

IN THE COURT OF ADDL. DISTRICT AND SESSIONS JUDGE, XVI, GAYA
Criminal Revision No. 160/2022

Present: Manoranjani Shaw
Addl. Sessions Judge XVIth, Gaya

Dated: 22.07.2024

IN THE MATTER OF:

Sarita Devi W/o Shailesh Kumar R/o Mohalla- House No. 59/Flat No. 7, 3rd Floor, Hastal Gram, Subh Nursing Home, Uttam Nagar, New Delhi-110059

...Revisionist/ Petitioner

Vrs.

- 1. The State of Bihar**
- 2. Shailesh Kumar S/o Ramdas Yadav**
- 3. Mithilesh Kumar S/o Ramdas Yadav**
- 4. Anuradha Devi W/o Mithilesh Kumar**

All Respondent No. 2-4

R/o Village Kotwara, P.S. Rafiganj, Distt. Aurangabad.

At present: Mohalla- House No. 59/Flat No. 7, 3rd Floor, Hastal Gram, Subh Nursing Home, Uttam Nagar, New Delhi-110059.

...Respondents

Present;
Advocate for Petitioner: Adv. Pradeep Kumar
Ld. APP for State: Sri. Arvind Kumar

ORDER ON REVISION

1. By the present Order, this court shall dispose of the revision petition, which have been filed by the present petitioner **Sarita Devi W/o Shailesh Kumar R/o Mohalla- House No. 59/Flat No. 7, 3rd Floor, Hastal Gram, Subh Nursing Home, Uttam Nagar, New Delhi-110059** Under Section 397 and 399 of Code of Criminal Procedure, 1973, seeking revision of order passed by Judicial Magistrate 1st Class, Gaya in Protest Case No. 9/2021, U/s 498A I.P.C dated 14.10.2022 wherein the Ld. Judicial Magistrate 1st Class has dropped the proceedings against Respondent No.3 (Brother in law) and Respondent No.4 (wife of Respondent No.3) and took cognizance against Respondent No.2 (Husband) only under section 498A IPC.
2. Upon filing of the revision petition, Notice was issued to the State as well as upon the Respondents and Trial court record was called upon and received.
3. Briefly stated, the case of the Revisionist/Complainant in short is that the complainant married with the Respondent No.2 Shailesh Kumar on 14.05.2015 with Hindu Rites and rituals at Village Kachanpur and the barat came from village Kotwara, P.S. Rafiganj, District Aurangabad. Further, it was stated that the father of complainant had given 7 Lacs as dowry to the accused persons in cash through bank Draft and 5 Bhar Gold Jewellery, 10 Bhar silver ornaments and other house hold articles including chain 1 Bhar Gold and Gold Ring.
4. The complainant after her marriage went to her matrimonial home but within 2-3 months of marriage the accused persons (Respondents herein along with other in laws) started passing vulgar comments upon the complainant and they used to say her Kali-Kaluti and husband (Respondent No.2 had threatened her to perform second marriage. It is further stated that the husband left her to village Kotwara and went to Delhi where he was working but whenever he used to come from Delhi he used to torture her badly. Accused always asked

the complainant to bring 10 Lacs from her parental Home for the purchase of flat in Delhi.

