

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 3686 of 2017****IN THE MATTER OF****Raja Dey & Ors.****Vs.****The State of West Bengal****For the Petitioners : Mr. Bibaswan Bhattacharya, Adv.,
Mrs. Bindia Paul, Adv.,****For the State : Mrs. Anasuya Sinha, Adv.,
Mr. Pinak Kumar Mitra, Adv.,****Judgment on : 16.06.2023****Subhendu Samanta, J.**

This is an application u/s 401 read with section 482 of the Code of Criminal procedure preferred against a judgment and order passed on 30th October 2017 by the Learned Sessions Judge Dakhin Dinajpur, Balurghat dismissing the criminal appeal 14 of 2017 and affirming the order of conviction and sentence passed by the Learned Chief judicial Magistrate Dakhin Dinajpur, Balurghat in connection with GR Case No. 770 of 2009 arising out of Balurghat Police station case no. 336 of 2009 whereby the petitioners were convicted

u/s 498 A/34 IPC and sentence to suffer RI for 6 months each and to pay Rs 1000 each, in default to suffer SI for one month each.

Three petitioners preferred this instant revisional application. During the continuation of the instant revision the petitioner no. 2 and petitioner no. 3 expired, thus their name was expunged from the criminal revision. The instant criminal revision is now being proceeded by the present petitioner no. 1. Viz- Raja Dey Petitioner no. 1 married the de facto-complainant Babli Dey in the year 2004 according to Hindu Rites and Customs. Out of that wedlock a male child was born in the year 2008.

The brief fact of the case is that the de facto-complainant namely Babli Dey lodged an FIR against the present petitioner before the Balurghat Police Station being case no. 336 of 2009 dated October 13, 2009 u/s 498 A/325/34 IPC.

Investigation of the police ended in the charge sheet against the all petitioners subsequently all three petitioners were placed on trial before the Learned CJM Dakhin Dinajpur at Balurghat.

During the trial 10 witnesses were examined by the prosecution but the defence adduced none. After the

conclusion of the trial and after hearing all the parties Learned Chief Judicial Magistrate convicted the present petitioner u/s 498 A/34 IPC. Being aggrieved by the said order of conviction the petitioner preferred an appeal before the Learned Sessions Judge Dakshin Dinajpur, Balurghat which is registered as criminal appeal no. 14 of 2017. After hearing the appellants and the state Learned Sessions Judge dismissed the appeal and the judgment and order of conviction passed by Learned CJM was affirmed.

Hence this revision.

Learned Advocate for the petitioner submitted before this court that the judgment of both the trial court and appellate court suffers no consideration of material evidences. The impugned order of conviction is illegal in the eye of law. the findings of the Learned Appellate Court is actually perverse. Both the trial court and the appellate court did not consider the statement of independent witnesses namely PW 2, PW 4 and PW 5 who are the independent witnesses/neighbours of the matrimonial home of the de facto complainant. The evidence of PW 7 can not be believed as he was never interrogated by the IO in the case and he is an interested witness. PW 1, that is the de facto complaint stated about sustaining injury at her eye but no cogent medical certificate or

evidences were adduced by the prosecution to support the injury of the de facto complainant. Evidence of PW 7, PW 8 and PW 9 cannot be believed as their statement is contradicted. Further more the de- facto complainant stated that she was treated at Red Cross hospital, while her twin sister PW 8 stated that the de- facto complaint was treated by a local doctor. No local Dr. was adduced on behalf of the prosecution in this case. Learned Advocate for the petitioner further argued that it is perverse finding of the Learned Appellate Court that the Streedhan article of the de facto complainant was kept at her matrimonial home by the present petitioners. The questions put to the accused petitioners u/s 313 Cr.P.C. is not at all specific to the points which was put forward during the examination of PWs. The appreciation of evidence by the Learned CJM as well as by the Learned Sessions Judge is palpably wrong. Learned Sessions Judge has misguided himself only to believe the statement of interested witnesses. Under such circumstances the petitioner prayed for setting aside the impugned order of conviction and sentence.

Learned Advocate for the respondent, the state submitted before this court that the present revisional Court has no power to go into the merit of the evidences adduced before the learned Magistrate. This is a court of revision and no second

appeal is permitted under the Criminal Procedure Code, thus the revisional court only permitted to look into the perversity of finding of the Learned Appellate Court. He further argued that the judgment passed by appellate court is very much cogent and cannot be altered in the present facts and circumstances of this case. He also argued that the finding of appellate court on the basis of the order of conviction is very well maintainable thus there is no scope to interfere.

