

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Case No.1036 of 2007

K.Senthil Kumar

.. Petitioner /Accused

Vs.

The State of Tamil Nadu,
rep., by Inspector of Police,
All Women Police Station,
Thiruppathur.

... Respondent /Complainant

(Amended as per order of this Court,
dated 18.07.2007 in M.P.No.1 of 2007)

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order dated 04.07.2007, made in C.A.No.35 of 2006, on the file of the Additional District Sessions Court/Fast Track Court, Thiruppathur, Vellore District, confirming the judgment and sentence, dated 04.09.2006, in C.C.No.823 of 2005, on the file of the Judicial Magistrate No.1, Thiruppathur, Vellore District.

For Petitioners : Mr.K.Selvaraj

For Respondent : Mr.P.Govindarajan,
Addl. Public Prosecutor

O R D E R

Material on record discloses that on reference, earlier, on 13.06.2014, in the Lok Adalat, presided over by the Judge, High Court (Retired), on the basis of the submission made by the learned counsel for the revision petitioner-husband that the petitioner is willing to pay a sum of Rs.10,00,000/-, directed the matter be placed before the next Lok Adalat, to be held on 30.06.2014, for reporting settlement. On 30.06.2014, the defacto complainant was present. But the petitioner was absent, though he was fully aware of the assurance of payment of Rs.10,00,000/-. Hence, Lok Adalat has adjourned the matter to 14.07.2014. On the said date, the Lok Adalat has recorded as follows:

"Upon the defacto complainant, questioning the conduct of the husband, this case was registered by the Inspector of Police, in All Women Police Station, Tirupattur, in Cr.No.11 of 2005. After trial, the case ended in conviction for the

offence proved under Section 498(A) on 04.09.2006, imposing a sentence of two years RI and a fine of Rs.2,000/-, which were challenged by the appellant/accused before the District Court, Vellore, which was confirmed, resulting in this Crl.R.C., in the year 2007.

2. At the request of the accused, the case was referred to the Lok Adalat and here, in order to settle the matter, we felt that the defacto complainant must be present, since the respondent in the appeal was state. Accordingly, notice was issued and the defacto complainant, present. We tried our best to settle the matter between the husband and wife, considering two children, but we are unable to reach the destination of settlement. The defacto complainant, viz., the wife of the accused and her relatives are not willing to settle the matter. Probably, considering the conduct of the accused, who made an attempt to cancel the settlement deed executed by his father in favour of the children which is valid or not, that has to be decided elsewhere.

3. Here also, a compromise was made by the appellant to pay a sum of Rs.2,00,000/-. Though the defacto complainant was not willing, under the hope, we convinced her with the aid of the defacto complainant's counsel and we gave a chance to the accused to produce Demand Draft for Rs.10,00,000/- on the date of hearing. Conveniently, the accused failed to appear and at the request of the learned counsel on record, we gave one more chance and even today, the parties have not settled and report the matter.

4. When the defacto complainant, who is the sufferer in this case, is not willing to compromise the matter. We have no options to compel her to settle the matter and if at all, the case has to be decided on merits, for that purpose, we are constrained to sent back the case to the regular court for disposal."

2. As there was no settlement, the present criminal revision case is listed before this Court. Material on record disclose that the Inspector of Police, All Women Police Station, Tirupattur, has laid a final report, in which, he has stated that marriage between the defacto complainant and the revision petitioner was solemnized on 09.02.1998. According to the defacto complainant, at the time of marriage, her parents presented 15 sovereign gold jewels, worth about Rs.15,000/- and Seervarisai articles for Rs.25,000/-. After the marriage, the petitioner/accused developed illicit relationship with another lady and due to which, he tortured the defacto complainant. On 17.11.2005 at 11.00 P.M., the petitioner assaulted the defacto complainant, on the ground that she has not obtained Rs.15,000/- from her parents.

