IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (D.B.) No. 1876 of 2017

Ratan Bauri, S/o. Late Fatik Chandra Bauri, R/o. Sakin-Gopinathpur, P.O. & P.S.- Nirsa, Dist.- Dhanbad.

… Appellant

Versus

The State of Jharkhand … Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Pratiush Lala, Advocate

For the State : Mr. Shailendra Kr. Tiwari, Spl. P.P.

Order No.06/Dated- 14th September, 2026

Per Sujit Narayan Prasad, J.

1. Heard, Mr. Pratiush Lala, learned counsel appearing for the appellant and Mr. Shailendra Kr. Tiwari, learned Special Public Prosecutor appearing for the State.

2. The instant appeal filed under Section 374(2) of the Cr.P.C. against the judgment dated 13.09.2017 and sentence dated 15.09.2017, passed in Sessions Trial No. 205 of 2014 arising out of Nirsa P.S. Case No. 141 of 2012 corresponding to G.R. Case No. 2107 of 2012, by which the appellant, namely, Ratan Bauri, has been convicted under Section 304B of the Indian Penal Code and directed to undergo R.I. for 10 years alongwith the fine of Rs. 10,000/- and in default of payment of fine, further to undergo S.I. for a period of two months.

3. Learned counsel appearing for the appellant first made submission by referring the order dated 28.11.2018 passed by co-ordinate Bench of this Court, whereby and whereunder, notice was issued upon the appellant through his advocate, as also through the

Superintendent of concerned jail for enhancement of his sentence, with a direction to consider the aforesaid issue at the time of hearing of the appeal, relevant part of the said order is being referred hereunder:-

> ***"Criminal Appeal(DB) No. 1876 of 2017***
>
> *This is a case of dowry death by burning, but the Court below has sentenced the appellant to undergo rigorous imprisonment for ten years with fine for the offence under Section 304-B of the Indian Penal Code.*
>
> *In the facts of this case, we notice the appellant through his advocate, as also through the Superintendent of concerned jail, for enhancement of his sentence, which shall be considered at the time of hearing of this appeal.*
>
> *The office is directed to send the notice to the appellant through the Superintendent of concerned jail."*

4. The second submission has been made by learned counsel for the appellant that the appellant has already undergone the maximum sentence inflicted of 10 years, way back in the month of January, 2023 being calculated from the date of custody, i.e., from 05.01.2013 and as such, the appellant has already been released after completion of the period of 10 years of sentence.

5. The submission has been made in view of the fact that the sentence has already been undergone and as such, as per instruction, he is not intending to press the appeal on merits but in all fairness has also referred the order dated 28.11.2018, whereby and whereunder, the notice was issued upon the appellant as to why the sentence be not enhanced.

6. The argument has been advanced that although such order was passed by calling upon the appellant to explain as to why the

sentence be not enhanced but law does not permit to pass an order of enhancement of sentence in absence of any appeal having been preferred by the State.

7. Learned counsel for the appellant has relied upon the judgment rendered by the Hon'ble Apex Court in the Case of **"Nagarajan Vs. State of Tamil Nadu"** reported in **(2025) Supreme (SC) 939,** wherein, the proposition has been laid down that the mandate as contained in Section 386 of the Cr.P.C. does not confer the Appellate Court to enhance the sentence on its own.

8. It has been submitted on behalf of the State by admitting the fact that no cross appeal has been preferred for enhancement of quantum of sentence.

9. This Court has heard the learned counsel for the parties. It is admitted fact that on the issue of enhancement of sentence, the notice was issued upon the appellant by the order passed by the co-ordinate bench of this Court vide order dated 28.11.2018. The admitted fact as would be evident from the order dated 28.11.2018 also, that this Court has passed the order calling upon the appellant to explain as to why the sentence be not enhanced. This Court, with a further observation made therein, that the issue of enhancement of sentence will be considered at the time of hearing of the appeal. Further, it is admitted fact that the appellant has already served the sentence as inflicted by the learned Trial Court.

