

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.23 of 2022**

Arising Out of PS. Case No.-184 Year-2001 Thana- ASHTHAWAN District- Nalanda

Md. Aftab Ahmad @ Aftab Ahmad, Son of late Nooruddin Ahmad, Resident of Harun Nagar Colony No.-2, P.S.- Phulwari Sharif, District- Patna, At Present- Flat No.-301, Park View Apartment, Salimpur Ahra Gali, P.S.- Gandhi Maidan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sanowar Jahan, aged about 45 years (Female), D/o, Late Abdul Moghni, Resident of Village – Harganwa, P.S.- Sare, District – Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Prashant Kashyap, Advocate Ms. Annapurna Sinha, Advocate
For the O.P. No. 2	:	Mr. Birendra Kumar Chaudhary, Advocate
For the State	:	Mr. Upendra Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT**

Date : 17-06-2025

The present Criminal Revision petition has been preferred by the petitioner against the impugned judgment and order of sentence dated 29.09.2021, passed by learned Additional Sessions Judge-III, Nalanda at Bihar Sharif in Criminal Appeal No. 20 of 2019, whereby the judgment of conviction and order of sentence passed by learned Trial Court against the petitioner has been upheld, though the co-convict viz., Daizy was acquitted. Learned Trial Court vide judgment and order of sentence dated 21.05.2019 had found the petitioner herein guilty under Section 498A of the IPC and sentenced him



to S.I. for one year and to pay a fine of Rs. 5,000/- and in default to pay the fine, he was further directed to suffer additional S.I. for one month.

Prosecution Case

2. The prosecution case as emerging from the written report to the police is that the informant/Sanowar Jahan was married to the petitioner/Md Aftab Ahmad @ Aftab Ahmad in the year 1993 and a daughter was born out of the wedlock. At the time of marriage, Rs. 50,000/- in cash, jewelry of golden and silver, clothes, utensils and furniture were also given. After the marriage, the informant joined the matrimonial home. But, after some time, the husband, mother-in-law/Mumtaz Ara, sister-in-law, Kaisar Jahan and husband of sister-in-law, Fahimuddin started demanding additional dowry by way of motorcycle and Rs. 50,000/-, failing which she was threatened not to be allowed to settle at the matrimonial home. On account of non-fulfillment of demand of dowry, the accused started committing physical and mental cruelty against the informant. However, the same was tolerated by her, hoping that good day would come. But the accused persons kept torturing and depriving her of food. She used to inform her parents regarding the demand of dowry, but they used to express their inability to fulfill the demand and



used to go to her matrimonial home to make the accused understand their inability to fulfill the demand. But despite that, the accused persons mixed poison in her food with intent to kill her. However, she got inkling that poison was mixed in her food and hence, she threw the food. The accused persons also tried to kill her. On 28.08.2001, the accused persons snatched all the gift items from the informant and ousted her from the matrimonial home after beating her. Somehow, she came back to her parental home along with her daughter.

Evidence of Both the Parties

3. During trial, altogether the following witnesses were examined on behalf of the prosecution:-

- (i) **P.W.-1** is Md. Anwar Nasim.
- (ii) **P.W.-2** is Md. Nisar Ahmed.
- (iii) **P.W.-3** is Sanowar Jahan.
- (iv) **P.W.-4** is Shahid Ahmed.

4. The prosecution also brought on record the written complaint by marking it as **Ext.-1**. However, no other documentary evidence was produced by the prosecution.

5. In defence, the accused persons also examined the following witnesses.

- (i) **D.W.-1** is Ramprasad Choudhary



(ii) **D.W.-2** is Rajendra Prasad

(iii) **D.W.-3** is Kameshwar Prasad

6. Letter to Registrar, Patna High Court was also marked as **Ext. A** by the defence.

Findings of the Trial Court

7. After appreciating the evidence on record and considering the submissions advanced by the parties, learned Trial Court found only the petitioner herein Md. Aftab Alam @ Aftab Alam and co-accused, Daizy guilty under Section 498A/34 of IPC and sentencing both of them to S.I. for one year and pay a fine of Rs. 5,000/- and in default to pay the fine, they were further directed to suffer additional S.I. for one month. However, both of them were acquitted of charge under Sections 3 and 4 of Dowry Prohibition Act. Other co-accused were acquitted of all charges.