3. On the report, C.C.No.823 of 2005 has been taken on file, for the offences, under Section 498-A IPC. Prosecution has examined 12 witnesses and marked two documents. Parties to the lis are resident of Jolarpet. PW.1 is the defacto complainant. Pws.2 and 3 are neighbours. PW.4 is known to the defacto complainant. Pws.5 and 6 are residents of Jolarpet, in a nearby street. Pws.7, 8 and 9 are brother, mother and father of the defacto complainant, respectively. PW.10 is a neighbour. PW.11 is the mother of the petitioner/accused and mother-in-law of the defacto complainant. PW.2, is the Investigating Officer, Inspector of Police, All Women Police Station, Tirupattur.

4. Witnesses 2, 3 and 4, neighbours of the defacto complainant, have corroborated the contents of Ex.P1 - FIR and the evidence of PW.1, defacto complainant. They have deposed that the petitioner/accused developed illicit relationship with one Gayathri. Pw.9, friend of PW.1, also corroborated the same. PW.5, resident of Jolarpet, also confirmed the intimacy of the petitioner/accused with one Gayathri. PW.11, mother of the petitioner/accused and mother-in-law of the defacto complainant, in her evidence, has candidly spoken that the petitioner/accused had illicit relationship with one Gayathri of Jolarpet and that he would not pay any amount for the expenses, to his wife, defacto complainant and minor son. She further deposed that whenever the defacto complainant questioned the petitioner/accused, as to why, he had not turned up to see her minor son, he would beat the defacto complainant and abuse the mother.

5. While analysing the testimony of the witnesses, it is the specific observation of the trial Court that there was no cross-examination of PW.11, Mother of the petitioner/accused, on the aspect of illicit intimacy with one Gayathri and due to the above, the petitioner/accused had harassed the defacto complainant and also abused his own mother. Thus, on the overall assessment of the evidence adduced by Pws.1 to 12 and by observing that no Indian woman, particularly, in the case on hand, mother of the petitioner/accused, would diminish the image and character of her own son, the trial Court came to the conclusion that the petitioner/accused has committed cruelty to the wife/defact complainant. The trial Court has also found that there was overwhelming and clinching evidence to prove that the petitioner/accused had developed illegal relationship with one Gayathri and consequently, harassed PW.1, defacto complainant.

6. Before the appellate Court, viz., Additional District Sessions Court/Fast Track Court, Thirupathur, Vellore District, the petitioner/accused had taken a plea of delay in preferring the complaint. After analysing the evidence of PW.1, the appellate Court, by observing that the petitioner/accused had committed an act of cruelty for a long period and only when the defacto complainant had

come to the conclusion that there was no other alternative, except to lodge a complaint, held that prosecution has proved the commission of offence, under Section 498-A IPC and accordingly, vide judgment in C.A.No.35 of 2006, dated 04.07.2007, confirmed the conviction of the petitioner/accused for the offence, under Section 498-A IPC and sentenced him to undergo Simple Imprisonment for two years and to pay a fine amount of Rs.2,000/-.

7. Dealing with the appeal, on merits, the learned Additional District Sessions Court/Fast Track Court, Thirupathur, Vellore District, after meticulous analysis of the oral testimony of Pws.2 to 4, neighbours, PW.5, resident of Jolarpet and PW.11, mother of the petitioner/accused, has categorically arrived at the conclusion that due to illicit intimacy of the petitioner, with one Gayathri, the accused has committed the act of cruelty and thus, the defacto complainant suffered stress and depression. The appellate Court has also categorically held that after developing illegal intimacy with the said Gayathri, the petitioner/accused had tortured PW.1. Accordingly, the appellate Court has concurred with the view of the trial Court and confirmed the conviction and sentence imposed on the petitioner/accused.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. To examine the correctness or otherwise of the findings recorded by the trial Court, as to whether the alleged relationship, has in any way constituted cruelty, within the meaning of explanation to Section 498-A of the Indian Penal Code, 1860, this Court deems it fit to consider the said Section, which deals with husband or relative of husband of a woman subjecting her to cruelty. Section 498-A reads as follows:

"498-A. 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.

