
(2014) 11 JH CK 0050
In the Jharkhand High Court
Case No : Cr.M.P. Case No. 1508 of 2008

Nitu Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378 (4)
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2015) 1 AJR 15

Hon'ble Judges : Rongon Mukhopadhyay, J; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : Prakash Jha, Senior Advocate, Advocates for the Appellant; Rajesh Lala and Arpit Kumar, Advocates for the Respondent

Judgement

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for Opposite Party No. 2. A complaint case vide C.P. Case No. 119 of 2000 was lodged by Gopal Mishra, father of Nitu Jha, stating therein that his daughter Nitu Mishra was married to Devesh Jha on 9.5.1999 according to the Hindu rights and rituals. When his daughter came to her in-laws place, the accused persons put forth demand of dowry of Rs. 51,000/- a scooter as well as Colour T.V. The complainant agreed to pay that amount in Gauna. Thereafter Opposite Party No. 3 Devesh Jha brought Nitu Jha to the house of the complainant on 26.01.2000 and left her there by saying that unless the demand is fulfilled, he will not be taking her back to his house.

2. In the said complaint, parties led their evidences thereupon the trial court having found accused persons guilty for the offence punishable under Section 498A of the Indian Penal Code and also under section 4 of the Dowry Prohibition Act passed the judgment of conviction and order of sentence to undergo simple imprisonment for two years and to pay a fine of Rs. 2,000/- for the offences under Section 498A of the Indian Penal Code; and to undergo simple imprisonment for four months and to pay a fine of Rs. 2,000/- for the offence

under Section 4 of the Dowry Prohibition Act vide judgment and order dated 26.5.2008. Being aggrieved with the said judgment and order, appeal being Criminal Appeal No. 137 of 2008 was preferred by the accused-opposite parties which was allowed and thereby the appellant were acquitted.

3. Being aggrieved with the judgment of acquittal this application has been filed under Section 378 (4) of the Code of Criminal Procedure Code.

4. Mr. Sri Prakash Jha, learned senior counsel, appearing for the petitioner, submits that the court while acquitting the Opposite Parties Nos. 2 to 4 has taken into account, certain stipulations made in the agreement in between the complainant Gopal Mishra and Shubash Jha the father of the Opposite Party No. 2, wherein father of Opposite party No. 2 had agreed to take Nitu Jha, the daughter of Gopal Mishra, with him, but certain stipulations which had been made thereunder had never been taken into account. In other words, whatever stipulations were in favour of the accused, it was taken notice of whereas stipulation, which were in favour of the complainant, were ignored and that by taking certain stipulation which were in favour of the accused persons the court recorded the order of acquittal which is quite bad and hence judgment passed in Criminal appeal is fit to be set aside.

5. As against this, Mr. Rajesh Lala, learned counsel for the accused-opposite parties, submits that the complainant in his complaint petition, has made certain statements from which it gets reflected that daughter of the complainant had been married to opposite party No. 3, but the fact is that the opposite party No. 3 had been kidnapped forcibly and while he was in captivity, he was forcibly made to marry Nitu Jha, and, therefore, a complaint had been lodged by Subhash Jha father of opposite party No. 3 as complaint case No. 715 of 1999. In that case, Gopal Mishra father of Nitu Jha and also three other persons were convicted and thereby it can easily be said that Nitu Jha had never been legally wedded wife of opposite party No. 3. Furthermore, since Opposite Party No. 3 had never married voluntarily with Nitu Jha, the complainant, in his complaint, made statements which was contrary to each other. In this regard, it was submitted that the court did find that on the complainant in his complaint petition has stated that marriage took place on 9.5.1999, and immediately thereafter, the accused persons started subjecting her to torture when Nitu Jha came to her in-laws place but all these allegations gets falsified from the evidence appearing on the record to the effect that Bidai had taken place on 30.12.2001 and thereby, the court did record that the prosecution has failed to establish the case of cruelty and hence the judgment and order passed by the appellate court never warrants to be interfered with.

6. Having heard learned counsel for the parties, it does appear that it is the case of the complainant the father of the petitioner that his daughter was married to Opposite Party No. 3 on 9.5.1999. Immediately thereafter she came to her in-laws place and as soon as she came there, the accused persons started subjecting her to torture. But this allegation, according to the appellate court,

gets falsified for the following reasons:--

"(i) She went to her matrimonial home after her bidai just after her marriage i.e. 9.5.1999 (paragraph 2 of her evidence)

(ii) The second conclusion, which can be derived is that her bidai was performed on 22.01.2000 as per the averment made in the complaint petition and statement of Gopal Mishra, C.W.1 at paragraph-1 and paragraph No. 12 and again statement made at paragraph 18.

(iii) The next date of bidai of Nitu Jha, which has come in evidence is 24.01.2000, this has been stated by Nitu Jha, C.W.2 at paragraph 3 of her deposition and lastly.

(iv) On 30.12.2001 as per the statement of Gopal Mishra, C.W.1 at paragraph 20 of his deposition and from the terms of agreement which has been signed by both the complainant and appellant Subhash Jha, wherein it has been held that the bidai of Nitu Jha would be performed on 30.12.2001."

7. Under the facts and circumstances aforesaid, the appellate court did hold that allegation of the complaint that the complainant's daughter was subjected to torture for 4-5 days, after the marriage, gets falsified. Under the facts and circumstances of the case, we do not find any illegality with the judgment and order passed by the appellate court. Hence it needs no interference. Accordingly this application stands dismissed.