

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

Crl.Rev.Pet.No. 2553 of 2003 (A)

AGAINST THE JUDGMENT IN CRL.A 117/2002 OF SESSIONS COURT, MANJERI

**AGAINST THE JUDGMENT IN CC 3367/1997 of JUDICIAL FIRST CLASS MAGSITRATE
COURT, MALAPPURAM**

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

**KUTTY HASSAN, S/O.VEERANKUTTY
KODIAN HOUSE, PUTHOOR AMSOM, KOLATHUPARAMBA,
P.O.OTHUKKUNGAL, MALAPPURAM DISTRICT**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/RESPONDENT(S)/STATE:

**THE STATE OF KERALA REPRRESENTED BY
THE CIRCLE INSPECTOR OF POLICE, TIRUR-THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.**

BY ADV. SRI.M.MADHUBHAN, PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
07-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

R.AV

K.RAMAKRISHNAN, J

Crl.R.P.No.2553 OF 2003

Dated this the 7th day of January, 2015

O R D E R

First accused in CC.367/1997 on the file of the Judicial First Class Magistrate Court, Malappuram is the revision petitioner herein.

2. The revision petitioner along with two others were charge sheeted by the Circle Inspector of Police, Tirur in Crime No.38/1997 of Kottakkal police station under section 498A read with section 34 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that the first accused married the defacto complainant and thereafter, they were living together as husband and wife and while so, there were insistent demand for money for meeting the purpose of the first accused which was met by the parents of the defacto complainant and on one occasion when amount was demanded, when it was not paid she had to leave the matrimonial house and she filed application for maintenance and that was settled after payment of Rs.10,000/- and thereafter she conceived again and in connection with the marriage of sister of the first accused, they wanted 10 sovereigns of gold ornaments and Rs.10,000/- to be given by

the defacto complainant and she had given her 10 sovereigns of gold ornaments and when she refused to pay Rs.10,000/- demanded, she was ill-treated and sent out of the house on 02.08.1995 and thereafter she delivered the child and she was not taken back and he married again and while she was residing with them they ill-treated her to meet their illegal demand both physically and mentally harassing her and thereby all of them have committed the offence punishable under section 498A r/w section 34 of the Indian Penal Code.

4. The case was taken on file on the basis of Ext.P1 private complaint filed by the defacto complainant on 14.03.1997, alleging commission of the aforesaid offence against three accused persons including the revision petitioner before the Judicial First Class Magistrate Court, Malappuram which was forwarded to the police for investigation under section 156(3) of the Code of criminal Procedure. On receipt of the complaint, PW7 registered Ext.P3 First Information Report, as Crime No.38/1997 of Kottakkal police station against the accused persons under section 498A r/w section 34 of the Indian Penal Code and thereafter, the investigation was conducted by him. He questioned the witnesses and recorded their statement. The further investigation was conducted by Circle Inspector of Police. He seized Ext.P5 marriage certificate

as per Ext.P2 mahazar in the presence of PW6 and another. The investigation was completed by the Circle Inspector of Police and he laid the final report in the case.

5. When the accused appeared before the court below, charge under section 498A r/w section 34 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. During the course of the trial, second accused died and charge against him was abated. In order to prove the case of the prosecution, PWs 1 to 7 were examined and Exts.P1 to P4 were marked on their side. After closure of the prosecution evidence, the accused were questioned under section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence. First accused had stated that he had not committed any offence and he is innocent of the same and PW1 had left the house voluntarily and she wanted him to come and reside in their house for which he was not amenable and she told that she will not come and reside with him. So, later he remarried and on account of that enmity, she had filed a false complaint. Third accused also submitted that she had not committed any offence and she has been falsely implicated in the case. After considering the evidence on record, court below found that third accused had

not committed any offence and she was acquitted of the charge levelled against her but court below found the revision petitioner guilty under section 498A Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for two years and also to pay a fine of Rs.5000/- in default to undergo simple imprisonment for one month. Aggrieved by the same, he filed Crl.Appeal 117/2002 before the Sessions Court, Manjeri. The learned Sessions Judge allowed the appeal in part confirming the order of conviction but modified the sentence to simple imprisonment for three months and also to pay a compensation of Rs.10,000/- to PW1 in default to undergo simple imprisonment for three months more under section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, the present revision has been filed by the revision petitioner-first accused before the court below.

