

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
SINGLE BENCH
JUSTICE ANAND PATHAK

CRIMINAL REVISION NO. 990/2020

Jameel Khan & Anr.

Vs.

State of M.P.

Shri Kumar Gaurav Sharma, learned counsel for the petitioners.

Shri R.S.Bansal, learned PP for the respondent/State.

ORDER
(Passed on this Day of May, 2020)

The present revision is preferred by the petitioners under Section 397 read with Section 401 of Cr.P.C. against the judgment dated 14/2/2020 passed in criminal appeal No. 57/2019 by 7th Additional Sessions Judge, Raghogarh, District Guna; whereby, appeal preferred by the petitioners has been rejected and judgment dated 24/5/2018 passed in Criminal Appeal No. 378/2016 by JMFC, Raghogarh, District Guna has been affirmed. By the judgment dated 24/5/2019 trial Court convicted the petitioners/revisionists under Section 498-A of IPC and awarded jail sentence of one year RI each with fine of Rs. 1,000/- each with default stipulation.

2. Case of the prosecution is based upon written complaint filed by complainant Reshma vide Ex. P/1 with the allegations that her marriage with petitioner No. 2 Shahrukh was solemnized in Group Marriage on 26/4/2015 at Raghogarh; wherein, father of complainant

at the time of marriage gave Rs. 51,000/- cash alongwith all provisions/utensils of household alongwith some gold and silver ornaments on behalf of bride. Uncle (ताउजी) of petitioner No. 2 namely Jameel Khan (who is petitioner No. 1 in the case) arranged the marriage of petitioner No. 2 (bridegroom).

3. After some days of marriage, both the petitioners demanded Rs. 1 lac from complainant and therefore, she was forcibly thrown out of matrimonial home on 8/1/2016, therefore, complaint has been lodged by complainant on 16/5/2016; on which FIR Ex. P/2 was registered and after investigation, charge-sheet was filed.

4. Both the accused abjured their guilt, therefore, trial conducted in which complainant Reshma (PW/1), her father Sharif Khan (PW/2) and Akila Bano (PW/3) deposed on oath and on behalf of accused, no evidence was led except statement under Section 313 of Cr.P.C.

After considering evidence on record and rival submissions, trial Court convicted the accused persons as referred above.

5. Against the said judgment of conviction and sentence, petitioners preferred appeal but met with the same fate and appeal has been dismissed, therefore, instant revision has been filed.

6. Record was called in the case and after receipt of record, counsel for petitioners, prayed for hearing at motion stage because according to him, matter can be decided at admission stage itself.

Counsel fore the State has no objection.

7. With consent of the parties, matter is heard finally.

8. It is the submission of learned counsel for the petitioners that trial Court as well as appellate Court erred in convicting and awarding jail sentence to the petitioners. When the complainant was thrown out from the matrimonial home on 8/1/2016 then immediately thereafter, complainant filed a police report on 9/1/2016 but that is in respect of offence under Section 323 and 294 of IPC against present petitioner No. 2 and one other person (excluding petitioner No. 1) but after four months on 16/5/2016 another complaint has been made on which instant FIR vide Crime No. 128/2016 at same Police Station Dharnavada was registered against both the petitioners for alleged offence under Section 498-A of IPC. She could have narrated the events in initial FIR itself which was registered vide Crime No. 3/2016 but she omitted to do so. After four months, she made another complaint (in instant case), which is an afterthought.

9. It is the submission of learned counsel for the petitioners that initial FIR vide crime No. 5/2016 and statement of complainant recorded in that case are being filed alongwith an application under Section 391 of Cr.P.C. so that it can be taken on record because due to inadvertence, both documents could not be placed before the Court and those documents indicate that she earlier filed a complaint in which she never narrated the ingredients of Section 498-A of IPC. He tried to place documents before this court to submit that instant case is a false case. He relied upon decision of this Court in the matter of **State of M.P. Vs. Jangbali Singh, 2004 (3) MPHT 406.**

10. It is further submitted that case was lodged against the petitioner No. 2 when he sent a notice to the complainant to live alongwith him vide Ex. D/1 and same is dated 19/4/2016 which is a registered notice and after receipt of notice, instant FIR was lodged on 16/5/2016. During pendency of the proceedings before the trial Court, parties tried to settle their dispute by mutual divorce and settling all the disputes between them and compromise was also produced before the trial Court but same could not be materialized, therefore, this aspect also deserves to be considered by this Court while considering the revision petition of the petitioners.

11. It is further submitted that evidence led by complainant is not sufficient to implicate the petitioner and Courts below erred in passing the impugned judgment. He relied upon judgment of Hon'ble Apex Court in the matter of **Rajendra Prabhu Chikane & Anr. Vs. State of Maharashtra & Ors., (2007) 13 SCC 511.**

12. Alternatively, learned counsel for the petitioners prayed for reducing the jail sentence of petitioners to the period already undergone by them because according to him, it is their first offence and they are poor and illiterate residents of District Guna and they do not bear any criminal antecedents. He relied upon decision of Hon'ble Apex Court in the matter of **Manohar Singh Vs. State of M.P., AIR 2014 SC 3649.**

13. On the other hand, learned counsel for the State supported the impugned judgment and prayed for dismissal of the instant revision.