Findings of the Appellate Court

8. Being aggrieved by the judgment and order of sentence passed by learned Trial Court, the convicts including the petitioner preferred Criminal Appeal bearing No. 20 of 2019 before learned Sessions Court. The appeal was allowed *qua* Daizy and she was acquitted. However, judgment of conviction and order of sentence passed by learned Trial Court against the



petitioner herein was upheld. Hence, being aggrieved by the judgment of the Appellate Court, the petitioner has preferred the present revision petition.

Submissions on behalf of the Petitioner

9. I heard learned counsel for the petitioner, learned APP for the State and learned counsel for the informant.

10. Learned counsel for the petitioner submits that the impugned judgment is not sustainable either in law or on facts. Learned Appellate Court has committed error of law and facts to uphold the conviction of the petitioner under Section 498A of the Indian Penal Code.

11. To substantiate his submission, learned counsel for the petitioner submits that the petitioner has been already acquitted of charge under Sections 3 and 4 of the Dowry Prohibition Act and the same was never challenged by the prosecution before any higher court. Hence, the demand of dowry could not be proved by the prosecution and there is no allegation of any such conduct on the part of the petitioner which could have driven the informant to commit suicide or caused grave injury or danger to her life, limb or health. Hence, the conviction of the petitioner under Section 498A IPC was erroneous as it is based on no evidence in support of it.



Submissions on behalf of the Opposite Parties

12. Learned APP for the State and learned counsel for the O.P. No. 2, however, defend the impugned judgment passed by the learned Appellate Court submitting that there is no illegality or infirmity in it. But as per record, there is neither error of law, nor perversity of any finding. The judgment is based on proper appreciation of law and facts and this Court under revisional jurisdiction is not required to re-appreciate the evidence and supplant its opinion in place of that of the Trial Court or the Appellate Court, who have concurrently upheld the conviction and order of sentence passed against the petitioner herein. He further submits that the petitioner has not pointed out any exceptional situations which may require interference by this Court in the impugned judgment and order of sentence.

13. I considered the submissions advanced by the parties and perused the materials on record.

**Extent and Scope of Revisional Jurisdiction
of the High Court**

14. Before I proceed to consider the rival submission of the parties, it is desirable to find the extent and scope of revisional jurisdiction of High Court. Sections 397 and 401 Cr.PC provide for revisional jurisdiction of High Court.

15. Section 397 Cr.PC reads as follows:-



“Section 397. Calling for records to exercise powers of revision. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself, to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.---All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

(Emphasis supplied)

16. Section 401 Cr.PC reads as follows:-

“Section 401. High Court's powers of revision.

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to



authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

(Emphasis supplied)

17. As such, as per the statutory provisions, the revisional jurisdiction is a discretionary power conferred upon the High Court to look into correctness, legality or propriety of any finding, sentence or order as recorded or passed by subordinate Courts. It is also provided to look into the regularity of any proceeding of the inferior Courts.

18. Revisional jurisdiction of High Court with reference to Sections 397 and 401 Cr.PC has been explained by Hon’ble Apex Court on several occasions.

19. In **Akalu Ahir and Ors. Vs. Ramdeo Ram** as reported in **(1973) 2 SCC 583**, Hon’ble Apex Court was dealing with a case wherein the accused were acquitted by Assistant Sessions Judge, against which the victim had filed criminal revision in the High Court. The revision petition was allowed by the High Court setting aside the judgment of acquittal and



remanding the case back for retrial. Here adverting to the power of revision conferred on a High Court by Section 439 read with Section 435 of old Cr.PC, Hon'ble Apex Court held that revisional jurisdiction is an extraordinary discretionary power vested in the superior Court to be exercised in aid of justice; in other words, to set right grave injustice. The High Court has been invested with this power to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that the subordinate courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power in spite of the wide language of Sections 435 and 439 of old Cr.PC does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice. This power is certainly not intended to be so exercised as to make one portion of the Code of Criminal Procedure conflict with another; as would seem to be the case when in the garb of exercising revisional power, the High Court in effect exercises the power of appeal in face of statutory prohibition.

