

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.96 of 2024

Arising Out of PS. Case No.-773 Year-2010 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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Abhinav Sagar, Son of Raj Kumar Sagar, Resident Of Village- Mitrachauk,
P.S-. Bettiah Town, District -West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kumari Amarpali, Daughter Of Shankar Prasad, Resident Of Village-
Kanhauri Bazar, Po- Kanhauri Via Bhuthi, Ps- Kanhauri, Dist- Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar, Advocate Mr. Shiv Kumar Dwivedy, Advocate
For the Respondent/s	:	Mr. Pramod Kumar Pandey, APP
For the Opposite Party No. 2:		Smt. Durga Kumari, Advocate Ms. Shama Akhtar, Advocate Ms. Deepmala Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 17-04-2025

1. The petitioner was husband of the Opposite
Party No. 2. At the instance of Opposite Party No. 2 on the
basis of a complaint, the petitioner was charged with an
offence under Section 498A of the IPC. The said case was
registered as Complaint Case No. 773 of 2010, T.R. No. 769
of 2018 before the Court of learned Sub-Divisional Judicial
Magistrate, Muzaffarpur (East). The learned Magistrate on
completion of trial found the accused/petitioner guilty for
committing offence under Section 498A of the IPC and
sentenced him to undergo imprisonment for one year with



fine of Rs. 5,000/-, in default to pay fine, simple imprisonment for further period of 3 months. The petitioner challenged the said order of conviction and sentence in Criminal Appeal No. 51 of 2019. The said appeal was heard by the learned Additional Sessions Judge 18th Court at Muzaffarpur and by his judgement and order dated 17th of October, 2023, the Court of appeal also affirmed the order of conviction and sentence passed by the learned Sub-Divisional Judicial Magistrate, Muzaffarpur for the offence punishable under Section 498A of the IPC.

2. In the instant revision, the petitioner has challenged the order of conviction and sentence, questioning its legality, correctness and propriety.

3. It is needless to say that the revisional Court has the jurisdiction to consider the correctness, legality and propriety of any finding, sentence, recorded or passed. When no appeal lies against the Appellate Court's order, affirming the order of conviction and sentence passed by the Trial Court, the aggrieved person has the statutory right to challenge the said order of conviction and sentence in revision. Therefore, this Court does not have any doubt



as to the maintainability of the instant revision. A question naturally comes next to consider the power and scope of the revisional Court while dealing with a revision against the order of conviction and sentence. Is it similar as that of appellate power or something more or confined to lesser jurisdiction. Law on this point is no longer *res integra* that when a matter comes up in revisional jurisdiction, the appellant has no right whatsoever beyond the right of bringing his case into the notice of Court. It is for the Court to interfere in exceptional cases where it seems that some real and substantial injustice has been caused. That is the main point which the Court has to consider. A revisional application is not to be regarded as some sort of a second appeal on question of law; a revision is a procedural facility afforded to a party, but it is not a continuation of the suit, appeal or trial, while the appeal is a statutory right conferred on a party. When it is an application in revision, the main question which the High Court has to consider is whether substantial justice has been done. In the case of appeal, on the other hand, the appellants, no doubt, are entitled to demand an adjudication upon all questions of



fact and law which they wish to raise, but in revision, the only question is whether the High Court should interfere in the interest of justice.

4. As a corollary to the above jurisprudence in the criminal administration of justice with regard to the scope of revisional application, it is held in a number of cases by the Apex Court as well as different High Courts that in revision, the revisional Court has no jurisdiction to reappreciate the evidence. Of course, the revisional Court can look into the evidence adduced during the trial only in very exceptional cases where appreciation of evidence appears to be absolutely perverse.

5. Bearing this age-old principals aforesaid, let me now briefly state the fact of the case.

6. The Opposite Party No. 2 lodged a complaint before the learned Sub-Divisional Judicial Magistrate, Muzaffarpur, alleging, inter alia that her marriage was solemnized with the petitioner on 12th of December, 2008. Prior to the marriage, the petitioner and his family members demanded dowry of Rs. 4 Lakhs in cash, a motorcycle for



the petitioner and a gold chain. However, on the date of marriage, the family members of the complainant failed to give motorcycle and a gold chain to the petitioner. Subsequent to the marriage, the petitioner and his family members demanded the said articles and on her failure to bring the said articles from her parental home, she was assaulted and tortured. Ultimately, on 18th of March, 2010, she was driven away from her matrimonial home in single cloth.

7. It is sufficient to hold at this stage that the learned Magistrate took cognizance of offence. The accused persons surrendered before the Trial Court to face the trial. Charge under Section 498A / 504 of the IPC and Section 4 of the Dowry Prohibition Act was framed against the accused persons. In order to bring home the charge, the complainant examined, in all, five witnesses including herself. Some documents were exhibited on behalf of the complainant as well as the accused/petitioner.

8. Further case of the petitioner is that he also filed the Matrimonial Divorce Case No. 85 of 2010. The said suit was decreed and marital tie between the petitioner and the



Opposite Party No. 2 was dissolved. The learned Family Judge also directed to pay permanent alimony at the rate of Rs. 4 Lakhs and the petitioner duly complied with the said order. Against the decree of divorce, the Opposite Party No. 2 filed a Miscellaneous Appeal bearing No. 93 of 2015. However, a Co-ordinate Bench of this Court dismissed the said appeal affirming the judgement passed by the learned Principal Judge, Family Court by an order dated 3rd of May, 2023.