According to him, when two Court below have passed the judgments then no case for interference is made out.

14. Heard learned counsel for the parties and perused the record.

15. This is a case where petitioners are facing wrath of Section 498-A of IPC and sentenced to undergo one year RI each alongwith fine and default stipulation. It is noteworthy to mention here that no minimum sentence is prescribed in Section 498-A of IPC . In the instant case, marriage of complainant alongwith respondent No. 2 was solemnized on 26/4/2015 and complainant left her matrimonial home on 8/1/2016. As per the complaint (Ex. P/1), she was removed from her matrimonial home on 8/1/2016. She was asked about a case registered at her instance in her cross-examination in which she accepted the fact that one more case is registered against petitioner No. 1 for Marpeet, therefore, contention of counsel for petitioners stand vindicated that immediately after her removal from matrimonial home on 8/1/2016, she had the opportunity to raise complaint regarding harassment for dowry demand under Section 498-A of IPC before the police officer when she lodged the report for offence under Section 323 and 294 of IPC (immediately after leaving her matrimonial home) on 9/1/2016. That was the time when she might have been agitated to lodge report and therefore, she could have lodged the report regarding harassment for dowry demand but she did not prefer to do so.

16. Therefore, Possibility cannot be ruled out that it is an

afterthought and when registered notice dated 18/4/2016 (sent on 19/4/2016), then she filed this complaint as an afterthought. Registered AD notice sent by petitioner No. 2 is placed with record as Ex. D/1 and therefore, this fact substantiates the argument that registered notice purportedly a notice of restitution of conjugal rights was sent by petitioner No. 2, then she moved against them with instant FIR.

17. Although, this Court does not intend to allow the application under Section 391 of Cr.P.C. because of peculiar facts and circumstances of the case because it would prolong the proceedings unnecessarily, therefore, this application is not entertained and rejected. However, the fact regarding filing of another case has been accepted by complainant (PW/1) in her cross-examination, therefore, case of petitioners gains grounds because prosecution could not prove the case beyond reasonable doubt about harassment in toto. Some gray area exists.

18. Investigating Officer filed the charge-sheet with only three documents which were exhibited and only three witnesses (complainant and her parents) were examined. Whole investigation appeared to be conducted in utter haste. Statement of investigating officer or any other witness (in Court) has not been led, therefore, on this count also case of prosecution falters.

19. Another irregularity, apparent on the face of record is non-filing of statement under Section 161 of Cr.P.C. of complainant and

her parents, whereas, they deposed on oath before the trial Court. This aspect renders the case further doubtful and it was the duty of the prosecution to take statement of witnesses under Section 161 Cr.P.C. and then accordingly investigate the matter.

20. All three prosecution witnesses are family members in which PW/1 is complainant herself and other two witnesses are her parents. In absence of police statement under Section 161 Cr.P.C., how the contradictions or corroboration would come over surface is a question. However, only factor goes in favour of complainant is that she stood with her complaint, FIR and her Court statement. Therefore, it appears that some domestic disputes may have cropped up but it was not in the manner she has tried to demonstrate the whole affair, therefore, this Court intends to partly allow the revision petition by modifying the jail sentence of the petitioners to the period of sentence already undergone by them (around three months) while upholding their conviction under Section 498-A of IPC. This conclusion is based upon the notion that this is petitioners first tryst with law and they don't have any criminal antecedents and petitioners have already suffered incarceration for some months till date, therefore, a lesson might have been learnt by them regarding respect of woman.

21. Cumulatively, the judgment passed by Courts below is modified to the extent that while upholding the conviction of petitioners under Section 498-A of IPC, their jail sentence is reduced

to the period of jail sentence already undergone by them. They shall have to pay the fine amount also, if not already paid. Petitioners shall be released forthwith, if not required in any other case, after verifying the factum regarding deposit of fine amount.

22. In view of COVID-19 pandemic, the jail authorities are directed that before releasing the petitioners, their preliminary Corona Virus test shall be conducted and if they are found negative, then the concerned local administration shall make necessary arrangements like transit pass/permit etc. for sending the petitioners to their house, and if they are found positive then petitioners shall be immediately sent to concerned hospital for their treatment as per medical norms. If the petitioners are fit for release and if they are in a position to make their personal arrangements, then they shall be released only after taking due travel permission from local administration. After release, the petitioners are further directed to **install Arogya Setu App** in their mobile and strictly follow all the instructions which may be issued by the Central Govt./State Govt. or Local Administration for combating the Covid19. Revision petition stands partly allowed and disposed of.

23. Trial Court be informed accordingly.

(Anand Pathak)
Judge