20. Hon'ble Apex Court has further held in **Akalu Ahir** case (supra) that it is not expected of High Court to act under Sections 435/439 CrPC as if it is a hearing on appeal in



spite of the wide language under Section 435 which empowers it to satisfy itself as to the correctness, legality or propriety of a finding, sentence or order and as to the regularity of any proceeding and also in spite of the fact that under Section 439 it can exercise *inter alia* the power conferred on a Court of appeal under Section 423 Cr.PC. The power being discretionary, it has to be exercised judiciously and not arbitrarily. Judicial discretion, means a discretion which is informed by tradition, methodised by analogy and disciplined by system.

21. In **Akalu Ahir** case (supra), Hon'ble Supreme Court also referred to and relied upon **Amar Chand v. Shanti Bose** as reported in **AIR 1973 SC 799** wherein Hon'ble Supreme Court has held that revisional jurisdiction is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on point of law and there has consequently been flagrant miscarriage of justice.

22. Applying the aforesaid principles the Hon'ble Supreme Court set aside the order of the High Court in **Akalu Ahir** case (supra) holding that the appraisal of evidence by the trial Judge in the case in hand was not perfect or free from flaw and a Court of appeal might well have felt justified in



disagreeing with its conclusion, but from this it did not follow that on revision by a private complainant, the High Court was entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial.

23. In K. Chinnaswamy Reddy Vs. State of A.P., as reported in **1962 SCC OnLine SC 32** also, the Hon'ble Apex Court has explained the revisional jurisdiction of High Court. Here, the accused was convicted and sentenced by Assistant Sessions Judge in trial but in appeal before the Sessions Court, the accused were acquitted, against which the revision was filed before the High Court by the complainant. In the revision, the High Court set aside the judgment of acquittal passed by the Appellate Court directing retrial of the accused.

24. Here, in K. Chinnaswamy Reddy case (supra) Hon'ble Apex Court referred to judicial precedents and held that under revisional jurisdiction, the High Court has no power to convert finding of acquittal into one of conviction even indirectly by ordering re-trial by re-appreciating evidence. It is further held that revisional jurisdiction should be exercised by High Court only in exceptional cases when there is some glaring defects in the procedure and there is manifest error on the point of law and subsequently there has been flagrant miscarriage of



justice.

25. The Hon'ble Apex Court has further held in **K. Chinnaswamy Reddy** case (supra) that it is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. However, Hon'ble Apex Court has indicated some cases of this kind, which would justify the High Court in interfering with a finding of acquittal in revision. Such cases as illustrated by Hon'ble Apex Court are as follows :

(i) where the trial court has no jurisdiction to try the case but has still acquitted the accused, or;

(ii) where the trial court has wrongly shut out evidence which the prosecution wished to produce, or;

(iii) where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or;

(iv) where material evidence has been overlooked either by the trial court or by the appeal court, or;

(v) where the acquittal is based on a compounding of the offence, which is invalid under the law.

26. In Duli Chand Vs. Delhi Administration as reported in **(1975) 4 SCC 649**, the Hon'ble Supreme Court has clearly held that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark



upon a re-appreciation of the evidence.

27. In Janata Dal Vs. H.S. Chowdhary and Ors. as reported in **(1992) 4 SCC 305**, the Hon'ble Apex Court has again explained the revisional jurisdiction of High Court under Section 397 read with Section 401 Cr.PC holding that the object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal courts — a kind of paternal or supervisory jurisdiction — in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.

28. In Vimal Singh v. Khuman Singh and Anr. also as reported in **(1998) 7 SCC 223**, the Hon'ble Apex Court has explained the extent and scope of revisional jurisdiction of High Court under Section 397 read with Section 401 Cr.PC. In this case the accused was acquitted by the Trial Court against which



revision was preferred before the High Court by the complainant. Allowing the criminal revision, the High Court had set aside the judgment of acquittal and had convicted and sentenced the accused.

