

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.31 of 2016

Arising Out of PS. Case No.-1713 Year-2005 Thana- PURNIA COMPLAINT CASE District-
Purnia

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MD. RAYEES @ MD. RAISH Son of Md. Tahhir All are resident of Village-
Patilwa, P.s Sadar, District Purnea.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Bibi Shahnaz@Dukhni Wife of Md. Rayees, D/o late Khalil Resident of
Village- Damka, P.s Sadar, District Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Bidhu Ranjan, Advocate
For the State	:	Mr. Sunil Kumar Pandey, A.P.P.
For the O.P. No.2	:	Mr. Bipin Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 16-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is the husband of the complainant.
The complainant filed a complaint before the learned Sub-
Divisional Judicial Magistrate, Purnia which was registered as
Complaint Case No.1713 of 2005 alleging commission of
offence against the petitioner and other accused persons who are
matrimonial relations of the complainant under Section 498A,
379 of the I.P.C. and Section 4 of the Dowry Prohibition Act,
1961. The learned Magistrate convicted all three accused
persons who are the husband, father-in-law and mother-in-law
of the complainant for committing offence under Section 498A



of the I.P.C. and Section 4 of the Dowry Prohibition Act.

3. For the offence under Section 498A of the I.P.C. the convicts were sentence to simple imprisonment for a period of two years with fine of Rs.3,000/- each. For the offence under Section 4 of the Dowry Prohibition Act, the accused persons were sentenced to suffer simple imprisonment of four months and also pay to fine of Rs.500/- each.

4. The order of conviction and sentence was challenged in appeal by the accused persons, however, on dismissal of the appeal, the instant revision has been filed by the husband of the complainant.

5. It is needless to say that being a court of revision, jurisdiction this Court is limited to consider legality, validity and propriety of an order, finding or sentence passed by the Trial Court and in such process, the revisional court will not re-appreciate the evidence on record as the evidence has been re-appreciated by the Court of Appeal and the Appellate Court has affirmed the judgment of the Trial Court.

6. However, when the Trial Court illegally places reliance on an inadmissible evidence or misplaced reliance on admissible evidence or the impugned order is passed without considering the evidence on record, the revisional court has the



jurisdiction to look into the evidence also.

7. Bearing the aforesaid principle of mind, let me state that during trial the complainant examined five witnesses, amongst them PW-4 is the complainant, PW-2 is the mother of the complainant and other three witnesses being PW-1, PW-5 and PW-3 were neighbors of the paternal home of the complainant.

8. Learned advocate for the petitioner at the outset submits that the complainant failed to examine any witness from the village where her matrimonial home exists because the neighbors of the matrimonial home of the complainant should have been the best witnesses to state as to whether the petitioner was subjected to torture and cruelty on demand of Rs.10,000/- by her husband and other in-laws.

9. In this regard, this Court likes to record that common experience of our societal behavior suggests that the neighbor generally do not want to involve themselves against another in cases relating to matrimonial dispute. Moreover, torture and cruelty upon a married women is generally perpetrated within the four walls of the house and it is not possible for the neighbors to know this.

10. Previously, the higher courts did not want to rely



upon the evidence of the relatives of the complainant and her neighbors on the ground that they being family members and closed neighbors, are entrusted in the outcome of the case. But there is parading sift in respect of appreciation of evidence in a case relating to matrimonial dispute and cruelty against women. The relatives of the complainant/wife are considered to be the best witnesses because a married women will first say about her experience in the matrimonial home to her mother, sister, friends and neighbor, so it is very natural that they would be knowing about the incidents that happened with the complainant at her matrimonial home.

11. In the instant case, the complainant stated on oath that she was treated with cruelty and harassment for illegal demand of Rs.10,000/-, when her mother failed to pay the said amount the accused persons snatched away her ornaments and drove her away. The said facts is corroborated by other witnesses.

12. Explanation to Section 498A of the I.P.C. defines the term 'cruelty' in the following language:-

“(a) any willful 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.”

13. The instant case squarely comes within explanation (b) of Section 498A of I.P.C. because the complainant/opposite party no.2 was harassed by the accused persons on demand of a sum of Rs.10,000/-. Section 4 of the Dowry Prohibition Act is a penal provision for demanding dowry. The term dowry is define in Section 2 of the Dowry Prohibition Act, ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly- (a) by one party to a marriage to the other party to a marriage; or (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person at or before or any time after the marriage in connection with the marriage of the said party, but did not include dower or *Mahar* in the case of person to whom Muslim Personal Law (Shariyat) applies. The petitioner and all the witnesses stated that the accused persons demanded a sum of Rs.10,000/- from the



complainant and her mother but there is no evidence that it was claimed as a condition of marriage or in connection with the marriage of the said parties. The money was claimed illegally by the accused persons but there is no evidence that it was claimed in connection with the marriage.

14. Therefore, this Court is of the view that both the Courts below failed to appreciate the case of the complainant/ opposite party no.2 as made out under Section 4 of the Dowry Prohibition Act. Therefore, this Court is of the view that both the Courts below erred in law and acted with material irregularity in convicting and sentencing the petitioner under Section 4 of the Dowry Prohibition Act.

15. In view of what has been stated above, this Court finds that both the Courts below rightly found the petitioner guilty of committing offence under Section 498A of the I.P.C. and the conviction and sentence passed against them under Section 498A of the I.P.C. is affirmed.

16. The order of conviction and sentence under Section 4 of the Dowry Prohibition Act is quashed and set aside. The instant revision is accordingly, allowed in part.

17. The petitioners are directed to surrender before the trial Court to suffer sentence within 15 days from the date of



communication of this order.

18. Lower Court Record be sent down to the Court
below along with a copy of this order.

(Bibek Chaudhuri, J)

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