

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.269 of 2023

Arising Out of PS. Case No.-5 Year-2014 Thana- SAHJAHANPUR District- Patna

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1. Suman Prakash Choudhary Son Of Madan Choudhary R/O Village- Maksudpur, P.S.- Sahjahanpur, District- Patna
 2. Madan Mohan Choudhary Son Of Sukhu Choudhury R/O Village- Maksudpur, P.S.- Sahjahanpur, District- Patna
 3. Shakuntala Devi Wife Of Madan Mohan Choudhary R/O Village- Maksudpur, P.S.- Sahjahanpur, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Abha Kumari Daughter of Sri Anil Choudhary, Resident of Village- Sarswati Lane, East Lohanipur, Ps- Kadamkuan, District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Jagdhar Prasad, Advocate
For the State	:	Mr. Sunil Kr. Pandey, A.P.P.
For the O.P. No.2	:	Mr. S.K. Lal, Sr. Advocate Mr. Raj Shekhar, Advocate Mr. Promod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 29-01-2025

The instant criminal revision is directed against the judgment and order dated 27.02.2023 passed by the learned Additional Sessions Judge-I, Patna City in Criminal Appeal No.68 of 2022. The learned Court of Appeal affirmed the order of conviction dated 26.05.2022 passed by the learned Sub-Divisional Judicial Magistrate, Patna City in G.R. Case No.377 of 2014, Trial No.4931 of 2022 arising out of Sahjahanpur P.S.



Case No.05/2014, however, modified the sentence passed against petitioner Nos. 2 & 3 directing them to undergo simple imprisonment for two years for the offence punishable under Section 498A of the I.P.C. and also to pay fine of Rs.5,000/-. The above-named two accused persons were sentenced to suffer imprisonment for one year with fine of Rs.5,000/- for the offence punishable under Section 4 of the Dowry Prohibition Act. The order of sentence passed against the petitioner No.1 remained the same without any modification.

2. It is apposite to mention the case of the prosecution, in brief, at the outset. That on 08.02.2014 one Abha Kumari lodged a written complaint in the local police station stating, inter-alia, that her marriage was solemnized with the petitioner No.1 on 17.05.2013. After marriage all the accused persons started torturing her on demand of dowry in the form of one Car and a flat. They also threatened her with dire consequences, if their demands were not fulfilled. As her husband used to stay in Kolkata at the relevant point of time she went to Kolkata thrice to stay with her husband but she was driven out. She informed the said fact to the jurisdictional police station in Kolkata, which was recorded in General Diary Book. He also informed about his plight to the learned Chief Judicial Magistrate at Patna.



Subsequently, on the basis of her complaint Sahjahanpur P.S. Case No.05 of 2014 was registered for offences punishable under Sections 341, 323, 504, 498A/34 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act. After investigation, police submitted charge-sheet against the accused persons/petitioners under Section 498A of the I.P.C. and section 3/4 of Dowry Prohibition Act.

3. During trial, prosecution examined four witnesses. PW-1 Meena Devi is the mother of the informant, PW-2 Anil Chaudhary is the father of the informant, PW-3 Abha Kumari, is the informant herself and PW-4 Prabhat Shankar is the Investigating Officer. During the evidence of the witnesses on behalf of the prosecution some documents were filed, which were marked Exhibits-1 to 7.

4. During trial of the case, the defence also adduced as many as five witnesses, DW-1, DW-2 & DW-5 are the accused persons/petitioners, while one Nisha Kumari and Siya Choudhary were examined as DW-3 & DW-4 respectively.

5. It is needless to say that in a revisional application challenging the order of sentence, the revisional Court should be very slow in interfering with the concurrent finding of fact. Ordinarily concurrent findings of facts recorded by Courts



below would not be interfered by the High Court, where there is concurrent finding by the Lower Court regarding cruelty allegedly committed by the petitioners upon the defacto complainant/wife. The court should not interfere with the judgment because reappraisal of evidence like a Court of Appeal is not permissible for the Revisional Court. It is the satisfaction of the Magistrate, which is a relevance for the purposes of Section 397 read with section 401 of the Cr.P.C., a revisional Court may have to power to correct any error in the order passed by the Magistrate but it will be beyond its power and jurisdiction to reassess the evidence and so on such reassessment to arrive at a finding which is ad-variance with the finding recorded by the Magistrate. An appraisal of evidence is not permissible in revision petition. The High Court while hearing revisions does not work as an Appellate Court and will not reappraise the evidence, unless some glaring feature is pointed out, which may show that injustice has been done.