29. Here, in **Vimal Singh** case (supra), the Hon'ble Supreme Court referred to and relied upon **K. Chinnaswamy Reddy case** (supra) and held that the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when -

(i) it is found that the order under revision suffers from glaring illegality or;

(ii) has caused miscarriage of justice or;

(iii) when it is found that the trial court has no jurisdiction to try the case or;

(iv) where the trial court has illegally shut out the evidence which otherwise ought to have been considered or;

(v) where the material evidence which clinches the issue has been overlooked.

30. In **Vimal Singh** case (supra), Hon'ble Apex Court



has further held that sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction.

31. In the State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri as reported in (1999) 2 SCC 452, the Hon'ble Apex Court has again explained the revisional jurisdiction of High Court holding that the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-



appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

32. In Thankappan Nadar and Ors. vs. Gopala Krishnan and Anr. as reported in **(2002) 9 SCC 393**, the Hon'ble Apex Court has again dealt with the revisional jurisdiction of High Court under Section 397 read with Section 401 Cr.PC. In this case the accused was convicted by the Trial Court. However, in appeal, the convicts were acquitted by the Sessions Judge, against which revision was filed before the High Court by the complainant. The High Court allowed the revision setting aside the judgment of acquittal passed by Appellate Court of Sessions.

33. Here, in **Thankappan Nadar** case (supra) the Hon'ble Apex Court referred to and relied upon the following judgments and set aside the order of High Court holding that the High Court has not found any procedural illegality or manifest error of law in the order passed by the Assistant Sessions Judge and only by re-appreciating the evidence, the High Court has set aside the judgment of acquittal passed by the Appellate Court



which is not permissible in Criminal Revision:

- (i) Akalu Ahir and Ors. vs Ramdeo Ram
1973 (2) SCC 583
- (ii) Vimal Singh Vs Khuman Singh
1998 (7) SCC 323
- (iii) Logendranath Jha Vs Polai Lal Biswas
AIR 1951 SC 316
- (iv) K. Chinnaswami Reddy vs State of A.P.
1962 SCC Online SC 32
- (v) Mahendra Pratap Singh Vs Sarju Singh
AIR 1968 SC 707
- (vi) Pakalapati Raju vs Bonapalli Peda Appadu
1975 (4) SCC 477
- (vii) Ayodhya Dube Vs Ram Sumer Singh
1981 Supp SCC 83

34. In Jagannath Choudhary and Ors. v. Ramayan Singh and Anr. as reported in **(2002) 5 SCC 659**, the Hon'ble Apex Court has again explained the revisional jurisdiction of High Court under Section 397 read with Section 401 Cr.PC. Here, the Hon'ble Apex Court has held that it is now well settled in a long catena of cases that the exercise of the revisional power is discretionary and only in case of glaring defect in procedural aspect or there being manifest error on point of law, causing a flagrant miscarriage of justice, the exercise of revisional jurisdiction is required.

35. Hon'ble Supreme Court was again dealing with revisional jurisdiction of High Court in **Bindeshwari Prasad Singh @ B.P. Singh & Ors. Vs. State of Bihar (Now**



Jharkhand) & Anr. as reported in **(2002) 6 SCC 650**. In this case, the accused was acquitted of the charge under Section 302 IPC by the Trial Court of Sessions. The criminal appeal filed by the State against the acquittal before the High Court was dismissed on the ground of limitation. However, the informant preferred the criminal revision before the High Court which was allowed by the High Court setting aside the judgment of acquittal and remitting the case to the Sessions Judge for re-trial.

36. Here in **Bindeshwari Prasad Singh @ B.P. Singh case** (supra), Hon'ble Supreme Court has held that ordinarily High Court does not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice.

37. In **Bindeshwari Prasad Singh case** (supra), Hon'ble Apex Court further held that the case on hand was not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. In that



case, Hon'ble Apex Court did not find any perversity in the judgment of the Trial Court. No defect of procedure was found, nor was any improper acceptance or rejection of evidence, nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At the best, the High Court thought that the prosecution witnesses were reliable while the trial court took the opposite view. Hence, the order of the High Court was set aside.

38. In Shlok Bhardwaj v. Runika Bhardwaj & Ors. as reported in **(2015) 2 SCC 721**, Hon'ble Apex Court has again held that it is well settled that the scope of revisional jurisdiction of the High Court does not extend to re-appreciation of evidence. In exercise of revisional jurisdiction, the High Court can interfere with the acquittal only if there is perversity in the order of acquittal.

