

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.923 of 2018

Arising Out of PS. Case No.-231 Year-1994 Thana- NAWADA District- Nawada

1. Sahdeo Gupta, Son of Late Banwari Lal Gupta Resident of Bokaro Steel City, Kiran Store, Sector IV, Police Station - Bokaro, District - Bokaro, Jharkhand.
2. Naresh Kumar Gupta @ Narsh Kumar Gupta, Son of Sahdeo Gupta Resident of Bokaro Steel City, Kiran Store, Sector IV, Police Station - Bokaro, District - Bokaro, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kanhaiya Lal, Son of Late Laxmi Prasad Resident of Mohalla - Purani Bazar, P.S.- Nawada, District - Nawada (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sharvan Kumar, Sr. Advocate Mr. Vishal Kumar, Advocate Mr. Dinesh Maharaj, Advocate
For the Opposite Party No. 2 :		Mr. Anand Kumar, Advocate Mr. Ravi Bhardwaj, Advocate
For the State	:	Ms. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 22-03-2024

1. The instant revision is directed against an order, dated 30th of May, 2018, passed in Criminal Appeal No. 39 of 2008, by the learned Additional Sessions Judge,



Fast Track Courts, 1st, Nalanda at Biharsharif, whereby and whereunder the learned Court of Appeal upheld the order, dated 12th of March, 2008, passed in Trial No. 82 of 2008, arising out of Nawada P. S. Case No. 231 of 1994, corresponding to G. R. Case No. 1543 of 1994, by the learned Chief Judicial Magistrate, Nalanda at Biharsharif, convicting and sentencing the Petitioners to suffer rigorous imprisonment for one year each for the offence punishable under Section 498A of the Indian Penal Code and rigorous imprisonment of six months with fine of Rs. 1,000/- each for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961. Both the sentences were directed to be run concurrently.

2. The Opposite Party No. 2 filed complaint case, bearing no. 656 C of 1994 before the learned Chief Judicial Magistrate, Nawada against the Petitioners and their family members, alleging, *inter alia*, that on 1st of March, 1993, the daughter of the Informant, namely, Jyoti Gupta was given marriage with the Petitioner No. 2 according to Hindu Rites and Ceremonies. After marriage, she went to her matrimonial home and she was subjected to physical and mental torture for one Maruti Car. The wife of Petitioner



No. 2 expressed her inability to provide a Maruti Car to the Petitioners, but she was brutally assaulted by them. A Panchayati was held at Bokaro where her matrimonial relations agreed to keep her with full dignity and honour. But they did not follow the decision of the Panchayati. The victim sent letters to her father, disclosing that if the demands of the accused persons are not fulfilled, they will ultimately kill her. The Informant made all other allegations, implicating the Petitioners of dowry related harassment and cruelty towards his daughter.

3. The said complaint was referred to Police under Section 156(3) of the Cr.P.C. and accordingly Nawada P. S. Case No. 231 of 1994, dated 19th of December, 1994 under Sections 498A, 323, 120B, 348 and 386 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, 1961 was registered and Police took up the case for investigation. On completion of investigation, the Police submitted charge-sheet against the Petitioners and 11 other persons named in the F.I.R.

4. Subsequently, on the prayer made by the Petitioners, the case was transferred from the Court of learned Chief Judicial Magistrate, Nawada to the Court of



learned Chief Judicial Magistrate, Nalanda at Biharsharif.

5. It cannot be out of place to mention that the Petitioners along with other accused persons filed an application before this Court, challenging the order of taking cognizance and quashment of the said order. However, this Court rejected the said application. The Petitioners preferred Special Leave Petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court allowed the application with regard to 11 accused persons other than the Petitioners.

6. It is contended on behalf of the Petitioners that both the Trial Court as well as the Court of Appeal, convicted and sentenced the Petitioners to rigorous imprisonment for one year for offence under Section 498A of the Indian Penal Code and rigorous imprisonment for six months for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961 on the basis of omnibus allegation made by the father of the wife of the contesting Petitioner No. 2.

7. It is submitted by the learned Advocate for the Petitioners that both the Trial Court and the first Appellate Court did not visualize the specific allegation against Petitioner Nos. 1 and 2. It is alleged by the



Informant that the victim was subjected to cruelty on demand of Maruti Car. However, there is no specific averments in the complaint as to who demanded the Maruti Car, when it was demanded and when and how the daughter of the Informant was tortured.

8. Time and again, it is stated by the de facto complainant that his daughter was brutally tortured by the Petitioners. However, she was never medically treated for such torture allegedly perpetrated upon her by the Petitioners.

9. The learned Advocate on behalf of the Petitioners rightly submits that both the Courts below relied on the statement of the wife of the contesting Petitioner No. 2 recorded under Section 164 of the Cr.P.C. as substantive piece of evidence. However, they failed to consider that a statement under Section 164 of the Cr.P.C. is not a substantive piece of evidence but only corroborative in nature, when it corroborates the statement made by the de facto complainant in the petition of complaint, the statement under Section 164 of the Cr.P.C. can be relied on as a corroborative piece of evidence. However, the statement under Section 164 Cr.P.C. is found to be exaggerated to



embrace the prosecution case.