6. Heard the counsel for the revision petitioner and the learned Public Prosecutor.

7. The counsel for the revision petitioner submitted that there was inordinate delay of more than 1 year and seven months after she left the house in filing the complaint and the delay has not been explained. Even going by the evidence of PW1, it cannot be said that there was any unlawful demand for any money or property made but in order to purchase some

vehicles to improve their living condition, help was asked for and that was given and that cannot be treated as unlawful demand for money etc. Further, on going through the evidence of PWs 1,2 and 3, it would be seen that there was no physical assault as claimed by the defacto complainant and the amounts were paid without any demur. Further, there is no evidence to show that she had suffered any bodily injury. Further her evidence will go to show that she was taken to her house and left there. There is no case that at the time of living there, she was asked to come with the money and then only she would be taken to the house. So, all these things will go to show that the cruelty as required under section 498A has not been made out and at most it can be only said to be petty quarrel in the family which cannot be treated sufficient to attract an offence under section 498A and the courts below have not properly appreciated the evidence and the conviction entered is not proper and the same is liable to be set aside.

8. On the other hand, the learned Public Prosecutor submitted that the narration of the incident made by PW1, PW2 and independent witnesses PW4 will go to show that the harassment met by the defacto complainant which will squarely fall under the explanation given under section 498A regarding definition of cruelty. The courts below have properly

appreciated the evidence and in matrimonial offence, it is difficult to get direct evidence and the courts below will have to appreciate the evidence and the circumstances to arrive at a conclusion regarding the commission of the offence. Since, the courts below have concurrently found on evidence, that prosecution case has been proved the case and found him guilty of the offence the revisional court is not excepted to interfere with the concurrent findings of the court of guilt unless the court feels that the finding is perverse.

9. It is an admitted that the marriage between the revision petitioner and the defacto complainant was solemnised on 27.11.1986. Even according to PW1, they were living happily for six and half years without any quarrel and three children were born to them in that wedlock. According to the prosecution, it was thereafter that he had started demanding money and started treating her cruelly. A reading of the evidence of PW1 will go to show that the revision petitioner was asking money not for his personal purposes but for the purpose of purchasing autorickshaw or tourist taxi for the purpose of improving their living conditions. It is also in away brought out in evidence that on earlier occasion when Rs.10,000/- was demanded, there was some quarrel occurred between the defacto complainant (PW1) and the revision

petitioner and she left the matrimonial house and thereafter she filed maintenance application as M.C.No.63/1994 and that was settled due to the intervention of PW4 and at that time Rs.10,000/- was paid and thereafter they resided together for nearly eight months and during that time, she became pregnant again the fourth child.

10. It is thereafter, the case of the prosecution was that the marriage of the sister of the first accused was decided to be conducted for which they had agreed to give 40 sovereigns of gold ornaments and Rs.40,000/- cash out of which they wanted the defacto complainant to give 10 sovereigns of gold ornaments and Rs.10,000/- cash and though she had earlier refused to pay the same, later she gave her 10 sovereigns of gold ornaments and since she could not pay Rs.10,000/- there was some quarrel occurred in which according to the prosecution accused Nos. 2 and 3 had pushed her and beaten her and told that she was brought back to the house from court not for the purpose of keeping her there and he would get better alliance and thereafter she was taken to her house and left there and thereafter he did not come and take her back. But at the time, she was examined before the court, she had no complaint against accused Nos. 2 and 3 and she had categorically stated that second accused did not do anything as

well and court below had disbelieved the evidence of PW1 regarding the allegations made against third accused and she was acquitted. Further, it was brought out in evidence of PW1 that after she was left in her parental house during August 1995, a complaint was filed before the police for getting back the child which was alleged to have been forcefully taken by the revision petitioner. But it will be seen from the evidence of PW1 and PW2 the father of the defacto complainant that at that time according to him the relationship was not so strained and they did not make any complaint regarding any ill-treatment alleged to have been met by her at the hands of the revision petitioner and no complaint of any unlawful demand for dowry or money were made at that time. They got back the child through police and it is long after that that the present Ext.P1 complaint was filed alleging cruelty under section 498A of Indian Penal Code.

