

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.267 of 2018**

Arising Out of PS. Case No.-2569 Year-2010 Thana- BHAGALPUR COMPLAINT CASE  
District- Bhagalpur

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Alka W/o Ranjan Kumar Rao and D/o Sri Kamleshwari Prasad Singh, R/o  
Village- Lilatari, P.S.- Rajoun, District- Banka at present New Shivpuri  
Colony, P.S. - Tilkamanjhi, District- Bhagalpur.

... .. Petitioner/s

Versus

1. State of Bihar
2. Ranjan Kumar Rao S/o Sri Raj Kumar Rao, R/o Village- Lilatari, P.S.-  
Rajoun, District- Banka.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-----------------------------|
| For the Petitioner/s | : | Mr. Dr. Manoj Kumar, Adv.   |
| For the O.P. No. 2   | : | Mr. Ajay Mukherjee, Adv.    |
| For the State        | : | Mr. Sunil Kumar Pandey, APP |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**

**ORAL JUDGMENT**

**Date : 22-02-2024**

The instant revision is directed against a Judgment and order of acquittal, passed in Criminal Appeal No. 118 of 2016, Trial No. 18 of 2017, by the 7<sup>th</sup> Additional District & Sessions Judge, Bhagalpur, reversing the Judgment and order of conviction and sentence by the learned Sub-Divisional Judicial Magistrate, Bhagalpur, in Complaint Case No. 2569 of 2010, holding the opposite party no. 2 guilty for committing offence under Section 498A of the I.P.C. and convicting and sentencing him to suffer Rigorous Imprisonment for two years with fine of Rs. 5,000/-.



2. Before I deal with the question, as to whether the impugned Judgment passed by the appellate court suffers from any illegality or material irregularity as well as jurisdictional error, let me state the following facts:-

The marriage of the petitioner with the opposite party no. 2 was solemnized according to Hindu rites and ceremony on 23<sup>rd</sup> June, 2010. It is alleged by the petitioner that immediately after marriage, she was pressurized by her husband and other matrimonial relation to bring further sum of Rs. 5,00,000/-. When the petitioner came to know that the opposite party no. 2 managed to get the properties of her father register in their names, she made an allegation to the opposite party no. 2 that he and other matrimonial relation committed cheating in respect of Rs. 3,93,000/- being the consideration money of the land of her father. The petitioner was subjected to physical assault and mental cruelty. Subsequently, on 19<sup>th</sup> December, 2010, accused nos. 2 to 5 came to her paternal home and took her to matrimonial home. On the way to her matrimonial home, it is alleged that the opposite party nos. 2 to 5, left her on the road taking away her ornaments, wearing apparels and some cash money, which was given to her by her father. She and her brother went to the nearest Police Station to lodge F.I.R., but Police refused to lodge F.I.R. Therefore, she filed a court complaint before the learned Sub Divisional Judicial Magistrate, Bhagalpur.

3. The learned Magistrate took cognizance of offence against the accused persons after initial enquiry and issued process. The accused persons being the husband and other matrimonial relation of the petitioner appeared before the trial court. Charge under Section 498A and 3/4 of the Dowry Prohibition Act was framed. The opposite party no. 2 and other accused persons denied the charges and claimed to be tried. During trial, the



complainant examined four witnesses. They are Navin Kumar Choudhary, Rishi Kumar, Sharla Devi and Alka, complainant herself. PW.1, Navin Kumar Choudhary, is a cousin brother of the petitioner, PW.2, Rishi Kumar, is the brother of the petitioner, PW.3, Sarla Devi is neighbour and PW.4, Alka, is the complainant herself.

4. On the contrary, the accused persons examined 14 witnesses. They are Sachidanand Singh, D.W.-1, Raj Kumar Rao (father of the opposite party no. 2), D.W.-2, Sant Kumar Singh, D.W.-3, Ashok Rao, D.W.-4, Uma Kant Rao, DW.5, Babloo @ Rajeev Kumar, D.W.-6, Prafful Kumar Singh, DW.7, Anita Devi, DW.-8, Indu @ Manju, DW.-9, Bharat Mahto, D.W.10, Laxman, DW.-11, Niranjana, DW.12, Kamleshwari Yadav, DW.13 and Ranjan Kumar Rao (opposite party no. 2 himself) as D.W.-14.

5. It is needless to say that the revisional court does not have the jurisdiction to assess the evidence on record afresh like that of the appellate court. The jurisdiction of the revisional court is limited to consider legality or illegality of any order, finding and sentence. If, however, the subordinate courts failed to consider the evidence on record or the finding of the lower appellate court is absolutely perverse, then only the revisional court is entitled to consider the evidence on record.

6. In the instant case, the petitioner mainly alleged cruelty by the opposite parties on the ground of harassment to fulfill their illegal demand of dowry or any valuable security from the father of the complainant. It is also alleged that the opposite party no. 2 and his matrimonial relative took away a landed property worth Rs. 3,93,000/- and recorded the said property in their names by deceiving her father and thereby committed cheating upon the father of the complainant. However, except the oral evidence, the complainant



failed to produce any documentary evidence in support of his allegation. The complainant could have filed the deed of conveyance of the property, which was allegedly taken by her husband from her father after her marriage. These documents could have been the best evidence in support of fulfillment of illegal demand of dowry, but the complainant failed to produce any document to this effect.

7. It is contended by the learned Advocate for the petitioner that in paragraph-74 of the cross-examination, the petitioner stated in the trial court that it is not possible for her to stay with the opposite party no. 2, her husband, because her husband had solemnized second marriage with one Diksha Kumari. However, the complainant failed to produce any document in support of petitioner's marriage with one Diksha Kumari.

8. In revision, the complainant filed a photo-state copy of a medical certificate, wherein, he is recorded that Diksha Kumari gave birth to a female child in the wedlock between her and accused Ranjan Kumar Rao. However, said document has not been exhibited in trial. The opposite party no.2 by filing a counter affidavit, against the said supplementary affidavit, has denied marriage of the opposite party with one Diksha Kumari.

9. Section 498A of the I.P.C. defines the term cruelty in the explanation appended to the said Section. The explanation runs thus:-

*“Explanation.—For the purposes 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; or*



*(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 person related to her to meet such demand.]”*

10. In order to prove a charge under Section 498A of the I.P.C., the case of the prosecution must be brought within the four corners of the definition of cruelty. Contracting second marriage during the subsistence of first marriage, is an offence under Section 494 of the I.P.C., but contracting second marriage, person does not fall within cruelty unless and until a case is made out that due to second marriage by her husband, the complainant suffer tremendous mental torture by willful conduct of the accused persons, which is of such nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health of the women. No such case is made out against the petitioner.

11. Therefore, I am not in a position to interfere with the decision of the appellate court, which is impugned in the instant revision.

12. The instant revisional application is, therefore, dismissed on contest.

13. Before I part with, I shall be failing to discharge my duty, if I do not record that the opposite party no. 2 is an employee of Indian Railway. It is needless to say that for a Government employee, solemnization of second marriage during the subsistence of first marriage amounts to gross misconduct, for which the opposite party no. 2 is liable to departmental enquiry.



14. Therefore, this order be sent to the employer of the opposite party directing the employer to initiate an enquiry, as to whether the opposite party had contracted a second marriage or not. If, the allegation is found to be true, disciplinary proceeding should be initiated against him and he should be punished in accordance with the Service Rules of the Indian Railway Departmentally.

**(Bibek Chaudhuri, J)**

pravinkumar/-

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