9. It is contended on behalf of the petitioner that the trial Court misplaced the consideration of evidence in its correct perspective because the order of conviction and sentence was passed on wrong appreciation of evidence. Secondly, it is submitted on behalf of the petitioner that the petition of complaint was vague and omnibus. On the basis of such vague complaint, the accused person / petitioner cannot be held guilty for committing offence under Section 498A of the IPC. Thirdly, the learned Advocate for the petitioner submits that even assuming that the Opposite Party No. 2 was tortured in the matrimonial home, all kinds of torture do not fall within the meaning of Section 498A.



10. In support of his contention, he brings my attention to the definition of “cruelty” mentioned in the explanation under Section 498A of the IPC. The definition of cruelty is reproduced below:-

“(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.”

11. The learned Advocate on behalf of the petitioner next draws my attention to a supplementary affidavit affirmed by the brother-in-law of the petitioner, stating, inter alia, that the Opposite Party No. 2 married for the second time after dissolution of her marriage on 1st of March, 2020. The second husband of the Opposite Party No. 2 was compelled to file a suit for divorce bearing



Matrimonial Case No. 55 of 2023 under Section 13 of the Hindu Marriage Act against the Opposite Party No. 2 on the ground of adultery and denial on the part of the Opposite Party No. 2 to establish physical relationship with her second husband. It is also stated in the supplementary affidavit that the Opposite Party No. 2 committed cheating by executing a fictitious agreement for sale with one Md. Hasnain Ansari for selling some land at a consideration price of Rs. 16 Lakhs. On the basis of a fard beyan submitted by the said Md. Hasnain Ansari, Bettiah Town P.S. Case No. 558 of 2021 for the offences punishable under Sections 406, 420 and 506 is registered against the Opposite Party No. 2 and her father.

12. Thus, it is contended by the learned Advocate for the petitioner that the Opposite Party No. 2 from the very beginning was a lady of questionable character. She used the institution of marriage as a wings to earn illegal money. She already managed to get Rs. 4 Lakhs as permanent alimony from the petitioner. Again she married for the second time and his second husband filed a suit for divorce with serious allegation of adultery and refusal to



consummate the marriage.

13. It is contended on behalf of the petitioner that both the Courts below failed to appreciate all such evidence filed on behalf of the petitioner and wrongly appreciated the evidence on record and passed the order of conviction and sentence.

14. The learned Advocate on behalf of the Opposite Party No. 2 submits that sentence of imprisonment for one year in committing the offence under Section 498A of the IPC is less than minimum and invites this Court to enhance the period of imprisonment passed by the trial Court.

15. In the petition of complaint, the Opposite Party No. 2 as the complainant stated that her marriage was solemnized on 12th of August, 2008. The petitioner and the accused persons demanded a sum of Rs. 4 Lakhs, a gold chain and a motorcycle as dowry before the marriage. From her family, a sum of Rs. 4 Lakhs was paid but still the petitioner went on demanding a motorcycle and a gold chain even after marriage. When the complainant refused to



bring the said articles from her parental home, she was assaulted by the petitioner and his family members. It is not stated specifically in the complaint or in evidence on which date the petitioner and his family members demanded motorcycle and gold chain. No evidence is forthcoming that a sum of Rs. 4 Lakhs were paid before and at the time of marriage by the family members of the Opposite Party No. 2. The complainant failed to say even a single date when she was tortured on demand of dowry. She never was examined by any medical practitioner after being assaulted allegedly by the petitioner and his family members. Only it is stated in the complaint as well as in evidence that on 18th of March, 2010, she was driven away from her maternal home.

16. If the statement made in the complaint is accepted in its face value, the Court can come to a conclusion that the petitioner refused to maintain the Opposite Party No. 2 and drove her away from his house on 18th of March, 2010. On the basis of this allegation, the Opposite Party No. 2 could have filed a case under Section 125 of the Cr.P.C. under the Domestic Violence Act but in



the absence of specific evidence mentioning the dates and time regarding demand of dowry and on account of failure to fulfill such demand, the petitioner was subjected to torture, I have no other alternative but to hold that the complaint suffers from vague and omnibus allegation. The evidence on record is also not in conformity with the complaint and no evidence was led stating the specific incidence of torture on demand of dowry.

17. With regard to the allegation against the Opposite Party No. 2 relating to her questionable character, adultery and being involved in other criminal offences, this Court thinks that the said allegation cannot be taken into consideration by the revisional Court as the revisional Court is not competent to consider evidence adduced against the parties and moreover the said evidence was not brought by the petitioner during trial of the case.

18. For the reasons stated above, this Court is of the view that both the learned Trial Judge as well as the Court of Appeal committed illegality and material irregularity in appreciating the evidence and holding the petitioner guilty for committing offence under Section 498A



of the IPC.

19. On the contrary, the conduct of the Opposite Party No. 2 is so revengeful that even after solemnization of second marriage, she has been contesting the instant revision with all her vigor and ability.

20. For the reasons stated above, the instant revision is allowed.

21. The order of conviction and sentence passed against the petitioner is set aside.

(Bibek Chaudhuri, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.04.2025
Transmission Date	21.04.2025

