
(2012) 09 JH CK 0064
In the Jharkhand High Court
Case No : Criminal Revision No. 265 of 2001

Sarat Mahato

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 494, 498A

Citation : (2012) 09 JH CK 0064

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : S.N. Das and Mr. Praveen Chatterjee, for the Appellant; Shekhar Sinha , Assistant Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioner and learned counsel for the State. The Complainant has not been made party in this case, as it was brought on record in the Court below that the complainant had died. Petitioner is aggrieved by the Judgment dated 22nd March, 2001, passed by the learned 1st Additional Sessions Judge, Bokaro, in Cr. Appeal No. 122 of 1994, whereby, the appeal against the Judgment of conviction and Order of sentence dated 11.7.1994 passed by Sri Raghupati Singh, learned Judicial Magistrate, 1st class, Chas, in Complaint Case No. 74 of 1994 / T.R. No. 613 of 1994, was dismissed with modification by the Appellate Court below. It may be stated that the Trial Court below had found the petitioner, the husband of the complainant, guilty for the offences u/s 494 and 498A of the I.P.C., and convicted him for the same. Upon hearing on the point of sentence, the petitioner was sentenced to undergo imprisonment for three years for the offence u/s 494 of the I.P.C., and imprisonment for two years for the offence u/s 498A of the I.P.C., and both the sentences were directed to be run concurrently. In the appeal filed against the

said Judgment and Order, the Appellate Court below has confirmed the conviction and sentence of the petitioner, so far as it related to the offence u/s 498A of the I.P.C., but the conviction and sentence passed by the Court below for the offence u/s 494 of the I.P.C., has been set-aside.

2. It appears that the complaint petition was filed in the Court of Chief Judicial Magistrate, Bokaro, by the Complainant Dhupu Devi against her husband, the petitioner, alleging that she was subjected to cruelty and torture as also assault for the demand of dowry and it was also alleged that the petitioner had married another lady and the complainant was driven out from the matrimonial home. The complainant supported her case in her statement recorded on solemn affirmation and upon enquiry, prima facie case was found against the petitioner and process was issued against the petitioner for facing the trial and ultimately, the petitioner was put to trial.

3. It appears from the Lower Court records, as also from the impugned Judgments that four witnesses were examined by the prosecution including the complainant, who have supported the case and on the basis of evidence on record, the Trial Court had convicted the petitioner for the offences under Sections 494 and 498A of the I.P.C., and had sentenced him as aforementioned. In appeal, the Appellate Court below had set-aside the conviction and sentence of the petitioner for the offence u/s 494 of the I.P.C., in view of the fact that there was no evidence that the petitioner had actually married another lady, but confirmed the conviction and sentence of the petitioner for the offence u/s 498A of the I.P.C. The record also shows that the statement of the petitioner was recorded u/s 313 of the Cr.P.C. by the Court below, in which the questions which were put to the petitioner and the answers given by the petitioner are quoted herein below:-

Question : - Aap par abhiyog hai ki aap ne badini Dukhu Devi ko maar peet kar ghar se bhaga diya ?

Answer : - Ji nahi.

Question : - Kya gawahi suni ?

Answer : - Ji haan.

Question : - Safai me kuch kahna hai ?

Answer : - Ji nahi.

4. Thus, from the statement of the petitioner recorded u/s 313 of the Cr.P.C., it is apparent that no question whatsoever was put to the petitioner with regard to any circumstance appearing against him in the evidence brought on record by the prosecution during the trial, rather the only question that was put to the petitioner was, whether he had assaulted the complainant and driven her out of the house, to which the answer was only given in negative. No question was asked with respect to the allegation of subjecting the complainant to cruelty and

torture or the alleged second marriage, as had come in the depositions of the prosecution witnesses. The questions put to the petitioner by the Court below u/s 313 Cr.P.C. are absolutely perfunctory questions, without pointing out any circumstance appearing in the evidence against him, on the basis of which the petitioner could not be convicted for any of the offences charged. In my considered view, serious prejudice was caused to the petitioner by not affording him any opportunity to explain any circumstance appearing in the evidence against him, and still convicting him of the offence charged. As such conviction and sentence of the petitioner on the basis of questions that were put to him u/s 313 of the Cr.P.C., cannot be sustained in the eyes of law. For the foregoing reasons, the Judgment of conviction and Order of sentence dated 11.7.1994 passed by Shri Raghupati Singh, learned Judicial Magistrate, 1st class, Chas. in Complaint Case No. 74 of 1994 / T.R. No. 613 of 1994, as also the Judgment dated 22nd March, 2001, passed by the learned 1st Additional Sessions Judge, Bokaro, in Cr. Appeal No. 122 of 1994, are hereby, set-aside. Consequently, the petitioner stands acquitted of the charge. The petitioner is on bail and he is discharged from the liabilities of his bail bond. This revision application is accordingly, allowed. Let the lower court records be sent back forthwith.