

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No. 17 of 2022

Mohammad Rahmatullah Ali @ Md. Rahmatullah, aged about 46 years, S/o Late Maqsud Ali, R/o Village- Chandewe, P.O. Chandway Chowk, P.S.- Pithoria, District- Ranchi **Petitioner**

-Versus-

1. The State of Jharkhand
2. Kahkansha Parveen, D/o Md. Eshaque, R/o Village- Azad Road Khunti, P.O. and P.S. Khunti, Dist. Khunti **Opp. Parties**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Sunil Kumar Ganjhu, Advocate
: Mr. Ashok Kumar Goel, Advocate

For the Opp. parties : Mr. B.R. Lochan, Advocate

09/21.03.2024 Learned counsel for the parties are present.

2. This Criminal Revision has been filed for setting aside the order dated 22.06.2017 passed in Criminal Appeal No. 80 of 2014 passed by the learned District and Additional Sessions Judge-1, Khunti whereby and whereunder the judgement of conviction and the order of sentence dated 26.03.2014 passed by the learned S.D.J.M. Khunti in Complaint Case No. 50 of 2002 has been dismissed. The learned trial court has convicted the petitioner under Section 498A of the Indian Penal Code (*hereinafter referred to as IPC*) and Section 4 of the *Dowry Prohibition Act* (*hereinafter referred to as the D.P. Act*) and has sentenced him to undergo Rigorous Imprisonment for two years with fine of Rs. 3,000/- for the offence under Section 498A of IPC and Rigorous Imprisonment for six months with fine of Rs. 3,000/- for the offence under Section 4 of the Dowry Prohibition Act and in default of payment of fine, the petitioner shall further undergo Simple imprisonment for three months and one month respectively. Both the sentences have been directed to run concurrently.

3. On 16.02.2024 a submission was made by the learned counsel for the petitioner that both parties have amicably settled their dispute and opposite party no.2-wife is living with the petitioner for the last two years. However, learned counsel for the opposite party no.2 had submitted that he has no instruction in this regard and if that be so, then appropriate petition is required to be filed and the matter can be sent for mediation. He had requested to post the case on 17.02.2024 so

that he may seek instructions. Accordingly, the case was posted on 17.02.2024

4. On 17.02.2024, the learned counsel for the parties were heard again. when the learned counsel for the opposite party No. 2 objected to the submissions made on 16.02.2024 on the instruction of the opposite party no.2 present in the Court, the learned counsel for the petitioner submitted that the incorrect submissions were made on 16.02.2024 under the instructions of his client-petitioner who was present in the court on that day and therefore, the learned counsel as a person was not at fault. Ultimately, the matter was heard on merits of the case.

5. The learned counsel for the petitioner submitted that there is no specific date of occurrence with regard to the demand for dowry. He has also submitted that the marriage was solemnized on 13.12.2000 and Complaint Case No.50 of 2002 was filed on 08.08.2002. He further submitted that the complainant herself has exhibited talak/Khula (Exhibit-1) which was dated 20.04.2006 and it was her version that if some money and land were given to her, she would not pursue the case filed under section 498A and provision of Dowry Prohibition Act. He further submitted that the evidence before the learned court has not been properly considered and, therefore, the judgment of conviction is fit to be set aside. He also submitted that it has come in evidence that the complainant had remained in her matrimonial house till 2010.

6. The learned counsel appearing on behalf of the opposite parties submitted that earlier also one F.I.R. was filed by the complainant which ended in a compromise, still the petitioner did not mend his ways. He further submitted that on account of the assault meted out to the complainant by the petitioner during which she suffered a fracture, she was taken to hospital for treatment on 07.08.2002. He further submitted that the argument of the petitioner that there is no specific date is not correct as specific averments have been made in the complaint petition which is supported by the evidence on record.

7. The learned counsel also submitted that there are concurrent findings recorded by the learned courts and there is no scope for re-

appreciation of evidence and coming to a different finding. He further submitted that all the basic ingredients for the offences under which the petitioner has been convicted are satisfied in the present case and no interference is called for.