10. Herein, the appeal is being sought to be not pressed and in that view of the matter, it is the duty upon the Court to take care of the order already passed by co-ordinate bench of this court on

28.11.2018, on the issue of enhancement of the sentence in the touchstone of the fact that as to whether the High Court on its own has got power for enhancement of sentence, if no appeal has been preferred by the State, the prosecuting agency.

11. For the aforesaid purpose, this Court needs to refer herein the power, which is being exercised on the issue of enhancement of sentence as conferred to the Appellate Court under Section 386 of the Code of Criminal Procedure, 1973. It is evident from the provision as contained under Section 386(b) of the Cr.P.C. / *pari materia* to Section 427(b) of the BNSS, 2023 that in an appeal from a conviction, the following orders can be passed:-

i. reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

ii. alter the finding, maintaining the sentence, or

iii. <u>with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;</u>

12. The provision as contained under Section 386(c) of the Cr.P.C. / Section 427(c) of the BNSS, 2023 is in a situation, where if an appeal has been filed for enhancement of sentence, the following exercise can be undertaken by the Appellate Court:-

i. reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

ii. alter the finding maintaining the sentence, or

iii. with or without altering the finding, alter the nature of the extent, or the nature and extent of the sentence, so as to enhance or reduce the same;

13. It is thus evident from the aforesaid provision that the statutory bar has been inflicted under Section 386(b)(iii) of the Cr.P.C. restricting the Appellate Court that while altering the finding, the nature or the extent of the judgment of conviction can be altered or the nature or the extent of the sentence can be altered, but not to as to enhance the same.

14. In view of the statutory restriction upon the Appellate Court not to enhance on its own under the power in view of the restriction imposed under Section 386(b)(iii) of the Cr.P.C. and if the Section 386(c)(iii) Cr.P.C. will be taken into consideration, then it would be evident that if there an appeal for enhancement of sentence, then on consideration of the appeal, the sentence can be enhanced by the Appellate Court.

15. Here, it is the admitted fact that the present appeal is against the judgment of conviction and no cross appeal has been preferred for enhancement of sentence.

16. No appeal has been filed for enhancement of sentence as per the specific provision made for the aforesaid purpose under the provision of Section 377 of the Cr.P.C. / Section 418 of the B.N.S.S., 2023 particularly, sub-Section (3) thereof, where it has been provided that an appeal can be filed against the sentence on the ground of its inadequacy against the sentence inflicted by the Court of Sessions or as the case may be, the High Court shall not enhance

the sentence except which will only be enhanced after providing an opportunity of hearing to the accused person in order to provide a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused will have an opportunity to plead for his acquittal or for the reduction of the sentence. For reference, the aforesaid provision is being referred herein:-

> *"**377(3) of the Cr.P.C.**- When an appeal has been filed against the sentence on the ground of its inadequacy, [the Court of Session or, as the case may be, the High Court] shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."*

17. It further need to refer herein the provision of Section 401 of the Cr.P.C., wherein the *suo motu* power has been vested upon the High Court to revise the order passed by the forum. But such for the aforesaid purpose, provision of Section 401 of the Cr.P.C. / Section 442 of the B.N.S.S., 2023 is being referred herein:-

> ***"401. High Court's powers of revision:***
> *(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*
> *(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.*
> *(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.*

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

18. The aforesaid legal issue has been considered by Hon'ble Apex Court in the Case of "**Nagarajan vs. State of Tamil Nadu**" (supra)**,** wherein, the Hon'ble Apex Court in a situation as to whether sentence can be enhanced by the Appellate Court on its own, has been pleased to hold that there is no reference under Section 386 of the Cr.P.C. to the effect, which has been referred in Section 401 of the Cr.P.C. conferring power upon the High Court to exercise the *suo motu* power by calling upon the record to rectify the miscarriage of justice.

