

LAL KISHORE JHA

v.

STATE OF JHARKHAND & ANR.

(SLP (Cri.) No. 4848 of 2011)

MAY 2, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

Penal Code, 1860 – ss.494, 498A – Complaint by wife under – During trial, accused-husband entered into settlement and in terms of settlement, he accepted to take complainant back even though he had taken a second wife in the meanwhile – On examination, complainant did not press the charges but expressed her willingness to live with her husband and his second wife – However, before the conclusion of trial she filed petition before the trial court stating that accused-husband had breached the terms of settlement and thrown her out of his house – Trial court recalled her for re-examination as a court witness u/s.311 and she fully supported the allegations made by her in the complaint – Conviction of the accused u/ss.494 and 498-A – Appellate court held that the order passed by trial court, recalling the complainant for examination as a court witness was bad and invalid and her evidence as a court witness could not be taken into account for recording the finding of guilt against the accused – Revision – High Court set aside the order of the appellate court and restored the order of the trial court – On appeal, held: In the facts and circumstances of the case, High court took the correct view of the matter and its order cannot be said to be excess of the revisional jurisdiction u/ss.397 and 401 CrPC – Conviction upheld – Code of Criminal Procedure, 1973 – ss. 397 and 401 – Revisional jurisdiction – Scope of.

The wife-complainant filed a complaint against her husband-petitioner under Section 494 and 498A IPC. During the trial, the petitioner entered into a settlement

A with complainant. In terms of the settlement, he accepted to take the complainant back at his house even though he had taken a second wife in the meanwhile. The complainant was examined before the trial court and she did not press charges and showed her willingness to live
 B with the petitioner and his second wife. Before the conclusion of trial, she filed a petition before the trial court stating that the petitioner had breached the terms of settlement and thrown her out of his house. The trial court recalled her for re-examination as a court witness
 C under Section 311, Cr.P.C. On her examination as a court witness, she fully supported the allegations made by her in the complaint. The trial court convicted the petitioner under Section 494 and 498A IPC. The appellate court held that the order passed by trial court, recalling the
 D complainant for examination as a court witness was bad and invalid and her evidence as a court witness could not be taken into account for recording the finding of guilt against the accused. In revision, the High Court set aside the order of the appellate court and restored the order of the trial court. Hence the special leave petition.

E Dismissing the special leave petition, the Court

Held: : In the facts and circumstances of the case, High court took the correct view of the matter and its order cannot be said to be excess of the revisional
 F jurisdiction u/ss.397 and 401 CrPC. [Para 10] [1018-F-G]

Vimal Singh v. Khuman Singh and Anr. (1998) 7 SCC 223; *MahendraPratap Singh v. Sarju Singh* AIR 1968 SC 707 – held inapplicable.

G Case Law Reference:

(1998) 7 SCC 223 held inapplicable Para 3

AIR 1968 SC 707 held inapplicable Para 3

H CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl) No. 4848 of 2011.

LAL KISHORE JHA v. STATE OF JHARKHAND & 1017
ANR.

From the Judgment & Order dated 19.2.2010 of the High Court of Jharkhand at Ranchi in Cr. Rev. No. 933 of 2008. A

Nagendra Rai, Smarhar Singh, Shantanu Sagar (for T. Mahipal) for the Appellant.

The following Order of the Court was delivered B

O R D E R

1. Delay condoned.

2. Heard Mr. Nagendra Rai, learned senior advocate, appearing for the petitioner. C

3. The petitioner is convicted under Sections 494 and 498-A of the Penal Code and is sentenced to rigorous imprisonment for two years on each count. The sentences are directed to run concurrently. D

4. Mr. Rai submitted that the petitioner was acquitted by the appellate court and the High Court, while disposing of the revision filed against the order of acquittal, exceeded its jurisdiction in passing an order that resulted into the conviction of the petitioner. He submitted that in exercise of the powers under Section 401 of the Code of Criminal Procedure, 1973, an order of acquittal cannot be converted into an order of conviction and what the High Court could, at best do was to order a retrial of the petitioner. In support of the submission, he relied upon the decisions of this Court in *Vimal Singh v. Khuman Singh & Anr.*, (1998) 7 SCC 223 and *Mahendra Pratap Singh v. Sarju Singh*, AIR 1968 SC 707. E F

5. We find no merit in the submission of Mr. Nagendra Rai and we are satisfied that the decisions relied upon by him have no application to the facts of this case. All that the High Court has done is to set aside the order passed by the appellate court and restore the order of conviction and sentence passed by the trial court. G

6. At this stage, it will be useful to take a brief look at the facts and circumstances that led the High Court to interfere in H

- A the matter. While the trial was going on, the accused purported to enter into some sort of a settlement with the complainant (his wife). In terms of the settlement, he accepted to take her (the complainant) back at his house even though he had taken a second wife in the meanwhile. Hence, when the complainant
- B was examined before the trial court she did not press the charges but expressed her willingness to live with her husband and his second wife. Later on, however, before the conclusion of the trial she filed a petition before the trial court stating that the accused (the husband) had breached the settlement and
- C thrown her out from his house.

7. In those circumstances, the trial court recalled her for re examination as a court witness under Section 311 of the Cr.P.C. On her examination as a court witness, she fully supported the allegations made by her in the complaint.
- D Eventually, the trial court convicted the petitioner under Sections 494 and 498-A of the Penal Code.

8. In appeal, the appellate court held that the order passed by the trial court, recalling the complainant for examination as a court witness was bad and invalid and her evidence as a
- E court witness could not be taken into account for recording the finding of guilt against the petitioner.

9. In revision, the High Court set aside the order of the appellate court on this score and consequently the order of the
- F trial court stood restored.

10. We are fully satisfied that in the facts and circumstances of the case, the High Court took the correct view of the matter and its order cannot be said to be excess of the revisional jurisdiction under Sections 397 and 401 of the Cr.P.C.

- G 11. We find no merit in the special leave petition. It is dismissed.

D.G.

Special Leave Petition dismissed.