Findings of this Court

8. The prosecution is based on Complaint Case No. 50 of 2002 presented by the Complainant-wife on 08.08.2002 before the learned C.J.M., Khunti stating that the marriage of the Complainant with the petitioner was solemnized on 13.12.2000 according to Muslim rites and customs in presence of the families of both the parties; a Nikahanama was prepared and after the marriage, the Complainant went to her matrimonial house. After two months, the petitioner assaulted and tortured the Complainant due to non-fulfillment of the demand of Rs.10,000/- and one colour television at the time of the marriage. When the Complainant informed about the demand to her father, her father showed his inability to satisfy the demand and then, the petitioner assaulted and drove out the Complainant from his house twice. On 04.09.2001, the complainant had lodged a Complaint Case No.53/2001 under Section 323, 498A of IPC and Sections 3 / 4 of the D.P. Act before the learned C.J.M, Khunti. However, on the assurance of the petitioner-husband that he would not torture the complainant again, the complainant-wife withdrew the said complaint case and went to her matrimonial house. It is the further case of the complainant that the petitioner again started torturing the complainant for fulfilling the demand of Rs.10,000/- and one colour television. It is further alleged that on 05.08.2002, the petitioner assaulted the Complainant by means of a wooden log causing fracture of her left hand. When the complainant informed about the incident to her father, her father alongwith Md. Junaid came to her matrimonial house but her father came to know that the petitioner had taken the Complainant to RMCH for treatment. When the Complainant's father went to RMCH, Ranchi, he saw the petitioner returning with the Complainant with plaster on her hand and she started crying and wanted to go with her father and the Complainant's father brought her to his house. Thereafter, the Complainant went to Khunti police station and narrated the matter to

the officer-in-charge, but he advised her to file case in court and then the complaint case was filed.

9. The learned A.C.J.M., Khunti examined the Complainant on solemn affirmation on 08.08.2002 and also examined one enquiry witness under Section 202 of Cr.P.C. and after enquiry, the learned A.C.J.M., Khunti on 13.08.2002 found a prima facie case under Sections 325, 498A of IPC and Section 3 / 4 of the Dowry Prohibition Act to proceed against the petitioner; the case was finally transferred to the court of the learned S.D.J.M., Khunti for trial and disposal.

10. The petitioner appeared on 22.07.2004 and on the basis of joint compromise petition, he was granted bail. But thereafter, when he misused the privilege of bail granted to him, his bail bond was cancelled on 29.06.2005 and when he did not appear even after issuance of N.B.W. and processes under Sections 82 and 83 of Cr.P.C., he was declared absconder vide order dated 31.01.2007. Ultimately, the petitioner was arrested on 31.07.2012 and thereafter, he was released on bail on 01.09.2012 pursuant to granting bail to him by the High Court.

11. On 25.02.2013, the charge was framed against the petitioner for the offence under Section 325/498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. The charge was explained to the petitioner who denied the charges and he was put to trial. After completion of the prosecution evidence the statement of the petitioner was recorded on 10.02.2014 wherein the petitioner denied the allegations, but did not give any defence evidence. Ultimately the petitioner has been convicted by the learned trial court for the offence under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act; so far as the offence under Section 325 of the Indian Penal Code is concerned, the learned trial court acquitted the petitioner on the ground that the injury report was required to be proved by the doctor and in absence of such proof, the petitioner was acquitted for the offence under Section 325 of the Indian Penal Code.

12. At the stage of trial altogether four prosecution witnesses were examined and duly cross examined. P.W. 1 Kakhshan Praveen is the complainant herself. P.W. 2 Md. Eshaque is father of the complainant.

P.W. 3 is Md. Junaid and P.W. 4 Shakeel Passa is a formal witness who had prepared affidavit of the petitioner. All the witnesses were duly cross examined on behalf of the petitioner in defence before the learned court below.

13. The complainant was examined as C.W. 1 who is the wife of the petitioner. She has fully supported her case by stating that she got married with the petitioner as per the Muslim rites and lived with her husband in the matrimonial home, but after two months her husband started demanding dowry of rupees ten thousand cash and colour television. The complainant further stated that she and her father belong to a poor family and when the demand was not fulfilled, the husband started assaulting her. She has specifically stated with regard to the incident of 05.08.2002 in the complaint petition and has also supported the same in her solemn affirmation. When she was examined as witness on 13.12.2012, she again described the incident and supported the case by stating that when she was putting oil to her child, the petitioner assaulted her and had been assaulting her on account of non-fulfilment of dowry. She has stated that she was taken to RIMS by the petitioner and plaster was done on her hand and while coming back she met her father and went to her parental house and consequently the children were left at her matrimonial house. She has stated that she has four children. The complainant was thoroughly cross examined and during her cross examination, she has stated that she had given divorce (*Khula Talak*) to her husband on 20.04.2006 and document to that effect was also prepared. She has also stated that after such separation, husband and wife do not live together. She has stated in her cross examination that she was staying in her parental house for the last four years. She has expressed her desire to bring back her children. She has also stated in her cross examination that after *Talak* she went to her matrimonial home and used to go to her matrimonial home for about once a year. She has stated that she is ready to accept land and cash from her husband and if such land and money is given to her and she would not proceed with the case. She has denied that she has any source of livelihood.

