

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.1365 of 2018

Arising Out of PS. Case No.-6 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

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Krishna Murari Sharma, S/o Sri Onkar Sharma, Resident of Village-
Sungarish, P.S. Paraiya, District-Gaya.

... .. Petitioner/s

Versus

1. State of Bihar
2. Soni Susmita, W/o Krishna Murari Sharma, D/o Ram Naresh Singh,
Resident of Village- Shanti Tola, Bedhana, P.S. Barh, District- Patna.

... .. Respondent/s

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with

CRIMINAL REVISION No. 82 of 2019

Arising Out of PS. Case No.-6 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

- =====
1. Tirpurari Sharma @ Tripurari Sharma, S/o Onkar Sharma @ Omkar Sharma
Resident of village- Sungarish, P.S. Paraiya, Dist- Gaya
 2. Onkar Sharma @ Omkar Sharma, S/o Late Saryug Sharma @ Late Sarju
Prasad Singh Resident of village- Sungarish, P.S. Paraiya, Dist- Gaya
 3. Kanti Devi @ Kranti Devi, Onkar Sharma @ Omkar Sharma Resident of
village- Sungarish, P.S. Paraiya, Dist- Gaya
 4. Priyanka Sharma @ Pinki Sharma Tripurari Sharma @ Tripurari Sharma
Resident of village- Sungarish, P.S. Paraiya, Dist- Gaya

... .. Petitioner/s

Versus

1. State of Bihar
2. Soni Susmita, W/o Krishna Murari Sharma, D/o Ram Naresh Singh,



Resident of village- Shanti Tola, Bedhana, P.S- Barh, Dist- Patna

... .. Respondent/s

Appearance :

(In CRIMINAL REVISION No. 1365 of 2018)

For the Petitioner/s : Mr.Krishna Pd. Singh, Sr. Adv
Ms.Meena Singh, Adv
Mr.Shaket Kumar Singh, Adv
For the State : Mr.Sunil Kumar Pandey, APP
Mr.Tarun Prasad Mandal, APP
For the O.P. No. 2 : Mr.Sidhendra Narayan Singh, Adv
Mr. Kumar Lalit, Adv

(In CRIMINAL REVISION No. 82 of 2019)

For the Petitioner/s : Mr.Krishna Pd. Singh, Sr. Adv
Ms.Meena Singh, Adv
Mr.Shaket Kumar Singh, Adv
For the State : Mr.Sunil Kumar Pandey, APP
Mr.Tarun Prasad Mandal, APP
For the O.P. No. 2 : Mr.Sidhendra Narayan Singh, Adv
Mr. Kumar Lalit, Adv

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 11-03-2024

1. Both the Criminal Revisions were heard together and this Court proposes to dispose of both the Revisions in a common judgement as the Revisional Applications were filed against a common judgement and order of conviction and sentence.

2. In Criminal Revision No. 1365 of 2018, the petitioner is the husband of the Opposite Party No. 2 and in



Criminal Revision No. 82 of 2019, the petitioners are matrimonial relations of the Opposite Party No. 2.

3. All the petitioners faced trial under the charge of Section 498A of the IPC and Section 4 of the Dowry Prohibition Act. The Trial Court on conclusion of trial recorded order of conviction and sentence against all the accused persons for the offence under Section 498A of the IPC, sentencing them to suffer rigorous imprisonment for two years and for the offence under Section 4 of the Dowry Prohibition Act, the accused persons/petitioners were sentenced to suffer imprisonment for 6 months. They were also directed to pay a fine and in default imprisonment for further period on both counts. It was directed by the Trial Court that both the sentences shall run concurrently. However, the sentence of imprisonment for non-payment of fine amount shall run separately.

4. The petitioners preferred an appeal before the learned Additional Sessions Judge, IVth Court, Barh in the District of Patna which was registered as Criminal Appeal No. 85 of 2013. The Appellate Court affirmed the judgment and order of conviction and sentence passed by the Trial Court, being the learned S.D.J.M, Barh in T.R. No. 297 of 2013. The said judgement and order passed by the Appellate Court is under



challenge in the instant Revision.