Explanation. - For the purposes of this section 'cruelty' means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

(b) harassment of the woman where such harassment is with a view to coercing her to 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."

10. The basic ingredients of Section 498-A I.P.C. are cruelty and harassment. Elements of cruelty, so far as clause (a) is concerned, have been classified as follows:

(i) any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or

(iii) any 'wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

11. "Cruelty" means, differences, quarrels, misgivings in the day to day life of the parties to the marriage, but there should be clinching evidence that the victim was insensitively treated and harassed, raising to the level of mental cruelty. Cruelty, includes both physical and mental, for the purpose of Section 498A. The aspect of ill-treatment with cruelty and harassment, has to be considered carefully and that the same should be established beyond doubt. There must also be material to show that the defacto complainant was subjected to cruelty and harassment. Prosecution should prove that because of the conduct of the accused, there was physical and mental cruelty and that consequent thereof, there is a reasonable apprehension in the mind of the wife that the living with the husband would be harmful and injury.

12. The word, "cruelty" in common English annotation, denotes a state of conduct, which is painful and distressing to another. Thus, the legislative intent is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing, the same would be within the meaning of the Section 498-A IPC.

13. In the case on hand, the question of harassment and cruel treatment to the wife was only for not bringing or meeting the dowry demands of the petitioner/accused on various occasions. In such a situation, the best person, expected to speak about the same, can be no-one else, except the victim of harassment and cruel treatment, namely, the wife. However, in the present case, PW.11, mother of the petitioner/accused and mother-in-law of the defacto complainant, has spoken about the sufferings of the defacto complainant. Neighbours have categorically supported that there was cruelty and harassment. Foundation of the complaint, about ill-treatment, harassment and wilful conduct of the petitioner, have been corroborated.

14. In State of West Bengal v. Orilal Jaiswal & Anr., reported in AIR 1994 SC 1418, the Supreme Court observed that,

"...The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts

about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in *Bater v. Bater* [(1950) 2 All ER 458, 459] has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter."

15. In *V.Bhagat v. Mrs.D.Bhagat* reported in AIR 1994 SC 710, the Supreme Court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act, observed as under :

"17.It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made....."

The context and the set up in which the word 'cruelty' has been used in the section seems to us, that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty."

16. In *Pawan Kumar v. State of Haryana* reported in 1998 (3) SCC 309, the Supreme Court, at Paragraph 18, held as follows:

"18.In our considered opinion, cruelty nor harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Section 304-B and 498-A IPC. Explanation (a) to Section 498-A itself refers to both mental and physical cruelty. In view of Explanation (a) the argument is, before

it constitutes to be a cruelty there has to be wilful conduct. Again wilful conduct means, conduct wilfully done may be inferred by direct or indirect evidence which could be construed to be such."

17. In *S. Hanumantha Rao v. S. Ramani* reported in AIR 1999 SC 1318, the Supreme Court considered the meaning of cruelty in the context of Section 13 of the Hindu Marriage Act, 1955 and observed that :

"mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."

18. In *Mohd. Hoshan v. State of A.P.*, reported in (2002) 7 SCC 414, the Apex Court while dealing with a similar issue held that mental or physical torture should be "continuously" practiced by the accused on the wife. The Court further observed as under :

"Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

19. In *Girdhar Shankar Tawade v. State of Maharashtra* reported in AIR 2002 SC 2078, the Supreme Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another. At Paragraph 3, it held as follows:

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and - physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only

coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498A."

20. In Gananath Pattnaik Vs. State of Orissa reported in (2002) 2 SCC 619, the Supreme Court held that the concept of cruelty under Section 498A IPC and its effect under Section 306 IPC varies from individual to individual also depending upon the social and economic status to which such person belongs. The Court held that cruelty for the purpose of offence and the said Section need not be physical. Even mental torture or abnormal behavior may amount to cruelty or harassment in a given case.