Heard the Learned Advocate perused the impugned judgment passed by the appellate court as well as the order of conviction recorded by the Learned CJM. The order of conviction was passed u/s 498 A/34 of IPC. Present petitioner no. 1 is the husband, petitioner no. 2 is the father-in-law and the petitioner no. 3 is the mother-in-law of the de-facto complainant. The present petitioner no. 1 is only revisionist here. It is to be looked into whether the order of conviction passed by the Learned CJM and affirmed by the Learned Appellate Court in respect of the petitioner no. 1 husband is maintainable or not.

Factually the FIR disclosed the allegation of torture inflicted by the present petitioner upon the de facto complaint and his minor son. The FIR also stated about the dowry demand of Rs 50000/-.

The de- facto complainant was examined as PW 1 who deposed that she was subjected to physical and mental torture on her matrimonial home by her husband and in laws on the demand of dowry. It was further alleged in the FIR that on the day of incident she was physically assaulted by her husband and sustained injury at her. Thus she had to left her matrimonial home soon. However at the later stage no evidences was produced by the prosecution to prove the assault thus there is no record of conviction u/s 323 or 325 IPC. The torture meted out upon the de- facto complainant on the demand of dowry was also corroborated by PW 3 (father) PW 7, PW 8, PW 9, PW 7 is the husband of the sister of the de- facto complainant; some statement of PW 7 recorded at the time of cross examination was pointed out before this court to prove that the PW 7 is not trustworthy and he is an interested witness.

I have perused the evidence of PW 7. The basic factum of torture meted out upon the de facto complainant is appears to be corroborated by PW 7. Thus, I find there is no infirmity in the evidence of PW 7, though in some places of his statement there are some discrepancies, but it cannot be said to be unreliable.

The evidences of PW 3 PW 8 PW 9 cannot be discarded on the ground that they are the near relatives of the de facto complainant.

The term 'cruelty' which is the key factor to decide this case is defined in the **Black Law Dictionary** as "the intentional and malicious infliction of mental or physical suffering on a living creatures, especially, of human, abusive treatment; outrage (abuse inhuman, treatment, indignity)."

The explanation of Section 498 A IPC specifically clarified the term "cruelty".

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) of the woman;
- (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 persons related to her to meet demand.

In this case it has been alleged that the de facto complainant was subjected to both physical and mental torture on the demand dowry of Rs 50000/- at her matrimonial home by her husband and in-laws. The evidence was adduced to the effect by the de facto complainant supported by the other 4 witnesses. It is the argument of the Learned Advocate for the

Petitioner that a finding of the Learned Appellate court is perverse to the effect that Appellate court only believed the statement of close relatives of the de- facto complainant but not put any emphasis in the statement of neighbours.

It appears from the impugned judgment of the sessions Judge that he has clarified his stand for believing the statement of near relatives on the ground that in Indian Society the married Women are being subjected to mental and Physical torture at her matrimonial home and usually they did not utter such torture to the outsiders of their family. Learned Sessions Judge is also of view that the information of such physical and mental torture must be there with the close relatives of the de facto complainant that is his father mother and sister. Considering the view of the Learned Sessions Judge I think it is justifiable for the Learned Sessions Judge to hold such observations.

The "cruelty" upon a married lady was alleged by victim/de-facto complainant by her testimony. She deposed that she was subjected to cruelty on the demand of further dowry. The statement of the victim got corroboration from the statements of other reliable witnesses.

The defence has failed to produce any evidence or circumstances by which the case of the prosecution can be disbelieved.

I further find that the impugned order of conviction passed by the Learned Magistrate is on the basis of materials on record and it not at all perverse. Considering the entire circumstances, I find there are sufficient materials in the present case to show that the present petitioner No.1 being the husband has inflicted torture upon the de facto complainant with the demand of dowry of Rs. 50,000/- at her matrimonial home.

Accordingly, I find no merit to entertain the instant Criminal Revision.

Nothing to interfere with the appellate order passed by the Learned Sessions Judge.

C.R.R. is dismissed.

The order of Learned Sessions Judge passed in Criminal Appeal No.14 of 2017 is hereby affirmed. The order of conviction against the present petitioner namely, Raja Dey is affirmed.

The petitioner Raja Dey is on bail, he is directed to appear before the Learned CJM concerned on 30th June, 2023

to serve out the remaining part of the sentence. Failing which Learned CJM shall issue a W/A for the compliance of the order.

Any order of stay/suspension of sentence passed by this Court during the continuation of the instant revision is hereby vacated. Connected applications if pending are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)