11. The evidence of PWs 2 and 3 is not helpful to prove the ill-treatment said to have been met by her in the matrimonial home. They have only hear say knowledge about what PW1 had stated about the ill-treatment. But PW2 stated that whenever demands were made, that were met by him. He had no case that he had interfered in those matters and refused to pay any amount as well. So, that will go to show that even if there was any monetary transactions had taken place

earlier, that has been done considering the relationship between the parties in a cardinal manner and it was not obtained under any pressure as claimed by PW1. Further, the evidence of PW4 will only go to show that it was he who had interfered in the matter and thereafter after paying Rs.10,000/- for the purpose of purchasing a taxi, she was taken back and they were living happily. Later, he came to know that she was sent back from the matrimonial house. He had no case that thereafter he had interfered in the matter also. Anything that has happened prior to the settlement cannot be taken as an act of cruelty under section 498A if those aspects were condoned and they decided to reside together.

12. Then, the only question is after they started living together after settlement, anything happened so as to attract the offence under section 498A as claimed by the prosecution. To prove this fact prosecution relies on the evidence of PW1 and PW5. According to PW5, one day when he was going along the road, he heard some sound and cry of a lady and after some time he saw PW1 coming out of the house and told him that she was scolded by her husband. She had told that they wanted gold ornaments and Rs.10,000/- to be paid and wanted to tell the same to her parents. According to him, he went there and told the same to PW2. But in Ext.P1 the case of PW1 was that

the gold ornaments were given after the marriage of the revision petitioner's sister. But she had a different case when she was examined before the court. PW2 had no knowledge about the ornaments giving of ornaments as claimed by PW1 as well. Further, it is brought out in evidence of PW1 that the revision petitioner had taken her to her house and left there. Thereafter he did not come. She had not deposed before the court that when she was left at her house, the revision petitioner had told her to come with the money and only if she came with the money she would be taken back. Neither PW2 nor PW3 had such a case as well. So, under the circumstances, even assuming that there was some quarrel occurred between PW1 and the defacto complainant regarding the amount payable in connection with the marriage of revision petitioner's sister, that cannot be taken as cruelty as defined under the explanation to section 498A of Indian Penal Code. Further, the delay in filing the complaint also looms large in this case. So, under the circumstances, courts below were not justified in appreciating the evidence in the right perspective so as to come to the conclusion that the prosecution has proved beyond reasonable doubt that the revision petitioner had ill-treated the defacto complainant making unlawful demand as defined in the explanation to section 498A of Indian Penal Code so as to

convict the revision petitioner for the offence under section 498A and the finding of the courts below on that aspect is liable to be set aside, especially when the delay in filing the complaint has not been explained either in the complaint or at the time when she was examined before the court as PW1 as well. The fact that they did not make any complaint regarding ill-treatment when they said to have been filed the complaint for getting back the child also will go to show that the allegation of cruelty on the basis of illegal demand for money or gold ornaments has been projected as an afterthought when the revision petitioner had married another lady for harass him and his family members and that possibility cannot be ruled out and that benefit must be given to the revision petitioner. Further, if two view are possible on the basis of the evidence, then the view in favour of the accused has to be taken and that principle has not been applied in this case by the courts below. In view of the discussions made above, the finding of the court below that the prosecution has proved beyond reasonable doubt that the revision petitioner had committed the offence punishable under section 498A of Indian Penal Code and conviction entered thereon are unsustainable in law and the same is liable to be set aside. The revision petitioner is entitled to get acquittal of the charge levelled against him giving him the benefit of doubt.

13. In view of the finding that the revision petitioner is entitled to get acquittal of the charge, levelled against him the sentence imposed is also not proper and the same is also liable to be set aside.

In the result, the revision petitioner succeeds and the revision is allowed. The order of conviction and sentence passed by the court below and modified by the appellate court in CC.No.367/1997 of Judicial First Class Magistrate Court, Malappuram and Crl.Appeal No.117/2002 of Sessions Court, Manjeri are set aside and the revision petitioner is acquitted of the charge levelled against him giving him the benefit of doubt. He is set at liberty and the bail bond if any executed by the revision petitioner will stand cancelled.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

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PA to Judge