6. It is submitted by Mr. Rajendra Narayan, learned Senior Counsel on behalf of the petitioners that during trial and in appeal the Court of first instance as well as the Appellate Court committed glaring mistake, for which the petitioners are suffering order of conviction and sentence without no fault of



them.

7. It is contended on behalf of the petitioners that both the Court below failed to appreciate the evidence in its true purport and thereby committed gross illegality misreading the evidence on record. Accordingly, the impugned judgment is perverse.

8. Thus, in case of glaring error and/or mistake in appreciation of evidence in rare cases when the finding with regard to sentence is challenged before the revisional court, the Court can go through the evidence on record without re-appreciation of the same.

9. This Court has already recorded the case of the prosecution. It was alleged by her that immediately after marriage, the petitioners demanded dowry in the form of a car and a residential flat, when the defacto complainant was unable to fulfill their demand, she was treated with cruelty.

10. It is pointed out by the learned Senior Counsel on behalf of the petitioners that the written complaint was lodged by the defacto complainant in Sahjahanpur Police Station on 08.02.2014, admittedly marriage of the defacto complainant with petitioner No.1 was solemnized on 17.05.2013. Therefore, during 2013 she did not make any complaint before any



authority. Both the Courts below placed heavy reliance on G.D. Entry No.1543 of 2014 dated 21.01.2014 lodged by the informant at Vidhan Nagar Salt Police Station, Salt Lake Kolkata-700098. In the said G.D. entry she alleged that her husband was a post graduate student in National Institute of Homeopathy, Salt Lake City on being called by him the defacto complainant came to his hostel situated near the college, when she reached the campus to meet him he left her without any reason. He spent the night of 20.01.2014 on the footpath. On the next day, he took her to Patna. Subsequently, on 18.01.2014 he submitted an application before the Chief Judicial Magistrate, Patna informing inter-alia that after her marriage the matrimonial relations of the informant used to harass her over the quality of her ornaments. The father of the defacto complainant tried to console her husband but he abused him. On 14.11.2013 the father of the informant took him to Kolkata to meet the husband of the informant but the petitioner No.1 refused to meet his wife. It is also alleged by the complainant that the parents of the petitioner No.1 decided to arrange his marriage with another lady, who passed M.B.B.S.

11. Thus, it is contended by the learned Senior Counsel on behalf of the petitioners that the informant did not



make any allegation with regard to illegal demand of a car and a flat and such allegation in the F.I.R. was made only to create a false story of cruelty and illegal demand of dowry.

12. The learned senior advocate on behalf of the petitioners further submits that neither the trial court nor the court of appeal did not consider the defence case. It is the specific case of defence that after marriage when the petitioner No.1 went to his matrimonial home with his wife he saw one Album with photographs of first marriage of the defacto complainant. Seeing this the defacto complainant immediately snatched away the Album and in the meantime, the petitioner No.1 was able to take away 09 photographs of first marriage of the petitioner No.1. It was subsequently learnt that the defacto complainant was previously given marriage to one Mukesh Chaudhary. The witnesses on behalf of the accused persons denied the allegation of cruelty on demand of a car and a flat.

13. During trial of the case, the informant and her parents deposed as witnesses on behalf of the prosecution. No other independent witness could be examined by the prosecution, except the allegation made in the F.I.R. No other document was produced by the prosecution to prove that there was illegal demand of a car and a flat and for failure on the part



of the informant, she was tortured by the accused persons.

14. On the other hand, documents filed by the defacto complainant suggests that she was not allowed to stay by petitioner No.1 in the hostel of his college in Kolkata. In the G.D. Entry lodged by the defacto complainant in Vidhan Nagar Salt police station or in the application for information of the incident before the learned Chief Judicial Magistrate, the petitioner did not utter a single word about demand of a car and a flat.

15. In view of such circumstances, this Court does not have any alternative but to hold that charge against the accused persons/petitioners was not proved beyond reasonable doubt. There are material discrepancies in the case record and neither the learned Magistrate nor the Court of appeal took into consideration the discrepancies. Had the discrepancies been considered, there would have been a judgment of acquittal.

16. For the reasons stated above, the instant criminal revision is allowed on contest, however, without cost.

17. The judgment and order of conviction and sentence passed by the Trial Court in G.R. Case No.377 of 2014, Trial No.4931 of 2022 dated 26.05.2022 and modified order of sentence passed by the learned Additional Sessions



Judge-1st, Patna City in Criminal Appeal No.68 of 2022 are set aside. The accused persons are acquitted of the charge, set at liberty and released from their respective bail bonds.

(Bibek Chaudhuri, J)

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AFR/NAFR	
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