

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.623 of 2019

Arising Out of PS. Case No.-2780 Year-2004 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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GURIYA KUMARI Wife of Sri Kumar Gaurav Singh Resident of Village -
Kamarthu, P.S.- Gayghat, District- Muzaffarpur, At present - D/O- Shivdayal
Singh, Resident of Village - Pahsaul, P.S.- Katra, District- Muzaffarpur

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Kumar Gaurav Singh Son of Umesh Kumar R/O Village- Kamarthu, Ps.-
Gayghat, Dist.- Muzaffarpur And At Present Residing At Kumar
Engineering, Airport Road, North Jalukbari Dehan Garigaon, Guwahati-
781012 (Assam).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Akbar Ali, A.P.P.
For the O.P. No.2	:	Mr. Prince Kumar Mishra, Advocate
		Mr. Rahul Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 23-04-2024 Heard learned advocate for the petitioner and learned

Additional Public Prosecutor for the State as well as learned

advocate on behalf of the Opposite Party No.2.

2. The judgment and order of acquittal passed in

Criminal Appeal No.71 of 2017 by the learned Sessions Judge,

Muzaffarpur on 27.09.2018 is impugned in the instant revision

whereby and whereunder the learned Judge in Appellate Court

was pleased to set aside the order of conviction passed by the

Trial Court against the appellant for committing offence under

Section 498A of the I.P.C. and a consequence sentence thereof.



The complainant is the petitioner before this Court.

3. It is pertinent to mention here that marriage of the petitioner was solemnized with the opposite party no.2 in the year 1999 she filed a complaint alleging offence under Sections 494/498A of the I.P.C. in the year 2004. It is alleged by the petitioner that since two days after her marriage, the petitioner was subjected to physical and mental torture by her husband and other matrimonial relations on illegal demand of money to the tune of Rs.2,00,000/- (Rupees two lacs only). The petitioner withstood such torture on the hope and aspiration that everything would be normal in future. However, it was not so in the matrimonial life of the petitioner and the opposite party no.2. The opposite party no.2 had an illicit relationship with a lady of Guwahati in the State of Assam. He also filed a suit for divorce against the petitioner. Subsequently, the petitioner filed a complaint case being Complaint Case No.7280 of 2004 alleging offence under Sections 498A/494 of the I.P.C.

4. It is contended by the learned advocate for the petitioner that the Appellate Court failed to appreciate and consider the evidence of the petitioner and other witnesses on behalf of the complainant. On the other hand, the learned Sessions Judge directed himself in a preconceived notion and



relied on the evidence of the opposite party no.2 and his witnesses only and acquitted the opposite party no.2.

5. In support of his contention, the learned advocate for the petitioner refers to paragraph no.13 of the Trial Courts judgment where the learned Magistrate on careful appreciation of evidence came to a finding that all the witnesses on behalf of the complainant deposed in the same manner that the petitioner was assaulted and tortured mentally on unlawful demand of Rs.2,00,000/- from her paternal home. The brothers of the complainant and even the independent witnesses supported the case of the complainant. Therefore, the evidence on behalf of the complainant clearly establishes her case within the scope of Explanation-2 of Section 498A of the I.P.C. The learned Judge in the Appellate Court did not make a comparative study between the evidence adduced by the complainant and the evidence adduced on behalf of the accused. He merely stated the evidence and accepted the evidence led by the witnesses on behalf of the opposite party no.2. There is absolutely no reason as to why the learned Sessions Judge had accepted the evidence of the opposite party no.2 and rejected the deposition of the complainant and his witnesses. Therefore, the impugned judgment is liable to be set aside. He also refers to the judgment



passed in Matrimonial (Divorce) Suit No.120 of 2004 by the learned Principal Judge, Family Court, Muzaffarpur on 21.07.2016. The prayer for divorce by dissolution of marriage was dismissed by the learned Principal Judge. In course of discussion, the learned Principal Judge held that the opposite party no.2 maintains a live in relationship with one Sima Barua and in the said relationship the said Sima Barua gave birth to a female child. The said fact was admitted during Trial of the matrimonial proceeding by the opposite party no.2 himself.

6. Learned advocate on behalf of the opposite party no.2, on the other hand, submits that the complaint filed by the complainant is an afterthought and counter productive action after the opposite party no.2 filed a suit for divorce against the petitioner. It is also submitted by the learned advocate for the opposite party no.2 that neither the complainant, nor the witnesses on behalf of the complainant could depose as to the date and time of the alleged torture and demand of dowry. The complainant stated that such demand was made by the accused persons since two days after marriage, while the brothers of the complainant stated that the complainant stayed happily with the opposite party no.2 for few months and thereafter, the opposite party no.2 and other accused persons made a demand of



Rs.2,00,000/- from the petitioner. Thus, in the absence of specific evidence, the Court cannot hold the husband of the complainant guilty for committing offence under Section 498A of the I.P.C. on omnibus and vague allegations.

7. Referring the the decision of this Court reported in **(2024) 2 BLJ 854** in the case of **Aruna Devi Vs State of Bihar and others**, it is submitted by the learned counsel for the opposite party that unlawful demand of money under Explanation-2 of Section 498A of the I.P.C. must relate to the dowry and such unlawful demand must be associated with the consideration of marriage. It is absolutely not stated by the complainant and the witnesses that the demand of money was made unlawfully as a consideration of marriage.

8. Having heard the learned counsels for the parties and on careful perusal of the judgments passed by the Trial Court as well as the Court of Appeal, this Court is inclined to record that revisional jurisdiction of the High Court does not confer any power to the Court to make independent assessment of the evidence adduced by the witnesses during trial. However, when the revisional court finds that the impugned judgment suffers from patent perversity and non consideration of materials, the Court can sparingly in rare cases examine the



evidence adduced by the parties.

9. However, without going into the nittygrities of evidence adduced by the parties, this Court find that the Court of Appeal did not appreciate, assess and scan the evidence adduced by the witnesses on behalf of the complainant and the opposite party no.2 and there is no discussion as to why the Court of Appeal accepted the evidence adduced on behalf of opposite party no.2.

10. In view of such matter, this Court is of the opinion that the Court of Appeal should reconsider the appeal afresh and pass a reasoned judgment on careful consideration of the evidences adduced by both the parties.

11. For the reasons stated above, the impugned judgment passed in Criminal Appeal No.71 of 2017 on 27.09.2018 by the learned Sessions Judge, Muzaffarpur is quashed and set aside.

12. The learned Sessions Judge, Muzaffarpur is directed to re-hear the Criminal Appeal No.71 of 2017 on 27.09.2018 and pass a reasoned judgment after examination, appreciation, assessment and scanning of evidence adduced by both the parties within two months from the date of communication of the order.



13. The instant revision application is accordingly,
disposed of with the following order.

14. Let a copy of this order be sent to the learned
Sessions Judge, Muzaffarpur for information and
communication.

15. The learned Sessions Judge, Muzaffarpur shall
take all endeavor to pass the judgment in Criminal Appeal
No.71 of 2017 on 27.09.2018 after hearing the parties within
two months from the date of communication of this order.

(Bibek Chaudhuri, J)

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