

(2019) 09 PAT CK 0129

In the Patna High Court

Case No : Criminal Revision No. 544 Of 2018

Deo Prasad Sao @ Deo Prasad And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401
Indian Penal Code, 1860 — Section 498A

Citation : (2019) 09 PAT CK 0129

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Bindeshwar Prasad Singh, Ajay Kumar, Rudra Deo, Jharkhandi Upadhyay

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the petitioners and learned APP for the State.
2. Despite notice being issued to the opposite party no. 2, who is the complainant/informant, which was validly served on her, nobody appeared when the matter was taken up and heard.
3. The petitioners have moved the Court under Sections 397 and 401 of the Code of Criminal Procedure, 1973, against the judgment dated 27.07.2016 passed by the Additional Sessions Judge, X, Patna in Cr. Appeal No. 25 of 2013, by which the judgment and order of conviction and sentence dated 23.01.2013 against the petitioners and others passed by the Sub Divisional Judicial Magistrate, Danapur in the district of Patna relating to GR No. 328 of 2001/Trial Case No. 444 of 2013, has been upheld.
4. The petitioners along with four others were convicted under Section 498A of the Indian Penal Code and sentenced to simple imprisonment of one year and fine of Rs. 3,000/- each and in default, they were to undergo further two months simple imprisonment. Challenge to the same was also rejected in Cr. Appeal No.

25 of 2013, by order dated 27.07.2016.

5. Learned counsel for the petitioners submitted that the opposite party no. 2 is the wife of their brother, who is also co-accused namely, Satya Narayan Sao. It was submitted that the petitioners have no concern with the matrimonial dispute of the parties and the allegation is that after birth of a male and female child and two years of marriage, she was tortured and assaulted for dowry of Rs. 8,000/- and beaten up and all her ornaments were snatched. It was submitted that such allegation, even if believed, can at best be attributed to husband, as the petitioners could not have any role or could not have benefited from any dowry or money which the wife of their brother would have fetched from the matrimonial home. It was submitted that the witnesses during trial have made only omnibus and general allegations and there is nothing specific against them.

6. Learned APP, from the Lower Court Records submitted that the witnesses have stated with regard to all the accused, including the petitioners, assaulting and torturing the opposite party no. 2 and it is quite believable that the petitioners being elder brothers of the husband of the opposite party no. 2, would definitely have been party to any torture or assault as their brother stood to gain from any dowry which is alleged to have been demanded.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties as well as the materials before the Court below, the Court does not find that the order of conviction requires any interference. However, with regard to the sentence, since the petitioners are elder brothers of the husband of the opposite party no. 2 and had been in custody for more than six months and about four months respectively, the Court is inclined to modify the sentence to period undergone.

8. Accordingly, the application stands disposed off upholding the order of conviction but modifying the sentence to period undergone. Further, fine of Rs. 3,000/- is also set aside.

9. The Lower Court Records be returned forthwith.