

(2016) 11 PAT CK 0090

In the Patna High Court

Case No : Criminal Revision No. 246 of 2016, (Arising Out of PS. Case No. -null Year-null Thana-null District-Jamui)

Awadhesh Singh @ Awadhesh Kumar Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 494, Section 498A

Citation : (2017) 1 ECRC 529

Hon'ble Judges : Mr. Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Mr. Pankaj Kumar Singh, Advocate, for the Petitioner; Mr. Gopesh Kumar, APP, for the State

Final Decision : Disposed Off

Judgement

Mr. Chakradhari Sharan Singh, J.(Oral)—The petitioner is the husband of Opposite Party No. 2. Despite service of notice on Opposite Party No. 2, she has not entered appearance.

2. Heard learned Counsel for the petitioner and learned Additional Public Prosecutor appearing on behalf of the State.

3. The petitioner is aggrieved by judgment and order, dated 24.07.2013, passed, in Complaint Case No. 428 (C) of 2003, by learned Sub Divisional Judicial Magistrate, Jamui, whereby he has been held guilty of the offence punishable under Sections 498A and 494 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, and the judgment and order, dated 01.12.2015, passed, in Criminal Appeal No. 32 of 2013, by learned 2nd Additional Sessions Judge, Jamui, whereby he has upheld the conviction of the petitioner under Sections 498A and 494 of the Indian Penal Code. The learned Appellate Court has, however, acquitted the petitioner of the charge of offence punishable under Section 4 of the Dowry Prohibition Act.

4. The learned Trial Court, after having held the petitioner and other persons, charged of the offences punishable under Sections 498A and 494 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, and sentenced them to undergo simple imprisonment for a period of two years for the offence punishable under Sections 498A of the Indian Penal Code, 06 months for the charge of offence punishable under Section 4 of the Dowry Prohibition Act. The petitioner was sentenced separately for the charge of offence punishable under Section 494 of the Indian Penal Code to undergo simple imprisonment for two years.

5. As has been noticed above, the Appellate Court has recorded acquittal of the petitioner of the charge under Section 4 of the Dowry Prohibition Act, but has upheld his conviction of the charge under Sections 498A and 494 of the Indian Penal Code and the sentences passed by the learned Trial Court with respect to the said offences.

6. It has transpired from the records that the petitioner was in custody during the investigation from 07.09.2005 to 19.01.2006 and after passing of the judgment by the Appellate Court, he had surrendered on 26.02.2016 and subsequently, released on bail under the orders of this Court, dated 13.03.2016, in the present case. The petitioner had, thus, remained in custody for more than 5? months in connection with the complaint case, in question, filed by Opposite Party No. 2.

7. Learned Counsel for the petitioner has submitted that the petitioner has already been duly punished right from lodging of the complaint case in the year 2006 till date and he has spent more than 5? months in custody. According to him, it was matrimonial discord between the petitioner and the Opposite Party No. 2, which had led to lodging of several cases including the present complaint case which has resulted into the conviction of the petitioner. He has also submitted that the charge of demand of dowry could not be established at the trial and, therefore, a lenient view may be taken by this Court in the matter of imposition of sentence.

8. The ambit and scope of a Court exercising criminal revisional jurisdiction is limited when it has to consider the concurrent findings of fact recorded by the Courts below. The petitioner has been concurrently held to be guilty by the Courts below for the offence punishable under Sections 498A and 494 of the Indian Penal Code.

9. I, therefore, do not intend to interfere with the said findings, there being nothing to demonstrate that the same are perverse, without evidence or contrary to evidence on record. However, learned Counsel for the petitioner appears to be right that in the matter of imposition of sentence, a lenient view can be taken, particularly, when the charge against the petitioner of commission of offence under Section 4 of the Dowry Prohibition Act could not be proved at the trial.

10. Considering the above, while not interfering with the findings relating to

conviction of the present petitioner, the sentence of imprisonment is hereby modified and reduced to the period of custody already undergone.

11. Since the petitioner, Awadhesh Singh @ Awadhesh Kumar Singh, is on provisional bail by virtue of the order of this Court, dated 31.03.2016, passed in the present proceeding, he is discharged from the liabilities of the bail bonds furnished earlier before the Court below.

12. This application stands disposed of accordingly.