14. The complaint witness C.W. 2 is the father of the complainant. He has also fully supported the prosecution case with regard to date and time of marriage as well as demand of dowry. He has stated that on 05.08.2002 when he went to the matrimonial house of the complainant, he came to know that the complainant had suffered a fracture and her hand was plastered. When he met the complainant on the way he brought the complainant to his home. He has stated that since 2010, the complainant is living with him. He has also stated that there was joint compromise and even after 05.08.2002 the petitioner had taken back the complainant.

15. C.W. 3 in his evidence has stated that on account of demand of Rs. 10,000/- and colour T.V. there was dispute between the parties. After Panchayati the complainant again went to her matrimonial home and ultimately on 20.04.2006 the complainant gave *Khula Talak* to her husband.

16. C.W. 4 is a formal witness.

17. The learned Trial Court considered the evidence of C.W.s, 1, 2, and 3 and recorded that the parental house of the complainant is in Khunti and at the relevant point of time it was within the district of Ranchi and her matrimonial home is under Chandwe Thana Ranchi which still falls within the District of Ranchi. He has recorded that the learned Trial Court has considered the basic ingredients for offence under Section 498-A of the Indian Penal Code and has recorded that the complaint witness no. 1 who is the complainant herself has fully supported the case of demand of dowry and assault on account of non fulfilment of demand which as per the C.W. 1 led to fracture and the complainant is so frightened and she does not want to go her matrimonial house.

18. The learned Court recorded that the complaint witness no. 2, the father of the complainant has also supported the case with regard to demand of cash and T.V. and that he was unable to meet the demand and on account of such failure C.W. 1 was being tortured by the petitioner. He has stated that for the last four years, C.W. 1 was living with him along with her four children. Efforts were made to reconcile and restore the matrimonial relationship between the parties and the

complainant used to occasionally visit to her matrimonial house but nothing materialized. Thus, C.W. 2 has supported the prosecution case. C.W. 3 has also supported the prosecution case to the extent that there were attempts of reconciliation between the parties and thereafter the complainant was sent to her matrimonial house but still the complainant is now living with her parents. The Exhibit 1 indicated that on 05.07.2001 there was compromise between the parties before the Anjuman Committee in order to give chance to the parties to restore their matrimonial relationship and the learned court observed that at present the complainant is living in her parental house. The learned Court has considered the materials on record and has recorded that the offence under Section 498-A of the Indian Penal Code was duly established by the prosecution and held the petitioner guilty of the offence.

19. So far as offence under Section 325 of the Indian Penal Code is concerned, the learned Trial Court acquitted the petitioner in absence of injury report. The learned Trial Court acquitted the petitioner for the offence under Section 3 of the Dowry Prohibition Act but convicted the petitioner for the offence under Section 4 of the Dowry Prohibition Act by referring to the ingredients of Section 4. The learned Court has recorded that the complainant herself has stated that the petitioner was demanding an amount of Rs. 10,000/- cash and Colour T.V. and on account of non fulfilment of demand the complainant was being assaulted and this statement of the complainant has been supported by the evidence of C.W. 2 the father of the complainant. The neighbour of the C.W. 2 has also supported the case. The learned Court ultimately held the petitioner guilty for the offence under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act and refused to grant benefit under the Probation of Offenders Act and sentenced the petitioner for Rigorous imprisonment of two year with Rs. 3,000/- fine and sentenced him Rigorous Imprisonment for six months with fine of Rs. 3,000/- for the offence under Section 4 of the Dowry Prohibition Act and on account on default of payment of fine, sentence has been awarded for one month simple imprisonment has been awarded.