10. The learned Advocate for the Petitioners refers to certain Exhibits from the records to show the falsehood of the criminal case. First, he refers to Exhibit-L wherefrom it is ascertained that the father of the wife of the contesting Petitioner No. 2 brought police to take back his daughter to Nalanda at Biharsharif but she, on her own, went back to her paternal home with her wearing apparels. Referring to Exhibits - M and N, it is pointed out by the learned Advocate for the Petitioners that the Petitioners was subjected to coercion and his signature was obtained on a paper purported to be a compromise petition for filing the same in the suit for dissolution of marriage, which contesting Petitioner No. 2 filed against his wife, Jyoti Gupta. The learned Advocate for the Petitioners, however, submits that neither the Trial Court nor the Court of Appeal did consider that all the witnesses examined on behalf of the prosecution were either the family members or co-villagers of the Informant. They are interested witnesses and their evidences should not be considered as a gospel truth without proper scrutiny.

11. The learned Advocate for the opposite



party/informant, on the other hand, submits that the Petitioners used to abuse her saying “Bhoot” (ghost) and “Pisach”. The learned Advocate for the Opposite Party No. 2 submits that can a lady in 21st Century be abused saying “Bhoot” and “Pisach”. This is a form of immense cruelty perpetrated by the Petitioners upon the daughter of the de facto complainant.

12. He refers to relevant portions of the impugned order / judgements and submits that the revisional Court has no jurisdiction to sit over concurrent finding of facts. All the witnesses corroborated the evidence of the complaint during trial of the case. All of them stated that the daughter of the Informant was subjected to physical and mental torture on demands of dowry in the form of a Maruti Car. Therefore, there is no reason to overturn the judgement passed by the Trial Court and affirmed by the Court of Appeal.

13. Having heard the learned counsels for the parties and on careful perusal of the entire materials on record, let me record at the outset that inherent power of the Court under Section 482 of the Cr.P.C. is of wide platitude with no statutory limitation but it has to be exercised in



accord with the guidelines incorporated in such power, *viz.*, (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.

14. In the instant case, the prosecution stated that criminal case was tried to be compromised. However, the said case was not compromised and finally a decree for divorce was granted by the Jharkhand High Court on the ground of irretrievable breakdown of marriage. This Court now cannot question as to whether the High Court can pass a decree for dissolution of marriage on the ground of irretrievable breakdown of marriage. However, when the decree for divorce has been finalized, there is no scope to file Special Leave Petition before the Hon'ble Supreme Court after the expiry of the limitation This Court must



accept that the parties were willfully divorced.

15. The prosecution case in brief is that the daughter of the Informant was subjected to physical and mental torture on demand of a Maruti Car. It is stated by the daughter of the Informant in her evidence that she informed the matter regarding torture of the Petitioners to her father by series of letters. However, not a single letter was produced by the de facto complainant during trial of the case. It is found from the record that a long standing dispute was going on between the contesting Petitioners and the daughter of the de facto complainant.

16. The learned Advocate for the Opposite Party No. 2 seriously urged that abusing a person saying “Bhoot” and “Pisach” itself is an act of cruelty. This Court is not in a position to accept such argument. In matrimonial relation, especially in failed matrimonial relations there are incidents where both the husband and wife abused each other saying filthy language. However, all such accusations do not come within the veil of “cruelty”.

17. The prosecution come up with a case of harassment with a view to coerce her to meet unlawful demand of dowry. In the instant case, prosecution states that



the accused persons / Petitioners demanded a Maruti Car. There was Panchayati between the parties. The parties went on abusing each other on various issues before lodging of the complaint under Section 498A of the Indian Penal Code but there is no document prior to the lodging of the complaint to show that the contesting Petitioners personally demanded a Maruti Car and on non-fulfillment of such demand, the daughter of the de facto complainant was subjected to cruelty. It seems to this Court that the case under 498 A of the Indian Penal Code is the outcome of personal grudge and differences between both the parties.

18. In *Arnesh Kumar Vs. State of Bihar & Anr.*, reported in **(2014) 8 SCC 273**, the Hon'ble Supreme Court observed that

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious



place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.”

19. Again in ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.***, reported in **(2010) 7 SCC 677**, it is observed by the Apex Court that:

“32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.”

20. Coming to the facts of this case and upon perusal of the contents and entire materials on record, it is



revealed that omnibus allegation was made against the Petitioners. The complainant alleged that all the accused persons harassed her and brutally tortured her on demand of a Maruti Car. However, no specific distinct allegation have been made against either of the Petitioners herein, i.e., none of the Petitioners have been attributed any specific role in furtherance of general allegations made against them. This simply led to a suggestion wherein one fails to ascertain the role played by each accused in furtherance to the offence.

21. In view of such circumstances, this Court is not in a position to concur with the concurrent finding of both the Courts below.

22. Accordingly, the instant revision is allowed on contest.

23. The judgement and order of conviction and sentence passed in Trial No. 82 of 2008, arising out of Nawada P. S. Case No. 231 of 1994, corresponding to G. R. Case No. 1543 of 1994, by the learned Chief Judicial Magistrate, Nalanda at Biharsharif and affirmed by the learned Additional Sessions Judge, Fast Track Courts 1st, Nalanda at Biharsharif in Criminal Appeal No. 39 of 2008, are hereby quashed and set aside.



24. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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