21. One of the contentions raised before this Court is that there is no evidence of demand of dowry and therefore, there cannot be any conviction under Section 498-A IPC. Yet another argument advanced by the learned counsel for the petitioner in this revision is that the complaint has been given after seven years of marriage and hence, offence is not made out.

22 In State of Uttar Pradesh v. Santosh Kumar reported in 2009 (9) SCC 626, the accused therein was charged under Sections 304(b) and 498-A IPC. There was no sufficient material to convict the accused, for the offences, under Section 304-B IPC. But there was material for conviction, under Section 498-A IPC. On the facts and circumstances of the case, the Supreme Court, at Paragraphs 31 to 33, held as follows:

"31. The High Court gravely erred in coming to the finding that once the charge under section 304-B IPC could not be proved, then conviction under section 498-A IPC and sections 3 and 4 of the Dowry Act also cannot be recorded. In State of Karnataka v. Balappa, 1999 Cri LJ 3064 (Kant), at pages 3068, 3069 and 3070, the court has dealt with in great detail that even if the charge under section 304-B IPC is not made out, the conviction under section 498-A IPC can be recorded.

32. Sections 304-B and 498-A IPC are both distinct and separate offences. The 'cruelty' is a common essential ingredient of both the offences. Under section 304-B, it is the 'dowry death' that is punishable and such death should have occurred within seven years of the marriage. In the statute, no such period is mentioned in section 498-A IPC. The husband or his relative would be liable for subjecting the woman to 'cruelty' any time after the marriage. The legal position is absolutely clear that a person charged and acquitted under section 304-B can be convicted under section 498-A IPC. This court in Smt. Shanti & Another v.

State of Haryana, (1991) 1 SCC 371 has taken the same view.

33. The demand of dowry is an essential ingredient to attract section 304-B IPC, whereas under section 498-A IPC the demand of dowry is not the basic ingredient of the offence. Therefore, even if there is acquittal under section 304-B IPC, still conviction under section 498A can be recorded under the law."

23. In Manju Ram Kalita v. State of Assam reported in 2009 (13) SCC 330, the Supreme Court, at Paragraph 21, held as follows:

"21. "Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."

24. In Gurdip Singh v. State of Punjab reported in 2013 (3) MLJ (Cr1.) 720 (SC), the Supreme Court, observed as follows:

"Section 498A of IPC deals with the offence of cruelty by the husband or relative. If a married woman is subjected to cruelty by the husband or his relative, he is liable for conviction under Section 498A. There is no requirement under Section 498A that the cruelty should be within seven years of marriage. It is also not invariably necessary under Section 498A that the cruelty should be in connection with the demand for dowry. It is interesting to note that Section 498A was introduced as per Act 46 of 1983 to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws" and Section 304B was introduced as per Act 43 of 1986 to make the penal provisions "more stringent and effective"."

25. Reverting to the case on hand, though Mr.K.Selvaraj, learned counsel for the petitioner submitted that prosecution has failed to prove the case, beyond all reasonable doubt and further contended that the complaint, under Section 498-A has been given after seven years, from the date of marriage and when the same has been admitted by PW.2, Inspector of Police, the Court below ought to have dismissed the complaint and acquitted the petitioner/accused and further contended that when the alleged demand of dowry made on 17.11.2005 was not proved and hence, both the Courts below have erred in

accepting the case of the prosecution, without evidence, this Court is not inclined to accept the said contentions, for the reason that even taking it for granted that there was no sufficient evidence, to prove the aspect of demand of dowry on 17.11.2005, yet clinching evidence has been adduced by the independent witnesses, supporting the version of the defacto complainant. As observed, above all, PW.11, mother of the petitioner/accused, herself, has deposed that her son, petitioner/accused, used to beat his wife/daughter-in-law/defacto complainant, whenever the defacto complainant asked for money to meet out the daily expenses. Evidence of PW.11 remains unshattered.

