

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1021 of 2016

... .. Petitioner/s

Versus

1. The State Of Bihar.
- 2.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Soni Shrivastava, Advocate
Mr. Ravi Bhardwaj, Advocate
Mr. Gaurav Singh, Advocate
For the Respondent/s : Mrs. Asha Kumari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 21-03-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

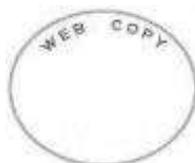
2. The instant revision is directed against the judgment and order of conviction and sentence passed in Criminal Appeal No.46 of 2021 dated 28.06.2016 whereby and whereunder the learned Additional Sessions Judge-III, Samastipur affirmed the order of conviction and sentence under challenge passed by the learned S.D.J.M., Dalsingsarai in C.R. No. 172 of 2004, T.R. No. 232 of 2011 convicting and sentencing the present petitioner and other two accused persons for rigorous imprisonment for three years and to pay fine of



Rs.1,000/- each and in default of payment of fine further simple imprisonment for two months for the offence under Section 498A of I.P.C.. The petitioner was also convicted and sentenced under Section 4 of the Dowry Prohibition Act with rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default of payment of fine further simple imprisonment for two months.

3. The factual aspect of the matter is not of much dispute. Marriage of the petitioner was solemnized with the opposite party no.2 in accordance with Hindu Rites and customs in the year 1994. After marriage, they started together to live as husband and wife. In the said wedlock, the opposite party no.2 gave birth to three children- two male children and one girl child. Girl child was born sometimes in the year 2001. It is the case of the complainant/opposite party no.2 that three years after the birth of the said girl child, the petitioner and all other matrimonial relations of the opposite party no.2 demanded Rs.10,000/- to be brought from her father's house in order to rear and maintain the said girl child.

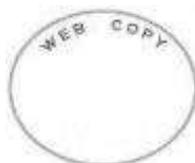
4. The opposite party no.2 was tortured for non-fulfillment of the demand of the petitioner and the other matrimonial relations. She filed a complaint under Section 498A



of the I.P.C. read with Section 4 of the Dowry Prohibition Act on 16.06.2004 against the present petitioner and other matrimonial relations which was registered as C.R. Case No.172 of 2004 in the Court of the learned S.D.J.M., Dalsingsarai.

5. The learned Magistrate took cognizance of offence against the accused persons, the opposite party no.2/ complainant was called upon to produce witnesses. Four witnesses on behalf of the opposite party no.2 was examined before charge. They are PW-1- who is uncle of the victim; PW-2- who is brother of the opposite party no.2; PW-3- who was examined as an independent witness before charge but he did not appear before the Court to face cross examination after framing of the charge; therefore, his evidence cannot be considered and PW-4 is the complainant herself.

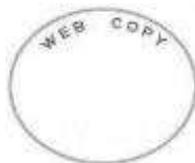
6. From the evidence of the complainant, it is clearly ascertained that there was no demand of dowry during first ten years of her marriage. The opposite party no.2 was staying happily in her matrimonial home with the petitioner but three years after the birth of the girl child, the petitioner and other accused persons demanded a sum of Rs.10,000/- from the opposite party no.2 for rearing the child and for her



maintenance. Specific evidence in this regard of the petitioner is that; “लड़की के लालन पोषण के लिए अपने मॉ बाप से दस हजार रूपया लेकर आओ”. It is further stated by the complainant/opposite party no.2 that all the accused persons made such demand.

7. It is contended by the learned advocate for the petitioner that the allegation made by the opposite party no.2 against the petitioner and other accused persons is absolutely general and omnibus in nature and on the basis of such omnibus allegation not a single accused could be held guilty for committing offence under Section 498A of the I.P.C.

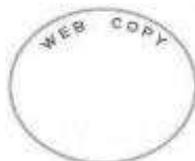
8. Learned advocate for the petitioner has also raised a suspicion on the entire incident as portrayed by the complainant/opposite party no.2. The opposite party no.2 alleged that she was tortured for non-payment of a sum of Rs.10,000/- but she did not disclose the incident to her own sister and sister's husband who reside in the same village. It is very natural and probable that when a married lady was tortured in her matrimonial home she would first rush to her near relative and disclose the incident. However, the complainant/opposite party no.2 did not disclose the incident to her sister and sister's husband.



9. The learned advocate for the petitioner calls upon this Court to consider as to whether the complaint under Section 498A of the I.P.C. was purposefully lodged against the petitioner and other accused persons with some false allegation because of the fact that it appears from the record that prior to the filing of the complaint under Section 498A of the I.P.C. read with Section 4 of the Dowry Prohibition Act, the present petitioner who happens to be the husband of the complainant/ opposite party no.2 lodged a criminal complaint against the opposite party no.2 for committing theft of house hold articles and ornaments. The instant complaint only came to be in existence after filing of the complaint by the husband against his wife.

10. The learned A.P.P. on behalf of the State has supported the judgments passed by the Trial Court and affirmed by the Court of Appeal.

11. Only issue involved in the instant appeal is as to whether any demand for proper maintenance of a child of the parties to a bride by the bride groom and his family members amounts to dowry or not. If the said demand comes within the definition of dowry, the concurrent findings of both the courts below shall be affirmed. If on the other hand, it is found that the said demand if accepted to be true on its face value does not



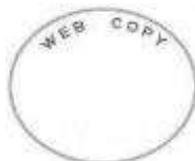
amount to dowry, even assuming that the complainant was tortured, the specific act of the petitioner does not come within the fold of penal provision under Section 498A of the I.P.C. read with Section 4 of the Dowry Prohibition Act. Section 2(i) of the Dowry Prohibition Act defines dowry in the following language:

“2(i). “Dowry” means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] *dower* or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.”