39. In Ganesha v. Sharanappa & Anr. as reported in **(2014) 1 SCC 87**, has again dealt with revisional jurisdiction of High Court under Section 397 read with Section 401 Cr.PC. It has also considered sub-section (1) of Section 401 Cr.PC as per which the High Court is empowered in its discretion to exercise any of the powers conferred on the Court of appeal by Sections 386, 389, 390 and 391 Cr.PC. Considering the statutory



provisions, Hon'ble Supreme Court has held that despite provisions of Section 386, High Court in revisional jurisdiction cannot convert finding of acquittal into one of conviction. However, it has been held by Apex Court that in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to re-appreciate the evidence in light of the observation of the Revisional Court and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case.

40. However, in **Ganesha case** (supra), by way of caution, Hon'ble Apex Court has held that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. Hon'ble Supreme Court further held that the High Court may also interfere in those cases of acquittal caused by shutting



out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to direct retrial.

**Summary of the Law relating to Revisional
Jurisdiction of the High Court**

41. As such, it clearly emerges from the statutory provisions and judicial precedents that revisional jurisdiction conferred upon the High Court is a kind of paternal or supervisory jurisdiction under Section 397 read with Section 401 Cr.PC in order to correct the miscarriage of justice arising out of judgment, order, sentence or finding of subordinate Courts by looking into correctness, legality or propriety of any finding, sentence or order as recorded or passed by subordinate Courts and as to the regularity of any proceeding of such inferior Courts.

42. However, the exercise of revisional jurisdiction by the High Court is discretionary in nature to be applied judiciously in the interest of justice.

43. Under revisional jurisdiction, the High Court is



not entitled to re-appreciate the evidence for itself as if it is acting as a Court of appeal, because revisional power cannot be equated with the power of an Appellate Court, nor can it be treated even as a second appellate jurisdiction. Hence, ordinarily, it is not appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Trial and Appellate Court, unless there are exceptional situations like glaring error of law or procedure and perversity of finding, causing flagrant miscarriage of justice, brought to the notice of the High Court. Such exceptional situations have been enumerated by Hon'ble Apex Court on several occasions which are as follows:-

- (i) when it is found that the trial court has no jurisdiction to try the case or;
- (ii) when it is found that the order under revision suffers from glaring illegality or;
- (iii) where the trial court has illegally shut out the evidence which otherwise ought to have been considered or;
- (iv) where the judgment/order is based on inadmissible evidence, or;
- (v) where the material evidence which clinches the



issue has been overlooked either by the Trial Court or the Appellate Court or;

(vi) where there is perverse appreciation of evidence or;

(vii) where the acquittal is based on a compounding of the offence, which is invalid under the law.

44. However, it has been cautioned by Hon'ble Supreme Court that the aforesaid kinds of situations are illustrative and not exhaustive.

45. Moreover, in revisional jurisdiction, the High Court is also prohibited by express provision in Section 401 (3) Cr.PC to convert the finding of acquittal into one of conviction. However, if it is found by the High Court that finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, the High Court can direct re-trial by pointing out such situations and thereafter, the Trial Court is obliged to re-appreciate the evidence in light of the observation of the Revisional Court and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case.

Present Case

46. Now coming to the case on hand, I find that the



petitioner herein was found guilty under Section 498A IPC by the Trial Court and the same has been upheld by the Appellate Court of Sessions. I also find that the petitioner was acquitted of charge under Section 3 and 4 of Dowry Prohibition Act and the same has not been challenged by the informant before any higher Court. As such, this finding of the Court below stands final.

47. I further find that the main submission on behalf of the petitioner is that for want of any proof in support of allegation of demand of dowry as alleged in the FIR, charge under Section 498A IPC against the petitioner fails, because there is no evidence of any such conduct on the part of the petitioner which could have caused grave injury or danger to the life, limb or health of the informant. Hence, the impugned judgment passed by the learned Appellate Court suffers from perverse appreciation of evidence and hence, it is liable to be set aside.