26. Illicit relationship of the petitioner, with one Gayathri, has been proved. Intention of the accused, harrassment, cruelty, failure to support the defacto complainant and his son and thus, causing mental cruelty to the defacto complaint, is proved beyond all reasonable doubt. Though the petitioner/accused has cross-examined the witnesses, nothing adverse is elicited to dislodge the case of the complainant. Offence under Section 498-A is a continuous offence and no matter, whether, a complaint is preferred, after seven years, after marriage or not, still, if there is any prima facie material, the Court can take cognizance of the same and proceed against the case, in accordance with law. In the light of the decision and decisions, stated supra, this Court is not inclined to interfere with the conviction of the accused. On the aspect of sentence, learned counsel for the petitioner submitted that after conviction, the accused has lost his job. Now, he has to maintain the family. Considering the above mitigating circumstances, this Court is inclined to reduce the sentence to six months Simple Imprisonment.

27. In the result, the Criminal Revision Case is disposed of. No costs.

Sd/-
Assistant Registrar
Dated:25.2.15

True Copy

Sub Assistant Registrar

To

1. The Additional District Sessions Court
Fast Track Court,
Thiruppathur, Vellore District.

2.do thro' The Principal Sessions Judge, Vellore.

3. The Judicial Magistrate No.1,
Thiruppathur, Vellore District.

4.do thro' The Chief Judicial Magistrate, Vellore.

5.The Superintendent, Central Prison, Vellore.

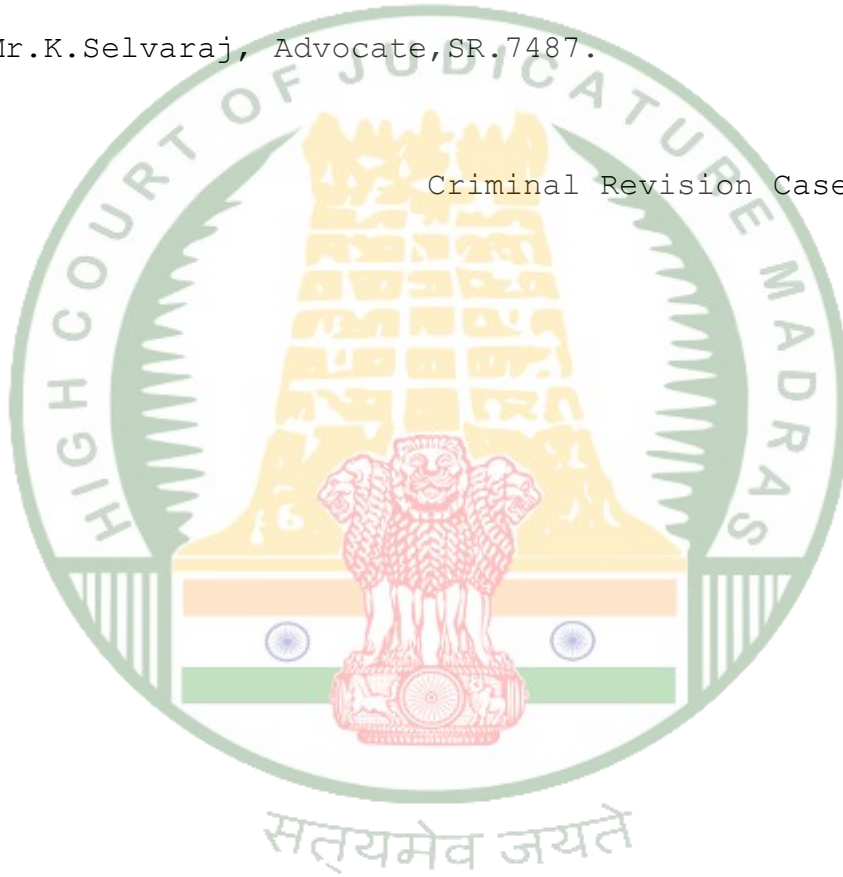
6. The Inspector of Police,
State of Tamil Nadu,
All Women Police Station,
Thiruppathur.

7.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.Selvaraj, Advocate, SR.7487.

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