

NON REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO .894 OF 2021****SAMAUL SK.****... APPELLANT*****versus*****THE STATE OF JHARKHAND & ANR. ...RESPONDENTS****J U D G M E N T****SANJAY KISHAN KAUL, J.**

1. Hena Bibi, respondent No.2/complainant claimed to be the legally married wife of the appellant, the marriage having been solemnised on 8.2.2000 as per Muslim customs & rites. It may be noticed that the appellant was already married to one Mastra Bibi and he apparently had illicit relationship with respondent No.2, which culminated in their marriage. The two parties are stated to have lived as husband and wife in the house of the appellant for about a year and a half and two children were born out of the said marriage.

2. It is the case of respondent No.2 that on the instigation of the first wife, the appellant started mental and physical torture and made demands of dowry and respondent No.2 had to ultimately go back to her parents' house. It may be noticed that during this period that respondent No.2 conceived for the second time. It is not necessary to go into more details but suffice to say that the alleged demand of dowry resulted in PCR No.310 of 2006 being lodged in the Court of Sub Divisional Judicial Magistrate (for short 'SDJM'), Pakur for offences under Section 498A of the Indian Penal Code, 1860.

3. The case went to trial and in terms of the judgment of the SDJM, Pakur dated 30.1.2014, the appellant was held guilty and sentenced to three years of rigorous imprisonment with a fine of Rs.10,000/- and in case of failure to pay the fine, the appellant was directed to undergo further sentence of six months. The appellant preferred Criminal Appeal No. 07/2014 against the judgment of the SDJM which was dismissed vide judgment dated 02.09.2014 by the Principal District and Sessions Judge, Pakur.

4. The appellant, thereafter, preferred a Criminal Revision against the said order, being Criminal Revision No.1060/2014, and in terms of the

impugned judgment dated 11/20.10.2020, the Criminal Revision was dismissed. The appellant thereafter preferred the Special Leave Petition (for short 'SLP') before this Court.

5. The appellant was called upon to surrender by this Court and he did duly surrender.

6. In the course of hearing of the SLP, the petitioner/appellant prayed for extension of the benefit of Probation of Offenders Act, 1958, which was declined on 26.07.2021. However, the Court expressed the view that it was not averse to consideration of reduction of sentence subject to the condition that the petitioner gave adequate compensation to respondent No.2 for herself and her children apart from whatever maintenance was being paid under Section 125 of the Code of Criminal Procedure, 1973.

7. In the proceedings dated 09.08.2021, learned counsel submitted on behalf of the appellant that he was willing to pay compensation of Rs.3.00 lakhs to respondent No.2 for herself and the children and requested for about six months' time to raise the money. Since respondent No.2 did not put an appearance despite service, learned counsel for the State was asked to verify the stand of respondent No.2. Learned counsel submitted that the police

authorities had verified from respondent No.2 and she was agreeable to receive the compensation of Rs.3.00 lakhs. Further, on compensation being paid, she had agreed that if the sentence of the appellant is reduced and/or if he is granted the benefit of the Probation of Offenders Act, she has no objection. This was recorded in the proceedings held on 23.08.2021 and the certificate has been placed on record.

8. We have given thought to the matter. We have already noticed that keeping in mind the nature of the offence, we had declined the benefit of the Probation of Offenders Act to the appellant. However, if the petitioner/appellant is showing remorse and is willing to make arrangements for respondent No.2 and his two children born out of the wedlock, we would not like to come in the way of such an arrangement, which should be beneficial to respondent No.2 and her children.

9. The object of any criminal jurisprudence is reformatory in character and to take care of the victim. It is towards this objective that Section 357 of the Code of Criminal Procedure is enacted in the statute. The objective of which is to apply whole or any part of the fine recovered to be applied on payment to any person of compensation for any loss or

injury caused by the offence. In the present case, it is one of voluntarily offering the amount albeit to seek a reduction of sentence.

10. We are informed that the appellant has now undergone about seven months of sentence and, thus, we are inclined to reduce the sentence to the period undergone in case the appellant pays to respondent No.2 for her benefit and her children's benefit a sum of Rs.3.00 lakhs.

11. In view of the submission made by the petitioner on 09.08.2021 requesting for six months' time to make arrangement to deposit/pay the amount, we direct that the appellant shall deposit with the trial court the amount of Rs.3.00 lakh on or before 28.2.2022 and subject to the deposit, the period of sentence undergone shall be treated as the sentenced period. The above-mentioned amount of Rs.3.00 lakh shall be apart from the requirement of paying fine of Rs.10,000/- directed by the trial court. We, however, make it clear that if the amounts are not deposited, the appellant will have to undergo the remaining part of the sentence of 3 years.

12. On the deposit of the amount, the trial court will take steps to release an amount of Rs.2.00 lakhs out of Rs.3.00 lakhs to respondent No.2 for herself and for her children. In order to secure the interest of the

children, a sum of Rs.50,000/- each out of the remaining amount, would be kept in an FDR with a nationalised bank for the benefit of the children. This amount will be released to them with accrued interest on attaining the age of 21 years.

13. The appeal is accordingly allowed to the aforesaid extent leaving the parties to bear their own costs.

.....J.
[Sanjay Kishan Kaul]

.....J.
[Hrishikesh Roy]

New Delhi.
August 31, 2021.