12. It is needless to say that in ***Bachni Devi & Anr. Vs. State of Haryana*** reported in (2011) 4 SCC 427, it is stated that the definition of the expression ‘dowry’ contained in Section 2 of the Act cannot be confined merely to the ‘demand’ of money, property or valuable security "made at or after the performance of marriage". Any money, property or valuable security given, as a consideration for marriage, "before, at or



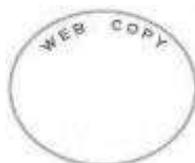
after" the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act.

13. Thus, the essential element of dowry is payment or demand of money, property or valuable security given or agreed to be given as consideration of marriage.

14. The learned advocate for the petitioner refers to a decision in *Satvir Singh and others Vs. State of Punjab and another* reported in *AIR 2001 SCC 2828*. The said report relates to a case under Section 498A and 304-B of the I.P.C. In para 20 of the said report, the Hon'ble Supreme Court was pleased to discuss that the prosecution, in a case of offence under Section 304-B, I.P.C., cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death". The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961.

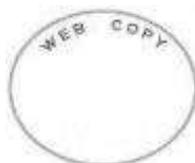
15. In para 21, the Hon'ble Supreme Court held that :

"21.Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third



occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry. Hence the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.”

16. The learned advocate for the petitioner also refers to another decision of the Hon’ble Supreme Court in the case of *Girdhar Shankar Tawade Vs. State of Maharashtra* reported in *(2002) 5 SCC 177*, in the said judgment the Hon’ble Supreme Court precisely held that all acts of cruelty upon a married women by her husband or other matrimonial relations do not come within the definition of cruelty as stipulated under Section 498A of the I.P.C. In course of living conjugal life, dispute between the spouses, differences, quarrel even saying extreme



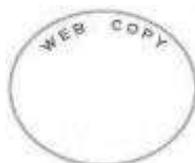
words like “I wish you should die” by one party to the other do not amount to cruelty within the meaning of Section 498A of the I.P.C. In order to bring a case within the fold of Section 498A of the I.P.C., it is absolutely necessary for the prosecution to prove cruelty within the explanation appended to Section 498A. The explanation says :

“Explanation.- For the purpose of this section, ‘cruelty’ means-

(a) any willful 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.”

17. In the instant case the opposite party no.2/complainant did not make out any case within the scope of clause (a) of the explanation to Section 498A of the I.P.C. She make out a case of willful harassment, when the harassment is caused to fulfill unlawful demand of the husband and other

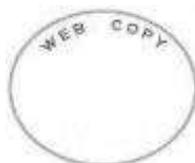


matrimonial relations.

18. Now it is important to note that in Explanation (b) of Section 498A of the I.P.C. the word 'dowry' has not been stated but the judicial pronouncement in this regard makes the issue no longer *res-integra* that harassment to meet any unlawful demand for any property or valuable security must be taken into consideration in terms of the definition of dowry under Section 2(i) of the Dowry Prohibition Act.

19. In the case of *Manju Ram Kalita Vs. State of Assam* reported in (2009) 13 SCC 330, it is held by the Hon'ble Supreme Court that in order to establish a charge under Section 498A of the I.P.C., the prosecution is required to establish that the women has been subjected to cruelty continuously and persistently or at-least in **close proximity of time of lodging of complaint**. Petty quarrel cannot be termed as cruelty to attract the provision under Section 498A of the I.P.C. In the present case it is clearly stated by the opposite party no.2 in her complaint as well as her evidence that for the maintenance of the girl child the petitioner demanded Rs.10,000/-.

20. It is not in dispute that both the petitioner and the opposite party no.2 come from marginalized Section of the society. There is also a ritual amongst the Hindus especially in

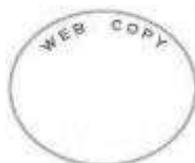


villages to keep their daughter in their parental home during pregnancy till the birth of the child and the mother and child is generally sent to the matrimonial home after the child becomes three to six months old. During this period, entire expenditure is borne by the “Mayka of the married lady”. This Court is not in a position to consider as to whether this prevalent culture is good or bad because moral assessment is not the duty of the Court.

21. This Court is of the view that for rearing and maintenance of a newly born baby, if the husband demands money from the paternal home of the wife, such demand does not come within the fold of the definition of ‘dowry’ and this Court has already held that explanation (b) of the cruelty must be read with reference to Section 2(i) of the Dowry Prohibition Act, this Court is of the considered view that charge under Section 498A of the I.P.C. had not been established against the petitioner.

22. Charge under Section 4 of the Dowry Prohibition Act cannot rely because of the fact that there was no demand of dowry from the parents or other relatives or guardians of bride and bride groom as a consideration of marriage between the complainant and the petitioner.

23. For the reasons stated above, the instant revision



is allowed.

24. The judgment and order of conviction and sentence passed in Criminal Appeal No.46 of 2021 on 28.06.2016 and affirmed the order of conviction and sentence under challenge passed by the learned S.D.J.M., Dalsingsarai in C.R. No. 172 of 2004, T.R. No. 232 of 2011 be set aside and quashed. The petitioner be released from their respective bail bonds.

25. Let a copy of this order be sent to the Court of learned S.D.J.M., Dalsingsarai, Samastipur for information and necessary action.

(Bibek Chaudhuri, J)

mdrashid/-

U		T	
---	--	---	--