5. It is not in dispute that the marriage between the petitioner of Criminal Revision No. 1365 of 2018 and the Opposite Party No. 2 was solemnized on 7th of May, 2007. It is alleged by the complainant that, at the time of marriage, the petitioners forcibly took Rs. 5 Lakh as dowry from the father of the complainant. After marriage, the husband and wife resided together for some time happily and thereafter the husband and other matrimonial relations exposed their ugly face to extort illegal money from the complainant and on her refusal she was subjected to torture. It is alleged that the husband of the complainant/Opposite Party No. 2 had illicit relationship with one Priyanka Sharma, the wife of the elder brother of her husband. The Opposite Party No. 2 disclosed the matter to her father. Her father and her maternal uncle came to her matrimonial home to settle the dispute but the accused persons demanded a sum of Rs. 5 Lakhs. However, on 21st of May, 2009, the complainant went to the place of posting of her husband along with her father but she was forced to return owing to illicit relationship of her husband with her elder sister-in-law. On 27th of October, 2009, the accused persons assaulted her, locked her inside a room and conspired to kill her.



Thereupon, the complaint under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act was filed by the complainant on 2nd of January, 2010.

6. During trial, prosecution examined five witnesses. They are the father of the complainant (P.W.1), the complainant herself (P.W.2), brother of the complainant (P.W.3), one Arjun Singh, maternal uncle of the complainant (P.W.4) and brother-in-law of the complainant (P.W.5).

7. It is submitted by the learned Sr. Advocate for the petitioners in both the cases that except very near relations, the Opposite Party No. 2 / complainant failed to produce any witness in support of her case. Secondly, it is submitted by the learned Sr. Advocate for the petitioners that there is no specific case against the accused persons. In the complaint, the complainant made a general and omnibus allegation that the accused persons used to torture her on illegal demand of Rs. 5 Lakhs. The complainant failed to say in her petition of complaint as well as in course of evidence that on which date and in what manner, the said amount of Rs. 5 Lakhs was demanded from the complainant.

8. It is further submitted by the learned Sr. Advocate for the petitioners that after the marriage, the husband



of the petitioner, i.e., the petitioner of Criminal Revision No. 82 of 2018, filed a suit for judicial separation on 6th of November, 2009. During the pendency of both the cases under Section 498A of the IPC and the suit for judicial separation, a compromise was arrived at between the husband and the wife and it was decided that both the cases were withdrawn by the respective parties and they would stay happily as husband and wife in the matrimonial home of the complainant. Husband has withdrawn his suit but the wife did not.

9. The learned Sr. Advocate for the petitioners also refers to the evidence on record, wherefrom it is ascertained that the complainant was only willing to stay with her husband and not with other matrimonial relations. Indisputably, the husband of the complainant is in Military Service. His elder brother also is in Military Service as well as his father. Therefore, the husband, father-in-law and elder brother-in-law of the complainant stay at their places of services and in the matrimonial home only the mother-in-law, elder sister-in-law and the complainant used to reside. The complainant wanted to stay with her husband and in dissociation with other matrimonial relations. Practically, the complainant went to the place of service of her husband with her father on 27th of May,



2009. They were allotted accommodation in a guest house for 10 days because the petitioner is not entitled to get any quarters for living together with his wife at his place of service

10. In view of such fact, the complainant was sent back to her matrimonial home after 10 days of the incident.

11. The learned Advocate for the petitioners in this connection refers to a decision of the Hon'ble Supreme Court, passed in the case of ***Geeta Mehrotra & Anr. vs. State of U.P & Anr.*** reported in ***2013 1 PLJR (SC) 10.***

12. In the above stated report, it is held by the Hon'ble Supreme Court that when complaint lacks ingredients of offence alleged against the brother and sister of the complainant's husband and there names were introduced in a casual manner and no allegation of their active involvement is made by the complainant, the proceeding against the relatives of the husband is liable to be quashed.

13. In the instant case, it is submitted by the learned Advocate for the petitioners that the complainant failed to prove that the petitioners demanded Rs. 5 Lakhs after their marriage. The allegation of torture and physical assault was also not proved. The complainant was never medically treated after being assaulted allegedly by her matrimonial relations. The



complainant alleged that her husband had illicit relation with her elder sister-in-law. However, the said fact has not been established by any independent witnesses. All the witnesses are interested and their evidence cannot be taken into consideration by the Trial Court. There is no statement on the part of the complainant that her brother and brother-in-law ever went to her matrimonial home to witness the victim/complainant being tortured by her matrimonial relations.

