

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Crl.Rev.Pet.No. 441 of 2004 (A)

AGAINST THE JUDGMENT IN CC 949/1996 of J.M.F.C., MALAPPURAM

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**VALAKATH THAZHEPULIYOLIL BASHEER,
S/O. KUNHUTTY, NALLUR AMSOM, PETTA,
FEROKE, KOZHIKODE DISTRICT.**

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENT(S)/COMPLAINANT:

**1. STATE OF KERALA, REPRESENTED BY THE
CIRCLE INSPECTOR OF POLICE, KONDOTTY, BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM**

*** 2. MUNDODAN KAMARUNNISA, D/O.CHEKKU,
VILAKKEPARAMBIL HOUSE, CHERUKAVU AMSOM,
CHEVAYUR DESOM, PULICKAL POST,
MALAPPURAM DISTRICT, PIN-673637.**

*** ADDL. R2 IMPEADED AS PER ORDER DATED 17.9.12 IN CRL.M.A.6920/12 IN
CRL.R.P. 441/04**

**R1 BY PUBLIC PROSECUTOR SRI. N. SURESH
R2 BY ADV. SRI.P.M.RAFIQ**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-
09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.441 of 2004

Dated this the 9th day of September, 2015

ORDER

Revision petitioner is the appellant in Crl. Appeal 139/2000 on the file of Sessions Judge, (Adhoc) Fast Track-1 Manjeri, challenges the concurrent findings of conviction under Section 498(A) IPC. He was accused in CC 949/96 of the Judicial First Class Magistrate, Malappuram and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.5000/- under Section 498(A) IPC, in default of payment of fine, simple imprisonment for two months. The conviction of the trial court was confirmed by the appellate court in the above appeal. Aggrieved by that, he preferred this revision.

2. The prosecution allegation against the revision petitioner is that, he married PW1 on 26.07.92 as per Muslim Customary Rights. At the time of marriage, he received 15 sovereigns of gold and subsequently paid a

sum of Rs.30,000/- by her father. While she was residing in the matrimonial house, revision petitioner took away her gold ornaments weighing 10 sovereigns. Thereafter, revision petitioner and his brother harassed her demanding more amount of money and gold. She was not in a position to pay the demanded amount, she informed this matter to her parents. Thereafter, she was residing with her parents. Subsequently she filed the above case in the Judicial First Class Magistrate Court, Malappuram, from there it was forwarded to Malappuram Police under Section 156(3) Cr.P.C. for investigation. After completing investigation, Circle Inspector of Police laid charge before court.

3. To prove the allegation, prosecution examined PW1 to PW7 and marked Ext.P1 to P4. The incriminating circumstances brought out in evidence were denied by the revision petitioner while questioning him. He did not adduce any defence witness. While cross-examination of CW1, Ext.D1 was marked. The trial court after analysing the evidence on record, convicted the accused.

4. The learned counsel appearing for the revision petitioner contended that, *prima facie* there was no evidence to attract offence under Section 498(A). There was no willful conduct which is of such a nature to drive PW1 to commit suicide or causing any injury danger to her life, limb or health. No evidence has been adduced by PW1 to show that revision petitioner demanded dowry and harassed her both physically and mentally. There was no coercion from the side of revision petitioner to make any unlawful demand for any property or valuable security from her or her close relatives on account of failure to meet such demand and harassed her. Prosecution utterly failed to prove the case beyond reasonable doubt. He relied the decisions in **Lawrence V. State of Kerala 2002 KHC 704** and **Rohtash V. State of Haryana (2012)6 SCC 589**.

5. Respondent contended that there was physical and mental harassment against the wife, which was deposed by PW1 and PW3. The incident happened on several occasions were narrated by these two witnesses

from their direct evidence. She sustained minor injuries for which she was not admitted in a hospital for the reason that, she need not disturb her family life. Later, one occasion she admitted in the hospital and took treatment from there. The harassment made by the husband was with a view to coerce her to bring some money which is an unlawful demand from the side of the husband, which is sufficient to attract the alleged offence.

6. Nowadays, the increasing violence against women, especially among young couple become a matter of concern to the society. The indictment provided to prevent torture to a married women by her husband or his relatives and punish them for such harassment is coming under the Indian Penal Code. Therefore, harassing or torturing the wife to coerce her or the relatives to concede or provide any unlawful demand of dowry or money or any property or any valuable security is an offence, the husband or his relatives are liable under the Indian Penal Code. Section 498(A) was enacted by the Parliament considering the increase of such harassments in the

society and restricting such cruelty against such women within the institution of marriage. Section 498(A) read 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.”

