

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.312 of 2019

Arising Out of PS. Case No.-229 Year-2010 Thana- KANKARBAG District- Patna

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Santosh Prasad @ Santosh Kumar Son Of Late Janak Prasad Resident Of
Mohalla - G-8, Peoples' Co-Operative Colony, Kankarbagh, P.S.-
Kankarbagh, Distt - Patna.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinay Kumar, Advocate Mr. Ramswarup Kumar, Advocate Ms. Simran Kumari, Advocate
For the O.P.	:	Mr. Raj Shekhar, Advocate
For the State	:	Mr. Upendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 04-02-2025

The present Criminal Revision petition has been preferred by the petitioner against the impugned judgment and order dated 05.12.2018, whereby learned Additional Sessions Judge-VIII, Patna in Criminal Appeal No. 4112 of 2014 has upheld the judgment and order dated 25.11.2014 passed by learned S.D.J.M., in G.R. Case No. 3051 of 2010, wherein learned S.D.J.M. has convicted the petitioner under Section 498A of the Indian Penal Code and sentenced him to rigorous imprisonment for two years and to pay a fine of Rs. 5,000/- and in case of default to pay the fine, the petitioner was directed to



undergo an additional imprisonment for three months.

2. The prosecution case as emerging from the written report of Lakshmi Devi, the informant was married to the convict/petitioner on 05.06.2006 as per Hindu rites and customs and just after one month of the marriage, she was subjected to harassment by the petitioner and his family members on account of non-fulfillment of the additional demand of dowry of Rs.1,00,000/- and a Hero Honda Motorcycle. It is further stated in the written report that during her stay at her matrimonial home, she also got pregnant and when she was carrying the pregnancy of three months, she was ousted from the matrimonial home by the petitioner and his family members on 19.04.2008. Thereafter, she gave birth to her son on 30.08.2008. It is also stated that even after giving information of the birth of the child to the petitioner and his family members, none of them came to see her or her child. Thereafter, she made a complaint to the Women Cell on 16.01.2010 and both the parties were called for settlement but the petitioner did not settle the matter and it was informed that he has entered into second marriage to one Rita Devi.

3. On the written report, Kankarbagh P.S. Case No. 229 of 2010 was registered against the petitioner and his family



members for the offence punishable under Section 498A read with Section 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

4. After investigation, charge-sheet bearing No. 204 of 2010 was submitted on 14.08.2010 against the petitioner only for the offence punishable under Section 498A. The family members of the petitioner were exonerated by the police finding the case against them untrue.

5. Subsequent to charge-sheet, cognizance of the offence was taken and thereafter charge was framed under Section 498A IPC against the petitioner and trial commenced.

6. During trial, altogether four prosecution witnesses were examined on behalf of the prosecution including the informant/Lakshmi Devi as P.W.-2. The father of the informant was examined as P.W.-1 and two I.Os were examined as P.W.-3 & 4.

7. After the evidence of the prosecution was over, the petitioner was examined under Section 313 Cr.PC during which he claimed that he is innocent and the evidence adduced against him is false. However, he did not even adduce any evidence in support of his defence.

8. After hearing both the parties and considering the



material on record, learned Trial Court convicted the petitioner under Section 498A IPC finding the following:

“13. On a careful scrutiny of evidence on record it becomes clear that the Informant was examined by the police u/s 161 of Cr.P.C. (vide para no.4 of P.W.3.). So far as the subjective findings of P.W.4 (vide para no.3) is concerned, said witnesses such as Mumtaz Ahmad and Atul Agrawal could not be examined by prosecution but defence has also not endeavored to examine these witnesses through processes of Court in support of easy virtue of the informant to show the real cause of dispute between the husband and the wife. Husband has not filed any divorced case also. Although P.W.1 and 2 have not been consistent in their evidence that cash and motor cycle was demanded in lieu of keeping the informant as wife, but admittedly the wife is residing separate from her husband against her will since the year 2008 and the husband is still not ready to keep her without reasonable explanation. Non-examination of family members may be a failure of prosecution side, but for this reason only informant should not be kept in a disadvantageous position. P.W.1 and P.W.2 have deposed in a natural manner without mixing any grave circumstance against the accused, so despite sincere efforts of the defence to make out dent in the trustworthiness of prosecution story has not been able to do the same. In the result, this court has no hesitation in holding that prosecution has been able to prove the guilt of the accused Santosh Prasad beyond reasonable doubts. Therefore, he is found and held guilty u/s 498a of IPC and convicted of the same accordingly. His bail bond is cancelled and he is taken into custody. Put awhile for hearing on the point of sentence.”

(Emphasis supplied)

9. Being aggrieved by the judgment of learned S.D.J.M., the petitioner/convict filed Criminal Appeal bearing no. 4112 of 2014 in the Court of Sessions, Patna. The appeal was however, dismissed upholding the judgment and order



passed by learned Trial Court holding as follows:

“ 20. On analyzing the evidence rendered by P.Ws.- it is manifest that the accused person has demanded dowry of Rs. One lach and one Motor Cycle from P.W.-02. Not only the accused persons due to non-filament of dowry, closed inside the room and did not supply food to P.W.-02. She was subjected to cruelty and harassment in the back ground of demand of dowry. It is also manifest from the evidence of P.W. -02 that demand of dowry came from the mouth of accused. The word cruelty occurring in Section 498A of IPC is to be

a) any useful conduct which is of such a nature as is likely to drive a man to commit suicide

b) harassment of a woman where such harassment is with a to coerce or any person related to she to meet unlawful demand.