20. This Court finds that even the Appellate Court vide impugned judgment dated 22nd June 2017 has considered all the materials on record and passed the reasoned order. The learned Appellate Court has recorded that the appeal was instituted on 24.04.2014 and the appellant had not taken any interest to argue the appeal since 20.11.2014. It also recorded that since 20.11.2014 neither the appellant appeared personally or through his lawyer and even after specific direction of the Court, nobody turned up to argue the case on behalf of the appellant. Ultimately on 01.06.2017, counsel for the petitioner had informed the petitioner and the matter was fixed for judgment and it was only the learned Additional APP who had argued the matter before the Court. The Court did not find any reason to give further opportunity to the petitioner and the appeal was decided on the basis of materials on record. The learned Appellate Court has recorded the findings which is quoted as under:-

"From perusal of the entire evidence and materials available on the case record, it appears that complainant has fully established this fact that accused Rahmtullah had demanded Rs. 10000/- in cash and colour TV from the complainant and the same was not fulfilled, then accused had also assaulted the complainant and ousted her from his home. It further appears that due to assault by the accused/appellant, left hand of the complainant was fractured and she was admitted to RIMS, Ranchi for treatment, where her hand was fractured. This shows that complainant was being assaulted by the accused/appellant due to non-fulfill of dowry demand, which is come under the preview of the cruelty."

CONCLUSION

Accordingly on the basis of the aforesaid discussion I find and hold that the trial court has rightly held the accused/appellant guilty for the offence u/s 498A IPC & 4 of the D.P Act. Hence I find no need to interfere in the judgment of conviction as well as in the sentence as such awarded by the trial court against the accused/appellant. Hence this appeal is accordingly dismissed. Bail bond of the accused/appellant is hereby cancelled. Let this judgment along with the LCR be returned to the trial court with a direction to take necessary steps for execution of sentence as awarded against the appellant henceforth."

21. This Court has gone through the records of the trial court and finds that both the learned Courts have rightly appreciated the materials on record and come to a finding that there was a demand of Rs. 10,000/- and Colour T.V. as dowry and on account of non fulfilment of the same the petitioner used to assault the complainant. The witnesses produced by the complainant have also fully supported the prosecution case. This Court is of the considered view that merely because the complainant had lived with the petitioner for some time the same does not have any bearing to absolve the criminal liability of the petitioner. Further the *Khula Divorce* which had taken place in 2006 has also no material bearing. The incident has to be taken into account with regard to the date and time when it occurred. Subsequent divorce between the parties has no bearing in this case.

22. Considering the totality of the facts and circumstances of this case, this Court does not find any illegality or perversity in the conviction of the petitioner under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act calling for any interference under revisional jurisdiction.

23. The records of the trial court indicate that the petitioner did not appear before the learned trial court in spite of compliance of all formalities and was declared an absconder vide order dated 31.01.2007 and was ultimately arrested and produced before the court on 31.07.2012. Thereafter the petitioner was ultimately granted bail by the High Court on 31.08.2012 with direction to appear before the Court on each and every date. The petitioner furnished bail bond on 01.09.2012 and was released. Thus, the petitioner had remained in custody during trial from 31.07.2012 to 01.09.2012. Moreover, the records of this case indicates that the petitioner surrendered before the learned court on 10.08.2021 and was directed to be enlarged on bail by this Court on 08.07.2022.

24. Considering the fact that the petitioner remained absconder for a considerable period and was arrested on 31.07.2012 and was brought before the Court, this Court is of the considered view the long period of trial is attributable to the petitioner. The trial was concluded and the petitioner was convicted within a period of less than two years. At the

appellate stage, there was no co-operation from the side of the petitioner in the matter of argument of the case, rather the petitioner never participated before the appellate court for argument of the case. The appellate court's judgment was passed on 22.06.2017 and the present case has been filed on 11.01.2022 after considerable delay of 906 days. In such circumstances, this Court is not inclined to grant any benefit of long drawn litigation to the petitioner.

25. Accordingly, the conviction and the sentence of the petitioner under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act passed by the learned trial court and upheld by the learned appellate court is affirmed and this criminal revision petition is dismissed.

26. The bail bond furnished by the petitioner stands cancelled.

27. Let this order be communicated to the court concerned through FAX/e-mail.

(Anubha Rawat Choudhary, J.)

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