19. The aforesaid issues have been decided by the Hon'ble Apex Court by taking into consideration the provision of Sections 386 & 401 of the Cr.P.C. and holding therein on the principle that a person is not supposed to be placed in a worse position as a result of filing of an appeal. No *reformatio in peius* or prohibition of *reformatio in peius* is a part of fair procedure and thus by extension can also be construed as a part of natural justice. It is not only a procedural guarantee but is also a principle of equity. The conclusion has been arrived at paragraph-13 that the rationale has been explained that no appellant by filing an appeal can be worse-off than what he was.

The relevant para of the said judgment as under para-13 is being referred herein,

> *"13. In this regard, it must be noted that for exercise of powers of the appellate court for enhancement of sentence in an appeal filed either by the State or the complainant or the victim, the Cr.P.C. provides that the appellate court can reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court competent to try the offence, or alter the finding by maintaining the sentence, or with or without altering the finding, alter the nature or the extent, of the sentence so as to enhance or reduce the same. Thus, the power to enhance the sentence can be exercised by the appellate court only in an appeal filed by the State, victim or complainant, provided the accused has had an opportunity of showing cause against such enhancement. It is further provided that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order of sentence under appeal. Therefore, in an appeal for enhancement of sentence filed by the State etc., unless the conditions prescribed in form of provisos to Section 386 of Cr.P.C. are complied with by the appellate court, there cannot be an enhancement of sentence. Obviously in such an appeal for enhancement of sentence, the convict or the accused is the respondent and therefore there cannot be enhancement of sentence unless the accused or convict has been heard. However, under the scheme of Section 386 of Cr.P.C. vis-a-vis in an appeal for enhancement of sentence, there can also be an acquittal of the accused as per sub-clause (i) of clause (c) of Section 386 of Cr.P.C. But, on the other hand, in an appeal from a conviction, it has been expressly stated that there cannot the enhancement of the sentence. Therefore, while in an appeal for enhancement of sentence filed by the State, the accused can make out a case for acquittal or discharge or retrial, in the case of an appeal from conviction, the respondent in such an appeal, namely the State or the victim or the complainant, cannot seek enhancement of the sentence than what has been awarded by the Trial Court in the*

absence of filing any appeal or revision. The above distinction can be explained by way of a latin maxim which has been discussed by Ujjal Bhuyan, J. while in Bombay High Court in Jyoti Plastic Works Pvt. Ltd. vs. Union of India and Others, 2020 Online Bom 2276, in the following words:

> *"40. In this connection we may refer to the maxim reformatio in peius. It is a latin phrase meaning a change towards the worse i.e., a change for the worse. As a legal expression it means that a lower court judgment is amended by a higher court into a worse one for those appealing it. In many jurisdictions, this practice is forbidden ensuring that an appellant cannot be placed in a worse position as a result of filing an appeal. When the above phrase is prefixed by the words 'no' or 'prohibition' which would render the maxim as no reformatio in peius or prohibition of reformatio in peius <u>it would denote a principle of procedure as per which using a remedy available in law should not aggravate the situation of the person who avails the remedy. In other words, a person should not be placed in a worse position as a result of filing an appeal.</u> No reformatio in peius or prohibition of reformatio in peius is a part of fair procedure and thus by extension can also be construed as part of natural justice. It is not only a procedural guarantee but is also a principle of equity. (Underlining by us)."*

20. This Court in the light of the aforesaid legal position, having been considered by Hon'ble Apex Court in the judgment herein is of the view that the sentence cannot be enhanced in absence of filing an appeal as per the provision provided under Sections 377(3) and 386(b)(iii) of the Cr.P.C. and in that view of the matter, the issue with respect to enhancement of sentence is hereby closed.

21. So far as the issue on merit is concerned, the appellant has already undergone the period of sentence as inflicted by the learned

Trial Court and as such, he does not want to press the present appeal.

22. Accordingly, the instant appeal stands disposed of as not pressed.

23. Pending I.A.(s), if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.)

Dated: 14.09.2026
Arpit-Rahul
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