14. The learned Sr. Advocate the for petitioners also refers to another decision of this Court reported in **2018 (2) PLJR 545, (Brijesh Das @ Brijesh Kumar Das & Ors. vs. State of Bihar & Anr)**. In this report also the High Court on its finding that there was no statement that other relatives assaulted the complainant and all allegation against the petitioners were vague and omnibus, held that the matrimonial relations of the complainant cannot be put to trial as the material against them were not sufficient.

15. Learned Advocate for the Opposite Party/Complainant, on the other hand, submits that after marriage, on the prayer of the complainant, the Military Authority allotted a marriage accommodation to her husband at her service place. However, the petitioner of Criminal Revision



No. 82 of 2018 purposefully did not take possession of the said quarter.

16. It is also submitted by the learned Advocate for the parties that the suit for judicial separation filed by the petitioner/husband ended in compromise on 14th of March, 2011, on the basis of an undertaking on oath that the complainant/wife would be kept in association with her husband but he floated the said undertaking. On the other hand, on 14th of February, 2013, the mother-in-law of the complainant filed a Complaint Case No. 229 of 2013 at Gaya against the complainant and her family members, alleging commission of dacoity, physical assault, theft and arson. The order of cognizance and further orders passed by the learned Magistrate in the said case was quashed by this Court. The petitioner/husband again given undertaking on 9th of June, 2014, that he would keep his wife with him in Criminal Appeal No. 85 of 2013. However, the said undertaking was also floated. Before this Court also the parties were directed to negotiate on the basis of one time settlement but the husband refused to accept such proposal when wife offered to live with the husband without any amount and till date the provisional bail has not been confirmed.

17. Up-till now, this Court has recorded the factual



dispute between the parties. However as a Court of Revision, this Court is not within the jurisdiction to adjudicate as to whether there was any demand of dowry, whether both the Courts below came to the concurrent finding that there was a demand of dowry and the accused persons assaulted the complainant. All such factual aspects were duly considered by the 1st Appellate Court and scope of the instant Revision is only limited to say as to whether the case made out by the complainant is sufficient enough to fulfill the ingredients of offence under Section 498A of the IPC.

18. It is needless to say that explanation to Section 498A defines “cruelty” in the following words :-

‘On plain reading of explanation (a), it is found that cruelty under Section 498A of the IPC applies to any willful conduct which is of such a nature that leads the wife to commit suicide or to cause grave bodily injury, harm etc., either physical or mental. In the second place, it is the harassment perpetrated by the husband and her matrimonial relations with a view to coerce her to meet an unlawful demand by her or by her family members.’

19. In the instant case, the complainant did not make out any allegation of any willful conduct which might lead



her to commit suicide. The complainant herself stated in her evidence that her husband, elder brother-in-law and her father-in-law reside at different places of their service. They do not reside in their matrimonial home. Therefore, there was no occasion for them to harass the complainant on illegal demand of dowry.

20. From the submissions made by the learned counsels for the parties, the dispute between the parties rests on a very small issue. The complainant wants to stay with her husband and husband does not want to take her to her place of service and insisted upon her to stay at her matrimonial home with her mother-in-law and sister-in-law because other accused persons stay away from the matrimonial home for their service.

21. The issue involved in the instant revision is as to whether the aforesaid dispute between the husband and wife amounts to cruelty. In my considered opinion and taking into account the definition of “cruelty”, this dispute does not come within the purview of “cruelty”.

22. Both the Trial Court as well as the 1st Appellate Court failed to considered this aspect of the matter and accordingly passed the order of conviction and sentence.

23. This Court is of the view that the order of



conviction and sentence was not properly passed and the same is liable to be quashed and set aside.

24. Accordingly, the order of conviction and sentence passed by the learned S.D.J.M, Barh in T.R. No. 297 of 2023 and affirmed by the learned Addl. Sessions Judge, Barh in Criminal Appeal No. 85 of 2013, are quashed and set aside.

25. The accused persons/petitioners in both the Revisional Applications are acquitted of the charge, set at liberty and released from their bail bonds.

(Bibek Chaudhuri, J)

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AFR/NAFR	NAFR
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