Ingredients of Section 498A, IPC

48. In the aforesaid facts and circumstances, it becomes imperative to advert to Section 498A IPC before I consider the submission on behalf of the petitioner. Section 498A IPC reads as follows:-

“498A. 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 extend to three years and shall also be liable to fine.

Explanation.—For the purposes 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.”

49. From the statutory provisions of Section 498A IPC, it clearly transpires that Section 498A IPC gets attracted against the husband or his relative only when they subject the women to cruelty. ‘Cruelty’ has been defined by the Explanation to Section 498A IPC and it has two limbs – (a) and (b). As per the first limb, ‘cruelty’ means any willful conduct which is of such a nature which is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health. Here, there is no reference to any demand of dowry.

50. However, as per the second limb to the Explanation to Section 498A IPC, ‘cruelty’ also means harassment of the woman which has been made with intent to coerce her or any of her relative to meet any unlawful demand for any property or valuable security or such harassment has



been made on account of her failure or failure of her relative to meet such unlawful demand. Here again, there is no reference to demand of dowry, though demand of dowry is covered under the unlawful demand. As such, harassment of a woman by unlawful demand of dowry also partakes character of cruelty.

51. As such, demand of dowry is not *sine qua non* to make out an offence of cruelty under Section 498A IPC. Hence, an accused can be convicted of charge under Section 498A IPC, even if there is no evidence of demand of dowry, if otherwise his willful conduct or harassment caused by him comes under the definition of cruelty as defined by two limbs of the Explanation to Section 498A IPC.

Findings and Order of this Court

52. Now coming to the case on hand, I find that the petitioner has been acquitted of the charge of demand of dowry by the Trial Court and the same has not been challenged by the informant in any higher Court and hence, finding of the Trial Court regarding demand of dowry stands final.

53. Hence, the only question to be considered is whether the finding of the Trial Court and the Appellate Court regarding guilt of the petitioner under Section 498A IPC is sustainable. In other words, whether such findings of the Courts



below are based on perverse appreciation of evidence or there is no evidence in support of such finding or that is based on inadmissible evidence or any material evidence has been overlooked by the Courts below.

54. From perusal of the FIR, prosecution evidence and the close scrutiny of the judgments of the Trial Court as well as the Appellate Court, I find that thrust of the allegation leveled by the informant/wife against the petitioner/husband is that husband/petitioner was harassing her with intent to coerce her and her relative to meet unlawful demand of dowry and in this regard, there is also allegation of committing physical and mental cruelty to the informant. However, I find that allegation of demand of dowry has already been found false by the Trial Court as well as the Appellate Court and the same has not been challenged by the informant in any higher Court.

55. I further find that before lodging the FIR, a letter was admittedly written by the informant to the Registrar General, Patna High Court, Patna, which does not disclose any allegation of physical or mental cruelty committed by the petitioner against the informant as the informant/wife has clearly admitted in her cross-examination. It has also come in the cross-examination of the informant/wife that no injury report



was prepared during investigation, nor had she shown any mark of injury to the police. But I find that such material evidence has been overlooked by the Trial Court as well as the Appellate Court. As such, there is no cogent evidence adduced by the informant and her witnesses to prove any willful conduct on the part of the petitioner/husband against the informant/wife which could have caused grave injury or danger to life, limb or health of the informant/wife. There is also no evidence to prove the allegation of harassment with intent to coerce the informant or her relative to meet unlawful demand for any property or valuable security.

56. Hence, I find that finding of conviction by the Trial Court as well as the Appellate Court is based on perverse appreciation of the evidence and misreading/overlooking material evidence, causing miscarriage of justice, warranting interference by this Revisional Court. Hence, the impugned judgment of conviction and order of sentence are not sustainable in the eye of law and and they are liable to be set aside.

57. Accordingly, the present petition is allowed, setting aside the impugned judgment of conviction and order of sentence, acquitting the petitioner of all the charges.

58. Any interlocutory applications, if pending, stand



disposed of. Let Lower Court Records along with a copy of this order be sent back to the Courts concerned.

(Jitendra Kumar, J.)

shoaib/ravi
shankar/S.Ali

AFR/NAFR	A.F.R.
CAV DATE	12.12.2024.
Uploading Date	17.06.2025.
Transmission Date	17.06.2025.