21. Therefore, the concept of cruelty is two told u/s. 498A of IPC. Both the types can severally as well as jointly constitute cruelty.

From the above discussions. It is evident that the accused is guilty of cruelty as defined u/s. 498A.

22. Demanding dowry and subjecting woman to cruelty in regard has become uncommon these days. These are an alarming increase in cases of dowry to harassment, torture, abetted suicide and dowry deaths of young innocent brides. Awakening of collection consciousness is the need of day. For this a wides social movement is necessary. The courts are expected to deal with such a case in a realistic manner so also to further object of the legislation. The end of justice would met if the accused person is dealt with hardly.

23. On analyzing the evidence rendered by P.Ws. I find no infirmity, irregularities in the judgment dated 25.11.2014 passed by the Lower Court. Hence, the judgment order dated 25.11.2014 passed by lower court is confirmed. Accused person Santosh Prasad is directed to surrender in lower court to serve the remaining punishment passed by the lower court.”

(Emphasis supplied)

10. Hence, the petitioner again being aggrieved by the judgment and order of learned Appellate Court preferred the



present petition.

11. I heard learned counsel for the petitioner and learned APP for the State as well as learned counsel on behalf of the O.P. No.2.

12. Learned counsel for the Petitioner submits that learned Trial Court as well as learned Appellate Court below have failed to properly appreciate the evidence on record passing erroneous order and judgment. To substantiate his submission, learned counsel for the petitioner submits that as per the allegation, the evidence adduced on behalf of the prosecution does not disclose any specific allegation of cruelty committed by the petitioner against the O.P. No.2. Barring omnibus allegation of demand of dowry and torturing therefor, there is no specific allegation either in regard to demand of dowry or commission of any cruelty against her. The informant has neither given the detail of demand of dowry nor any instances of cruelty with reference to date, time, place and nature of the cruelty. In the written report filed before the police, there was general allegation not only against the petitioner but against his family members also. Even during his deposition, she has against made bald statement of demand of dowry and allegation of cruelty. She has nowhere deposed that by whom,



when and how the demand of dowry was made, nor even the nature of cruelty is mentioned.

13. He also submits that it is settled principle of law that to prove charge beyond reasonable doubts, the prosecution is required to prove who, why, when and how, but none of such ingredients of the alleged offence is fulfilled. The whole allegation is general and omnibus which cannot be relied upon.

14. He further submits that both learned Trial Court and learned Appellate Court below have failed to properly appreciate this fact. Only on the basis of general allegation against the petitioner and other family members, the petitioner has been convicted. As such, there is perversity of finding by learned Trial Court as well as learned Appellate Court. Hence, the impugned and order are not sustainable in the eye of law.

15. *Per contra*, learned APP for the State and learned counsel for the O.P. No.2 support the impugned judgment and order of sentence passed by learned Sessions Court and learned Trial Court submitting that both the Courts below have properly appreciated the evidence on record and properly convicted the petitioner by the impugned judgments.

16. I considered the rival submissions of the parties and perused the materials on record.



17. Here, the only question for consideration of this Court is whether the petitioner herein has committed cruelty against the O.P. No. 2/informant as defined under Section 498A IPC. Hence, it is pertinent to refer to Section 498A of the Indian Penal Code for ready reference:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purpose 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.”

18. Section 498A provides for punishment of husband or his relatives, subjecting a women for cruelty and as per the Explanation thereto, there are two limbs of cruelty. As per Clause (b) of Explanation to Section 498A IPC, cruelty means harassment of the women 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.

19. But in the case on hand, I find that the petitioner



has not been charged under Sections 3 and 4 of the Dowry Prohibition Act. Charge was framed only under Section 498A IPC and he has been convicted under it. So for want of any charge for demand of dowry and harassment thereof, second limb of Explanation to Section 498A IPC is not applicable against the petitioner.

20. As per another limb of cruelty as mentioned in sub-clause (a) to the Explanation of Section 498A IPC, cruelty means any willful conduct 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. But in the case on hand, I find that there is no specific allegation in regard to any such willful conduct committed by the petitioner against the informant/wife. The allegations are general and omnibus. No specific instances of such conduct with reference to the date, time, place and nature of the conduct has been given, either in the written report or in his statement to the Police or in the deposition. Throughout her statements, she has made just general and omnibus allegation which creates doubt in the prosecution case against the petitioner.

21. Even learned Trial Court has held in his judgment that the prosecution witnesses are not consistent in their



evidence regarding demand of cash and motorcycle. But learned Trial Court convicted the petitioner under Section 498A IPC only on the ground that the wife is living separately from the petitioner for several years and he is still not ready to keep her in his matrimonial home without any reasonable explanation. But learned Trial Court has failed to appreciate that refusal of husband to keep his wife in his matrimonial home does not attract application of Section 498A IPC. There are matrimonial laws governing such conduct of husband. The informant/wife could have moved Family Court for restitution of conjugal rights under Section 9 of the Hindu Marriage Act or she could have filed petition for maintenance from her husband/petitioner. But no way, the petitioner could be convicted under Section 498A IPC for such refusal to keep his wife in his matrimonial home.

22. Even learned Appellate Court below has not appreciated the aforesaid facts and circumstances and without application of judicial mind, he has upheld the conviction and sentence passed by learned Trial Court.

23. Hence, I find that the impugned judgment and order are not sustainable in the eye of law and hence, the same are set aside, acquitting the petitioner of the charge framed and



allowing the present revision petition.

(Jitendra Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2025.
Transmission Date	04.02.2025.

