)** held as under:-

“Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut

out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-Section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court could not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High court in such exceptional cases is to order retrial. In fact, sub-Section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction.”

10. The learned Trial Court, in its judgment, discussed the statements of all the witnesses. The trial Court did not shut down or discard the evidence laid by the prosecution outrightly, on the contrary, the trial Court assessed the entire evidence on record and then came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and acquitted the accused/respondent Nos. 1-5. In the light of Apex Court's decision Viman Singh (Supra), High Court can interfere with the order of acquittal if it comes within the ambit of exceptional case such as same suffering from glaring illegality etc.

11. Considering this aspect of the case and further considering

other evidence available on record, the trial Court has come to the conclusion of acquitting the accused/respondent Nos. 1-5 of the charge levelled against them by extending them benefit of doubt. This Court finds no illegality in the order impugned acquitting the respondent No. 1-5 particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of revision against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

12. Accordingly, the revision preferred by the applicant/complainant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE