

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

Crl.Rev.Pet.No. 1731 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN CRA 552/2013 of 4TH ADDITIONAL SESSIONS COURT, ERNAKULAM AGAINST THE ORDER/JUDGMENT IN CC 706/2007 of J.M.F.C.- I, KOCHI)

PETITIONER(S)/IST APPELLANT/1ST ACCUSED:

DIETZ GEN CREDO SOONER, AGED 40 YEARS,
S/O.C.P. SOONER, CHUDUKATTUNGAL HOUSE,
NEAR LIGHT HOUSE, PUTHUVYPE, ERNAKULAM - 682 508.

BY ADV. T.M.MOHAMMED YOUSEFF (SR.)
 SMT.AYSHA YOUSEFF
 SMT.MOLLY JACOB
 SMT.RABIA BEEGAM T.K.
 SRI.JOBI.A.THAMPI
 SMT.M.KABANI DINESH
 SRI.ABHILASH.K.S.
 SMT.FASHIYA YOUSEFF

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SMT.ABHIJITH LESLIE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON 22/9/2015 PASSED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.R.P.No. 1731 of 2014

Dated this the 22nd day of September, 2015

O R D E R

The first accused, who stands convicted by the Judicial First Class Magistrate-I, Kochi, in C.C.No.706/2007 for offences punishable under Section 498A IPC, as confirmed by the judgment of the Additional District and Sessions Judge-IV, Ernakulam, in Criminal Appeal No.552/2013, is the appellant herein.

2. The case of the de facto complainant was that the first accused had married her on 16/1/2003 as per the religious rights and ceremonies. On 26/1/2003, the first accused, who was employed abroad, left India. Accused 2 and 3 are the parents of the first accused and the 4th accused is his sister. The allegation was that ever since the date of marriage, the de facto complainant was physically and mentally harassed by the accused acting in combination, with the intention to satisfy their demand for

more dowry, over and above 75 sovereigns of gold ornaments and five cents of land already given to her. It was alleged that harassment was to such an extent that it was likely to drive her to commit suicide. When the physical and mental harassment became unbearable, she left the matrimonial house, to her parental house, on 24/4/2003. Thereafter also, allegedly the first accused continued to harass her, by making false allegations orally and over telephone and spread rumours among the local persons. Complaining about that, Ext.P1 complaint dated 10/4/2004 was submitted to the Women's Commission which was forwarded to the concerned police station on 17/6/2004. Thereafter, the crime was registered. After the conclusion of the investigation, final report was laid against all the accused, for offences punishable under Section 498A read with Section 34 IPC.

3. All the accused appeared before the learned Magistrate and pleaded not guilty. They faced the trial. On the side of the prosecution, PW1 to PW 13 were marked. Exts.C1 to C4 were marked as court exhibits. On

the side of the accused Exts. D1 to D3 were marked. The court below on an evaluation of the available materials, concluded that the prosecution had succeeded in proving the allegation against the accused and convicted accused 1 to 3. The first accused was convicted to undergo simple imprisonment for two years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three months. Accused Nos.2 & 3 were found guilty and imposed simple imprisonment of six months each and a fine of Rs.10,000/- with a default clause. That was challenged by accused Nos. 1 to 3 in Criminal Appeal No.552/2013 before the Sessions Court. The Appellate Court on an re-valuation of the available inputs, concurred with the conclusion arrived at by the learned Magistrate in so far as it related to the first accused and confirmed the conviction. However, the court held that the allegation against accused Nos. 2 and 3 were not proved and they were acquitted.

4. Contenting that both the courts have committed manifest error in evaluation of the facts and also applying

the law, this revision has been preferred. Heard both sides and examined the records.

5. It is an admitted fact that the alleged marriage took place on 16/1/2003 and the first accused left India on 26/1/2003. It is further admitted that the de facto complainant left the matrimonial home on 24/4/2003 and thereafter has not returned to the matrimonial home. The specific allegation of the de facto complainant is that the accused had harassed her both mentally and physically from the date of marriage itself in connection with the demand for dowry. Her oral version is to the effect that it was so unbelievable that she could not have imagined as to what could she have committed.

6. The prosecution essentially relied on the oral testimony of PW2, the de facto complainant, supported by the version of PW4. Ext.P1 is the basis of the prosecution case, which is the complaint dated 10/4/2004 submitted to the Women's Commission, which was later forwarded to the concerned police station and based on which, the crime was registered. The specific allegation of the de

facto complainant was that she was given 75 sovereigns of gold ornaments and property as a dowry. The gold ornaments were allegedly taken by the husband on the first night itself and thereafter he started harrasing her with a demand for more dowry. The definite contention of her is that she was harassed in connection with demand for dowry and was not permitted by the acused to visit her parents and she was locked in a room. Though the learned Magistrate found substance in the above allegations, the appellate court on re-valuation held that the allegation of scolding her by the accused and locking her in a room, preventing her from meeting others and not permitting her to meet her father even in the hospital, were not substantiated beyond reasonable doubt. Such an evaluation is based on materials and in revision, I am not inclined to enter further into the merits of that finding, since it is patent from the records that the appellate court was justified in so concluding.

7. The only factual premise on which the court below confirmed the conviction against the first accused was

relying on Exts.P6 to P9 and the oral testimonies of PW2 and PW4 touching upon the above documents. Exts.P6 to P9 are letters allegedly sent by the accused to few persons who were claimed to be the neighbours. PW4 was one among the recipients . Hence, the question that arises in this revision is whether the conclusion arrived at by the lower appellate court that Ext.P6 to P9 supported by the oral testimonies of PW2 and PW4 to prove the guilt under Section 498A IPC is sufficient or not.

8. One of the contention set up by the learned senior counsel for the accused was that there was no valid marriage between the complainant and the first accused. The court below has considered this aspect in detail. This defence is seen set up in the course of cross examination and also in the reply given by the accused in answer to Section 313 Crl.P.C questioning. Admittedly, the parties are Hindu Ezhava. They are entitled to enter into the matrimonial relationship as per the customs and practices applicable to them. Admittedly, the marriage certificate was not produced before the court below. There was

admittedly no registration of the marriage also.

9. The lower appellate court relied on Ext.C4, which was the judgment of this Court in Mat.Appeal No.48/08. The appeal was preferred by the first accused challenging the order of the Family Court in O.P.No.430/2006 granting divorce. By Ext.C4 judgment, this court confirmed the finding of the Family Court. In the light of this finding granting divorce, it is only to be held that the divorce granted confirms existence of a valid marriage. The court below has additionally referred to Exts.C1 to C3 which are the bail applications submitted by the first accused and the orders thereon. It was admitted that the first accused was the husband and thereby admitting the matrimonial relationship.

10. PW2 deposed in terms of the valid marriage. She deposed that they got married on 16/1/2003. She further deposed that it was registered in Puthuvye SNDP Sakha and at Valavoor Sakha, which had jurisdiction in relation to the de facto complainant and her family. There is no series of cross examination on this. PW4 is a witness to the

marriage, who also deposed that she had attended the marriage of PW2 with the first accused.

11. An evaluation of the above materials indicate that there are sufficient evidence to lead to the definite conclusion that there was a legal marriage between the parties as per the religious customs and law applicable to the parties.

12. Ext.P1 discloses that harassment allegedly started on the date of marriage itself. Evidently both the husband and wife lived together only during the period from 16/1/2003 to 26/1/2003. Thereafter, she left the matrimonial home on 24/4/2003. In the above circumstances, if her case is believed, there could not have been any instance of direct physical or mental harassment against the de facto complainant by the first accused after the ten days period when they lived together and thereafter by in-laws after 24/4/2003. However, her specific allegation in relation to the period thereafter is that the accused used to spread baseless allegations and wild rumours against her over the telephone among the

members of the locality.

13. The specific allegation of PW2 was that the first accused alleged that she had a love affair with one Prasad and that she was maintaining close relation with him. There was a further allegation that he went to the extent of alleging that the de facto complainant had undergone an abortion prior to her marriage. Another allegation against the accused was that he spread rumours that the child was not his. According to PW2, this was conveyed by the accused to PW4, one Rajan and one Bhaskaran and two other unnamed persons of the locality.

14. The lower appellate court, essentially relying on Exts.P6 to P9 arrived at a conclusion that the husband had spread baseless and wild allegations against the wife, among the local persons. There is no doubt that, as held by the lower appellate court, if the accused had made baseless allegations that she had love affair with one Prasad, that she had undergone an abortion before the marriage and that the child was not his, it is sufficient to prove the ingredients under Section 498A. In this context,

Exts.P6 to P6(b) have to be examined. Ext.P6(a) is a the photo copy of the letter dated 1/2/2004 addressed to one Sudha. Ext.P6(b) is a letter dated Nil. Ext.P7 is another letter dated 10/2/2004 stated to be the continuation of the letter Ext.P6(b). Ext.P6 (a) is stated to be an envelop in which Ext.P6(b) was allegedly sent to said Sudha. PW4 is one Sugatha Kumari. According to PW2, the said Sudha is none other than PW4, Sugathakumari. PW4 also in her evidence deposed that Ext.P6 series and Ext.P7 were received by her. Ext.P9 is another letter dated 31/1/2004 addressed to the same Sudha. Ext.P8 is a letter dated 28/1/2004 addressed to one Bhaskaran. The said Bhaskaran was not examined on the ground that he was no more. According to PW2, Bhaskaran died about four year prior to her examination. All the above letters were marked through PW2. PW4, who is claimed to be the recipient of Exts.P6, P7 and P9, was also examined as PW4. There is absolutely no evidence as to why the original of Ext.P6 was not produced.

15. Evidently, Exts.P6 to P9 are letters prior to

Ext.P1. PW4 in her evidence had no valid explanation as to why the letters were not referred to in Ext.P1. She had in the cross examination explained that, the above letters were not mentioned in Ext.P1, since she received letters subsequent to Ext.P1. However, she admitted that she had received the letters in January 2004. If that be so, her explanation that it was not mentioned in Ext.P1 because it was not available with her as on the date of Ext.P1 is false. Ext.P1 is submitted about three months thereafter. It assumes significance since Exts.P6 to P9 if believed per se, raise very serious allegation affecting her chastity which is enough to conclude cruelty. However, strangely the above documents were not referred to in Ext.P1.

16. The main finding of the appellate court in regard to allegation of cruelty was based on Exts.P6 to P9. This has to be appreciated in the back ground of her specific allegations in Ext.P1 which gave rise to criminal prosecution. She has vaguely stated that the accused had orally and telephonically spreading rumours and wild allegations against her. She did not have a case at that

time that any such letters were ever sent. She had no case that the accused had stated that she had undergone abortion or any definite allegation affecting her chastity. Hence, it is only to be reasonably presumed that, had she received Exts.P6 to P9 at that point of time, definitely it would have been referred to in Ext.P1.

17. The several allegations in Ext.P1 indicated essentially only family bickering and disputes within the family. She had no case that the allegations were so harsh so as to drive her to commit suicide. Specific instances of cruelty are also not mentioned, though she had stated generally that she was harassed in connection with the demand for dowry. Essentially, Ext.P1 does not disclose any such specific instance of cruelty, so as to attract Section 498A. She had also not requested in Ext.P1 for any action to be initiated under Section 498A. On the other hand, she only prayed that necessary action may be taken to ensure that the future of herself and her child were protected. She had expressed that she would like to continue to have a matrimonial relationship with her

husband. This only shows that she did not have even an allegation that the accused had meted out such a cruelty, so as to drive her to commit suicide or which was in connection with an demand for dowry.

18. Exts.P6 to P9 letters were specifically denied by the first accused. There was even a suggestion that it was concocted. PW2 had specifically stated that the letters were entrusted to her by PW4 Rajan and Bhaskaran. PW2 had stated that those were in the handwriting of the first accused. The court below relied on the signature of the first accused in his vakalath to consider whether Exts.P6 to P9 were in the handwriting of the first accused. The court held that signature in the vakalath of the first accused was not identical to that on Exts.P7 and P9. However, the court concluded that the handwriting in Exts.P6 to P9 were similar to the writing of the name in the vakalath of the accused. This appears to be a patent error committed by the court. There was absolutely no evidence that the name of accused seen on the vakalath was in the admitted handwriting of the accused. Even

though it can be presumed that the signature seen in the vakalath of one person is his own, so such presumption can be extended in the case of handwriting on the vakalath unless, it is so specifically proved. There is no independent evidence to prove that Exts.P6 to P9 were in the handwriting of the first accused.

19. The court below relied on Ext.P6(a) envelop, which allegedly contained Ext.P6(b), to conclude that it was sent by the first accused. Reasoning given by the court below was that it seems to have been sent from abroad and hence it must have been sent by the first accused who was abroad at that time. The envelop shows that it has Five Rupees Indian Postal Stamp affixed on it. There are two seals affixed on it. Both seals relate to post offices in Kerala. Evidently, both the letters were posted in India and received in India. Hence, the reasoning of the court below is not correct in this regard. Hence, there is nothing to attribute authorship of Exts.P6 to P9 to the first accused.

20. Even otherwise, reference to Exts.P6 to P7 shows

that those were lengthy letters written by a person disclosing his view point on the issue. Even assuming that it is written by the first accused, it relates to the matrimonial relationship between himself and his wife, the reasons for its failure and attributing the entire liability on the de facto complainant. There is a reference that the defacto complainant was not behaving properly and even if she had an affair, prior to the marriage, the accused was ready to forgive and forget. He alleged that the wife was not co-operative, did not adjust herself with the family and was always having strange behaviour. It is true that there is an allegation that after she had left the matrimonial home, the accused conducted an enquiry and it was revealed that she had an affair with one Prasad and there was information that she had even undergone abortion. Even then, he had gone to the extent of saying that he was ready and willing to forgive. A perusal of the entire letters indicate that according to him, the marriage was spoiled by the de facto complainant. She allegedly had a bad behaviour. It only indicates his side of version regarding

the entire incident. Hence, on the basis of the above letters alone, one cannot arrive at a definite conclusion that they are per se false and that they were made without any bona fides. Hence, it can only be presumed that these are only allegations which the accused had. In the absence of anything to show that the allegations made in Exts.P6 to P9 are per se false, no conclusion can be arrived against accused .

21. Accordingly, the entire evidence in the above perspective, it is only to be held that the findings of the court below relying on Exts.P6 to P9 to conclude that the accused has committed offence punishable under Section 498A IPC is not sustainable. It is only to be held that the contents of Exts.P6 to P9 are not proved beyond reasonable doubt.

22. In the light of the above, it is only to be held that the conviction of the court below relying on Exts.P6 to P9 is legally not sustainable and is liable to be set aside.

In the result, the revision is allowed. The impugned judgment and conviction is set aside. The accused is

acquitted. Bail bond stands discharged.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.