5. Complainant further stated that earlier complainant had filed the criminal case U/s 498A vide Rafiganj P.S. case No. 181/20 against Akhilesh Yadav (Brother in law), Ramdat Yadav (Father in law), Mundri Devi (Mother in law) and Rita Devi Sister in law Gotni) in which the charge sheet have already been submitted on 14.10.2020. It was further stated that in above mentioned case the mother in law was arrested then the Husband Shailesh Yadav came to Rafiganj and compromised the case with the complainant and consequently mother in law was granted bail on the basis of compromise. Thereafter, Husband Shailesh Kumar called the complainant to Delhi where all the Respondents herein in the present case kept her, but their attitude did not change and in absence of husband of complainant, Respondent No.3 who is brother in law (bhaisur) tried to molest her and outrage her modesty of which his wife has also supported him.
6. Complainant thereafter stated that she went to woman cell in Delhi along with her father where the complainant came to know that her husband has already filed divorce case against her in Delhi, Dwarka Court after the compromise in Rafiganj Case and after reconciliation by woman cell, woman cell has sent letter to S.S. Police and thereafter the Anti P.S. Case No. 9/2021 was registered.
7. The complainant had filed the protest petition during the investigation of Anti P.S. Case No. 09/2021 before the Judicial Magistrate, Gaya. The Investigating officer had filed the final form in Anti P.S. Case No. 9/2021.
8. On protest petition examination of total 4 witnesses including the complainant was done and the Ld. Magistrate 1st Class, Gaya has taken Cognizance against the Respondent No.2 (Husband) only and dropped out the proceedings against Respondent No.3 and Respondent No.4 against the said order the Revisionist has filed the present revision petition.
9. The revision Petitioner has challenged the impugned order on the following grounds:
 - i. For that the impugned order dated 14.10.2022 is illegal and bad in law.
 - ii. For that the impugned order dated 14.10.2022 is perverse and bad in law.
 - iii. For that the trial court has not consider the fact and circumstances as well as material available on record.
 - iv. For that the Ld. Trail court ought to have considered the evidence which has been adduced by the complainant.
 - v. For that the Ld. Trial Court has failed to exercise the judicial discretion in the facts and circumstances of the case.
 - vi. For that the Ld. Trial court ought to have taken cognizance U/s 376/511 I.P.C along with $\frac{3}{4}$ of Dowry Act against all the accused named in the complaint petition.
 - vii. For that the Ld. Trial Court has not considered the evidence as brought on record by the witness in enquiry evidence as every witness has supported the contentions of the complainant.
 - viii. For that the complainant herself stated on S.A. in para 6 as she has stated in S.A. “ ishi kam me bhaisur Mithilesh Yadav ne mere sath galat karne ki koshish ki, Jisse Kisi tarah bach kar room me band hog aye, unhone kaha ki kisi se kaha toh jaan se mar dunga”
 - ix. For that the Ld. Trial court has not consider the occurrence and cognizance has not taken for that offence.
- 10.Ld. APP for state appeared and argued the matter and stated that the impugned order is correct and as per law and it does not involve any illegality or impropriety. Further, he stated that the revision Petitioner has filed two consecutive case Under Section 498A IPC against the accused persons in two sets belonging to same family, in laws putting similar types of allegations on the male members of her matrimonial home.

11. In the first Complaint admittedly the chargesheet is being filed and second the present one. Further, the Complainant/ revision Petitioner has not stated regarding the molestation by the Respondent No.3 who is elder brother of her husband in her written information which she gave before the Anti P.S.
12. Per contra Ld. Counsel for Revisionist has appeared and argued that the Ld. Trial court has erred in passing the impugned order as the Ld. Trial court has not considered the material on record and specifically the statement of complainant which is very specific against the Respondent no.3 and hence prayed for summoning the other accused persons/ Respondent No. 3 and 4 for the offence committed by them U/s 498A/ 376/511 IPC.
13. In the Present revision petition only legal question which has to be considered is that whether the impugned order passed by the trial court was within its jurisdiction and whether the trial court has committed any illegality or impropriety in passing the impugned order and whether the order of Ld. Trial court is liable to be interfered by this court in its revisional jurisdiction.
14. Prior to proceeding toward the perusal of the record, it would be relevant to note down section 498A IPC which states as:

Section 498 A: Husband or relative of Husband of a woman subjecting her to cruelty:

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may be extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, “ Cruelty Means”-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

15. From perusal of impugned order and Lower court record and argument advanced by the parties it transpires that the Ld. Trial court has summoned husband of the complainant i.e. Respondent No.2 in the Protest complaint, Under Section 498A IPC and dropped the proceedings against the Respondent No. 3 (Brother in law Bhaisur) and Respondent No.4 (Sister in law Gotni Wife of Respondent No.3).
16. Now upon perusal of Para 6 of the statement of Complainant/ Respondent which she had given while examination by the court in Protest Petition which is in verbatim as **“isi kram me bhaisur Mithilesh Yadav ne mere saath galat vavvabar karne ki koshish ki. Jisse kisi tarah se bachkar room me band ho gaye”**. “That the Respondent No.3 tried to mistreat her and somehow she was able to lock herself in the room”. Further upon perusal of statement of father of complainant who deposed as AW1 in protest petition vide Para 4 of the statement stated that **“2 din ke baaad phir beti ka phone aaya aur boli ki bhaisur Mithilesh Kumar ne mere saath galat vyayhar karne ki koshish ki kisi tarah bach gayi”** That the Respondent No.3/ Bhaisur has mistreated her and somehow she escaped.
17. Further from perusal of hand written information of Complainant given before P.S. Anti, Case No. 09/2021 dated 02.03.2021 it transpired that informant has inter alia in her later part of statement stated that she was tortured by her husband and she was continuously tortured by him for bringing 10 Lacs for purchase of flat in Delhi, further she stated that the her Bhaisur Mithilesh Kumar (Respondent No.3) and Gotni Anuradha (Respondent No. 4) also connive with her husband and they also tortured her. Further she stated that she had called her father who tried to reconcile the matter but in vain.

