

(2016) 11 PAT CK 0053

In the Patna High Court

Case No : Criminal Revision No. 986 of 2014 With Cri. Rev. No. 987 of 2014

Md. Nanhe, son of Md. Allauddin

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357
Penal Code, 1860 (IPC) — Section 498A

Citation : (2017) 1 ECRC 85

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Mr. Ashhar Mustafa, Advocate, for the Respondent No. 2; Mr. Upendra Kumar, A.P.P, for the State; Mr. Shankar Kumar, Advocate, for the Petitioners

Final Decision : Disposed Off

Judgement

Chakradhari Sharan Singh, J.(Oral) - Both these revision applications filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, arise out of judgment and order, dated 26.08.2014, passed, in Criminal Appeal No. 56 of 2012/70 of 2013, by learned Ad hoc Additional Sessions Judge II, Sitamarhi, whereby and where under he has affirmed the judgment of conviction and the order of sentence, dated 06.09.2012, passed by the learned Sub Divisional Judicial Magistrate (Sadar), Sitamarhi, in Trial No. 950 of 2012, arising out of Complaint Case No. 1/758/2009, wherein, after having convicted these petitioners of the offence punishable under Section 498A of the Indian Penal Code , the learned Trial Court has sentenced each of them to undergo simple imprisonment for a period of 2 (two) years with compensation of Rs. 2,000/- each, payable to the complainant in accordance with Section 357 of the Code of Criminal Procedure, 1973. This is the reason why both these applications have been heard together with the consent of the parties and are being disposed of by the present common judgment and order.

2. I have heard Mr. Shankar Kumar, learned Counsel for the petitioners and Mr. Upendra Kumar, learned Additional Public Prosecution, appearing on behalf of the State. I have also heard Mr. Ashhar Mustafa, learned Counsel appearing on behalf of the respondent no. 2, i.e., the complainant, who had entered appearance after service of notice.

3. The petitioner, Md. Nanhe, of Criminal Revision No. 986 of 2014, is the husband of the complainant; whereas, petitioner nos. 1 and 2, namely, Md. Alauddin and Rehana Khatoon, are father-in-law and mother-in-law of the complainant.

4. The gist of case of the prosecution is that the respondent no. 2 was married to Md. Nanhe, nearly 12 years before the date of lodging of the complaint case in accordance with the muslim customs and rites. Three sons were born out of the said wedlock. It was alleged in the complaint petition that the persons named in the complaint petition started making demand of Rs. 50,000/- from the complainant's father for business purpose and on refusal, she was subjected to torture and cruelty, both mental and physical. There is allegation of physical assault made by these petitioners and of throwing the complainant out of her matrimonial home.

5. At the trial, altogether 5 (five) witnesses were examined, who supported the case of the prosecution. Upon appreciation and analysis of the evidence adduced at the trial, learned Trial Court arrived at a conclusion that the charge against these petitioners stood proved beyond all reasonable doubt. It also transpires that brother of the petitioner Md. Nanhe, namely, Md. Raju, and his sister, namely, Rehana Khatoon, were also made accused. Upon appreciation and analysis of evidence, the learned Trial Court convicted these petitioners of the offence punishable under Section 498A of the Indian Penal Code. However, in the absence of any material worth evidence, it acquitted the other two accused persons, namely, Md. Raju and Rehana Khatoon.

6. After having convicted them of the said offence, the learned Trial Court sentenced them to undergo simple imprisonment for a period of 2 (two) years and to pay a sum of Rs. 2,000/- each as compensation to the complainant under Section 357 of the Code of Criminal Procedure, 1973. The appeal preferred against the said judgment and order, passed by the learned Trial Court, dated 06.09.2012, came to be dismissed by order dated 26.08.2014, as noted above, by learned Ad hoc Additional Sessions Judge II, Sitamarhi. In that background, these revision applications have been preferred.

7. Learned Counsel appearing on behalf of the petitioners has submitted that the Courts below have failed to appreciate the allegation of demand of dowry in its correct perspective. According to him, even if the allegation of demand of a sum of Rs. 50,000/- for the purpose of running a business is treated to be true for the sake of argument, the same cannot be said to be demand of dowry. He has further submitted that it can be easily seen from the evidence on record that the

complainant was not living with these petitioners when the complaint case was lodged and she, in fact, was living with her father and mother.

8. He has further submitted that in any event, in the background of the facts and circumstances and the nature of evidence adduced at the trial, coupled with the fact that certain admitted matrimonial discord between the petitioner, Md. Nanhe, and the complainant, is the reason behind lodging of the complaint case, a lenient view ought to have been taken by the Courts below while imposing sentence. Learned Counsel for the petitioners has attempted to convince this Court that findings recorded by the Courts below of conviction of the petitioners are perverse and they need interference accordingly, in the present proceeding.

9. Learned Counsel appearing on behalf of the complainant (respondent no. 2), in both the cases, has vehemently opposed these applications and has submitted that there being concurrent findings of facts, the same should not be interfered with in the revisional jurisdiction. According to him, the sentence imposed upon the petitioners is befitting their proven criminal misconduct.

10. I find substance in the submission made on behalf of the complainant that the concurrent findings of facts recorded by the Courts below should be interfered with by the High Court in revisional jurisdiction, in exceptional circumstance, particularly when the findings appeared to be perverse, based on no evidence or contrary to the evidence adduced at the trial, and not otherwise. I am not, therefore, inclined to accept the submission advanced on behalf of the petitioner for interfering with the concurrent findings of facts recorded by the Courts below, leading to the conviction of the petitioners for the offence punishable under Section 498A of the Indian Penal Code. I am convinced, on the basis of material on record, that necessary ingredients of Section 498A of the Indian Penal Code are available as evidence and conviction of the petitioners cannot be faulted with on that ground.

11. However, I am of the view that the sentence of imprisonment, so imposed by the learned Trial Court, and affirmed by the Appellate Court, needs to be modified in the peculiar facts and circumstances of the case.

12. Accordingly, the sentence to undergo simple imprisonment for a period of 2 (two) years, in the case of the petitioner Md. Nanhe, is modified and reduced to simple imprisonment for a period of one year.

13. Since the petitioner Md. Nanhe is on bail by virtue of the order of this Court, dated 10.12.2014, passed in the present proceeding, his bail bonds are cancelled. The petitioner, Md. Nanhe, is directed to surrender before the Court below within a period of one month from today to serve out remaining sentence, after adjusting the period for which he has already remained in custody.

14. If the petitioner, Md. Nanhe, fails to surrender before the Court below within the aforesaid period of one month, the Court below shall be required to take all possible steps to secure his attendance.

15. So far as petitioners of Criminal Revision No. 987 of 2014, who are the father-in-law and mother-in-law of the complainant, are concerned, they have remained in custody for the same period as that of petitioner Md. Nanhe. The sentence of simple imprisonment in their case is hereby modified and reduced to the period of custody already undergone by them.

16. Since the petitioners, namely, Md. Allauddin and Rehana Khatoon, are on bail by virtue of the order of this Court, dated 10.12.2014, passed in the present proceeding, they are discharged from the liabilities of their bail bonds, furnished earlier before the Trial Court.

17. So far as compensation amount is concerned, with the consent of the parties, the same is enhanced to Rs. 3,000/- each. The said amount must be paid to the complainant within a period of one month from today, failing which the amount shall be recovered in accordance with the provisions of Section 357 (3) of the Code of Criminal Procedure, 1973.

18. These applications stand disposed of accordingly.