7. The violence mentioned in the above have two parts. In first part 'cruelty' means - any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health of a women, which includes whether mental or physical. Therefore, the husband or relatives of the husband of a women, subjects such women to cruelty and any willful conduct from their side to drive the women to commit suicide or to cause grave injury or danger to life is an offence under Section part (a) of 498(A) IPC. In the present case, such an allegation is not found, therefore I am not considering part (a) of 498(A) IPC. Part (b)

explained harassment of the women, where such harassment is with a view to coerce 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 amounts to cruelty. The position of 498(A) has been explained by the Apex court in Girdhar **Shankar Tawade V. State of Maharashtra (2002(5) SCC 177) = (AIR 2002 SC 2078)**. Therefore, analyzing the clause (a) of Section 498(A) of IPC, cruelty means, any willful conduct which is of such a nature as is likely to drive the woman to commit suicide and clause (b) the explanation pertains to unlawful demand for money or any valuable things. Coming to the facts of the case, PW1, the wife of the revision petitioner contended that, she was harassed by her husband demanding more money and gold.

8. The learned counsel appearing for the second respondent submitted that both parties divorced and living separately. I have gone through the oral evidence of PW1, her evidence shows that on 26.07.92 revision

petitioner married her as per Muslim Customary Rights. At the time of marriage, 15 sovereigns of gold ornaments given to her. After 15 days of marriage, Rs.30,000/- was given to him by her father for business purpose. Immediately after the marriage, they resided together in the matrimonial home for one year, subsequently, he took 10 sovereigns of gold and appropriated that amount to his brother's job in gulf countries. She deposed that for the remaining amount, revision petitioner and his brother ill-treated her. But nothing was stated by PW1, how much amount was there in her possession and how much amount demanded. This shows that there was no demand from the side of the revision petitioner and PW1 has not disclosed how much amount she was keeping in her possession.

9. When she visited her house, she disclosed about the gold ornaments. Her family members after knowing the appropriation of the gold, informed her not to reside in the matrimonial house and informed her to stay with her parents. Accordingly, after 3 months, revision petitioner

went there and resided with her in the wife house. PW1 also stated that he assaulted her, but the specific overtact of assault was not mentioned in the petition or before court. On the other hand, vague allegations are made by her in the trial court.

10. Analyzing the evidence of PW1, it is clear that eventhough, she contended that she was ill-treated by her husband demanding more money and gold, no specific allegation of such demand was mentioned in the petition or before court. The revision petitioner has not made specific demand for money, which is clear from the oral testimony of PW1. PW2 is the mother of PW1, supported her daughter. Her allegation was that, the revision petitioner threatened her with the help of sorcerer that she will be killed. PW3 also supported the evidence of PW1. Analysing the oral testimony of PW1 to PW3, it is not clear that how much amount demanded and how much amount was in her possession. But it is true that, in their family life, there was no payment of dowry at the time of marriage, but as a matter of customary marriage, they

gave 15 sovereigns at the time of marriage, 10 sovereigns of gold was appropriated by PW1 for obtaining Job to her husband's brother in gulf countries. As a responsible sister-in-law, she is bound to help her husband's brother, to that extend that support was granted to him, otherwise it is difficult to find any specific demand for money and specific harassment for such amount. In the absence of such evidence, I am of the opinion that prosecution failed to prove that revision petitioner harassed PW1 with a view to coerce her to meet any unlawful demand for money or any valuable security and she was harassed both mentally and physically. When such evidence is not found in her evidence, a wrong appreciation was made by the court below, which was not properly appreciated by the appellate court, resultantly, the conviction and sentence passed by the trial court is liable to be set aside.

11. Apex court in **Ghusabhai Raisangbhai Chorasiya & Others V. State of Gujarat AIR 2015 SC 2670** in para 20 held as follows;

“20. Coming to the facts of the present case, it

is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A, IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal* (AIR 2014 SC 331) (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In

the instant case, the accused may have been involved in an illicit relationship with the appellant No.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498A, which includes cruelty to drive a woman to commit suicide, would not be attracted.

In view of the above legal principle, the conviction and sentence passed by the trial court under Section 498 (A) is set aside and the revision petitioner is acquitted and set at liberty. This revision petition is allowed.

STK

//TRUE COPY//

P.A. TO JUDGE**Sd/-
P.D. RAJAN,
JUDGE**