She further stated that her husband had illicit relation with her Bhabhi (Respondent No.4).

18.From perusal of later part of statement it is conspicuously clear that the informant/revisionist has nowhere written in her complaint regarding misbehaviour/ mistreatment by her brother in law (Respondent No.3).

19.In her statement before the Investigating Officer u/s 161 Cr.P.C. Informant/ revisionist has stated that her bhaisur (Respondent No.3) tried to have physical relation with her and Respondent No.4 also tortured her.

20.Further, from the perusal of the written information which the complainant has given against which the criminal case U/s 498A vide Rafiganj P.S. case No. 181/20 against Akhilesh Yadav (Brother in law), Ramdat Yadav (Father in law), Mundri Devi (Mother in law) and Rita Devi Sister in law Gotni) in which the charge sheet have already been submitted on 14.10.2020 wherein she has stated that “ **mere sasur ramdata Yadav, saas Mundari Devi, Gotni Rita Devi and Bhaisur Akhilesh Yadav dura mere sath mar pitai galat harkat karne ki koshish tatha gandi gandi gali aur naihar se paisa lane ke liye mujhe pratarit karte the isliye maine** case kiya” and in that FIR mother in law got arrested.

21.It is pertinent to mention here that in her written information given before Rafiganj P.S. the Informant/ Revisionist has alleged the molestation against her father in law and her brother in law Akhilesh Yadav and further in her Anti P.S. case she has alleged molestation against her another brother in law namely Mithilesh Yadav (Respondent No.3).

22.Further, from perusal of complete statement under Section 161 Cr.P.C. of Informant/ Complainant / Revisionist in which the final form was filed, it is transpires that the dispute is majorly related to matrimonial discord between the Complainant and her husband Respondent No.2. Further, the Respondent No.2 has also filed the divorce petition before Family Court, Dwarka Delhi which goes on showing that the complainant has dispute against her Husband who has treated her with cruelty and as far as the other family members are concerned they have been roped deliberately by the complainant in order to put pressure upon the Respondent No.2 Husband.

23.Hon'ble Apex Court in the case of **Kahkashan Kausar @ Sonam Vs. State of Bihar in Criminal Appeal No.195 of 2022 decided on 01.02.2022**,following observations were made by the Apex Court:

“18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in- laws of the husband when no prima facie case is made out against them.”

24.It would not be out of place to state herein that Hon'ble Apex Court time and again deprecated the practice of roping all the family members in the matrimonial dispute by the woman to settle her personal vengeance.

25.Further in the present case regarding the demand of money complainant has not specified the name of any of the family members in matrimonial home as to who has demanded the money and when demand was made by her in laws. The statement with regard to the demand of money by the Respondents in the present matter is general in nature.

26. It is settled law that in Revisional Jurisdiction court can examine the record of the trial court so as to satisfy itself as to correctness, legality and propriety of the order passed by the Ld. Trial Court. It is a supervisory Jurisdiction which is liable to be exercised so as to prevent any miscarriage of justice.
27. Upon perusal of Trial court Record and considering the argument of Ld. APP for the state and the Petitioner. It is considered that in the present matter the Ld. Trial Court has not committed any illegality in passing the impugned order thereby dropping Respondent No.3 and Respondent No.4.
28. Looking at the allegations in the present petition on the face of it I find that trial court has not committed any illegality in passing the impugned order. I do not consider that Ld. Trial Court has not exercised its jurisdiction and passed the impugned order. Hence, the revision petition is dismissed.
29. Vide separately announced order in the open court, the Revision Petition is **Dismissed**.
30. A copy of this Order along with LCR be sent back to the trial court.
31. Revision file be consigned to Record Room.

Corrected and Signed by me.

Sd/-
Manoranjani Shaw
ASJ XVIth, Gaya
22nd July, 2024

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