

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 431 of 2010

Order reserved on 25.02.2021

Order pronounced on 09.04.2021

Kapil Vastrakar S/o. Late Shri Rama Vastrakar, aged about 32 years, Occupation - Ex - Assistant Jailor, R/o Village Paraghat P.S. Masturi, Presently resident of Jail Line Bilaspur, CG.

---- Applicant

Versus

State of Chhattisgarh, through Collector, Bilaspur, CG.

---- Respondent

For Applicant	: Mr. Ashok Kumar Shukla, Advocate
For State/ Respondent	: Mr. Anand Verma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

Marriage between the applicant herein with Manjula (PW-1) was solemnized on 15.02.2001 and after living for some days in her matrimonial home, they went to Ambikapur where the husband was working. However, just within the four months after marriage, the relations between the two turned sour, allegedly, on account of the demand of Hero Honda Splendor Motorcycle raised by the husband and his family members such as the mother-in-law, father-in-law and brother-in-law of the complainant Manjula. Not only this, the accused/applicant herein is also alleged to have subjected the complainant to frequent beatings on account of the non fulfillment of his demand for Hero Honda Splendor Motorcycle. When the cruel behavior of the applicant and his relatives became unbearable, the complainant made a written report (Ex. P-1) followed by registration of FIR under Section 498-A IPC against them.

2. It is relevant to note that the FIR was registered against as many as four persons but two out of them have expired during the trial itself and one has been acquitted by the learned Magistrate. In other words, the present applicant Kapil Vastrakar is the only person who was convicted by the learned Magistrate under Section 498-A IPC and sentenced to undergo RI for one year and pay fine of Rs.1,000/-, plus default stipulation. Learned lower appellate Court also approved the findings recorded by learned Magistrate as a whole by the judgment under challenge in this revision petition dated 18.08.2010 passed in Criminal Appeal No. 145/2006. Hence this revision.

3. Counsel for the accused/applicant submits that when co-accused Mannu has been acquitted by the trial Court, the present applicant should also have been extended the same benefit as the case of both of them rests on the same set of evidence. He submits that both the Courts below have not considered the evidence adduced by the defence in its proper perspective, and merely on the basis of testimony of the interested witnesses examined by the prosecution, he has been held guilty under Section 498-A IPC which is wholly unjustified. He submits that the prosecution did not bother to examine any independent witness to go into the veracity of the allegations made by the complainant. This apart, the question of territorial jurisdiction for setting the criminal law in motion against the accused/applicant has also not been given proper consideration by both the Courts below and therefore, also the accused/applicant is entitled for acquittal. Reliance is placed on the judgment of the Supreme Court in the matter of **Mohd. Hashim Vs. State of Uttar Pradesh and others reported in (2017) 2 SCC 198** and in the

matter of **Sitaram Paswan and another Vs. State of Bihar** reported in **2005 AIR SCW 4713** and other decisions of the High Court.

4. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that looking to the conduct of the accused/applicant where right from the inception of marriage he started subjecting his wife to beating for demand of motorcycle and made her leave his house and go to stay in her maternal home, he is not entitled for acquittal claiming parity with the one who has been acquitted by learned Magistrate because the allegations against both of them are altogether different.

5. Evidence of the complainant (PW-1) goes to show that though there was no requirement of dowry in her community, yet her parents had given number of household articles as also the gold and silver ornaments as per their capacity, yet just after four five months of the marriage the present applicant and his relatives such as mother, father and brother started harassing her. Her evidence also goes to show that holding her a woman of having ugly complexion and also persisting upon his demand for Hero Honda motorcycle, he time and again subjected her to beating with hands, fists; and to prevent the sound of her cries from going out, he used to insert a piece of cloth in her mouth. She has further stated that for some days she did not make the matter public in the hope that the things would be set right some day or the other, but when there was no improvement for sufficient long time, she informed her ordeal to her parents. The allegation of taking liquor and then misbehaving with her under intoxication and threatening her of life at point of knife has also been made by the complainant. The tortuous act of the accused/applicant

meted out to the complainant for demand of motorcycle also finds corroboration from her father Rameshwar Prasad (PW-2), Suresh Vastrakar (PW-5) and Panchram Vastrakar (PW-6). The letter written by the sister of the complainant namely Pramila (PW-4) to her father informing the miseries of the complainant as were telephonically informed to her by the complainant herself, has also been seized. Likewise, another letter written by the complainant herself has also been seized, and if a composite reading of those letters is made, it is evident that the complainant underwent incessant tortuous activities at the hands of her husband. Furthermore, the evidence of the complainant indicates that the accused/applicant was having an extra-marital affair with some woman which caused great mental agony to her. The evidence of Rameshwar Prasad (PW-2) says that after receiving the information regarding the harassment to the complainant he went to the house of the accused/applicant and even after showing his inability to fulfill the demand of motorcycle due to premature retirement, but the accused/applicant misbehaved with him and did not budge from his persistent demand. As regards the question of territorial jurisdiction in setting the criminal law in motion, the same should have been taken at the initial stage of trial instead of the same being raised before this Court in revision.

6. Having heard counsel for the parties, seen the evidence of the witnesses in particular that of the complainant PW-1, her father PW-2 and her brother-in-law (PW-5) and considered the judicial pronouncements cited by counsel for the accused/applicant, this Court is of the considered opinion that the elements of cruelty meted out by the accused/applicant in raising a persistent demand of motorcycle and subjecting the complainant to beating are fully made

out and therefore, this Court does not see any reason to interfere with the findings recorded by both the Courts below as far as the applicant herein is concerned. This Court is not in agreement with the submission of learned counsel for the accused/applicant that since one accused has been acquitted, the similar treatment should be given to the present applicant also, for the reason that the allegations made against the accused/applicant are far serious in nature. Thus the conviction of the accused/applicant under Section 498-A IPC is maintained.

7. Since there is nothing on record to indicate that the accused/applicant had any previous conviction, treating him as the first offender this Court feels that he would be entitled for the benefit of Section 4 of the Probation of Offenders Act, 1958. This Court therefore, grants the said benefit to the accused/applicant on his entering into a bond of Rs. 10,000/- within a period of four weeks from today before the trial Court for keeping peace and good behavior. Since the accused/applicant is already on bail, his bail bonds stand discharged.

8. Revision is thus partly allowed.

Sd/-

(Vimla Singh Kapoor)

Judge