

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 267 of 2015

Jannath Mary Anitha

...Petitioner

Versus

1. State rep. by
Inspector of Police
AWPS Police Station
Gandhipuram
Crime No.57/2001

2. Jayaprakash Babu

3. Thangaraj

4. Rajam

...Respondents

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the judgment of the learned Additional District and Sessions Judge, Coimbatore, made in CrI.A.No.148 of 2009, dated 11.07.2014, reversing the judgment of the learned Judicial Magistrate No.I, Coimbatore, in C.C.No.42 of 2007, dated 14.10.2009.

For Petitioner : Mr.S.Ramachandran

For Respondents : Mr.A.Thiyagarajan

ORDER

Criminal Revision Case is against the judgment of the learned Additional District and Sessions Judge, Coimbatore, made in CrI.A.No.148 of 2009, dated 11.07.2014, reversing the judgment of the learned Judicial Magistrate No.I, Coimbatore, in C.C.No.42 of 2007, dated 14.10.2009.

2. The marriage between the petitioner and the second respondent/first accused was solemnised as per Christian Rites and Rituals at Kattoor on 24.04.1996. Pursuant to the marriage, the first accused and petitioner along with accused Nos. 2 to 4 lived

jointly at Velandipalayam, Coimbatore. It is alleged that the first accused ill-treated the petitioner and demanded dowry of Rs.15,00,000/- for starting an Industry. The accused are alleged to have forced the petitioner to sign in white and bond papers. It is further alleged that when the petitioner was pregnant, the accused have administered pudding against her will, which resulted in termination of her pregnancy on 21.10.1996. Subsequently, a Panchayat was conducted and thereafter, the petitioner and the first accused lived under one roof at Chennai. On 17.10.1998, a female child was born to the first accused and the petitioner. Again the first accused started ill-treating the petitioner and asked her to bring a sum of Rs.15,00,000/- for starting the Industry. Hence, a complaint was lodged by the petitioner/defacto complainant. On receipt of complaint, a case was registered and a final report was filed under Sections 498(A) and 406 IPC and Section 4 of Dowry Prohibition Act. The complaint was taken on file in C.C. No. 42 of 2007 on the file of the learned Judicial Magistrate No.I, Coimbatore. The Trial Court, by judgment dated 14.10.2009, convicted and sentenced the first accused to undergo two years rigorous imprisonment and imposed a fine of Rs.1000/-, in default, to undergo simple imprisonment for two weeks for the offence under Section 498 (A) IPC and to undergo two years rigorous imprisonment and imposed a fine of Rs.5,00/-, in default to undergo two weeks simple imprisonment for the offence under Section 4 of the Dowry Prohibition Act and the first accused was imposed with a fine of Rs.1,000/-, in default to undergo one month simple imprisonment for the offence under Section 406 IPC. Accused Nos. 2 and 3 were convicted and sentenced to undergo one year rigorous imprisonment each and imposed a fine of Rs.5,00/-, in default to undergo two weeks simple imprisonment under Section 498(A) IPC and to undergo one year rigorous imprisonment each and imposed a fine of Rs.500/-, in default, to undergo two weeks simple imprisonment under Section 4 of Dowry Prohibition Act. Accused Nos. 4 and 5 were acquitted from all the charges levelled against them. Aggrieved against the same, accused Nos. 1 to 3 preferred CrI.A.No.148 of 2009 before the learned I Additional District and Sessions Judge, Coimbatore. The learned I Additional District and Sessions Judge, Coimbatore, by judgment dated 11.07.2014 acquitted all the accused, thereby, reversed the judgment of the Trial Court. Aggrieved by the order of acquittal passed by the Trial Court, the petitioner/defacto complainant has come forward with this Criminal Revision Case.

3. Mr.S.Ramachandran, learned counsel appearing for the petitioner/ defacto complainant would submit that the Trial Court rightly convicted accused Nos. 1 to 3, but, the Appellate Court erroneously acquitted them without taking into consideration the cogent evidence of P.Ws. 1 to 3, who have categorically stated that there is a demand of dowry of Rs.15,00,000/- and therefore, the fact of demand of dowry has been clearly established. He would further contend that the petitioner's father has deposited a sum of

Rs.1,00,000/- in fixed deposit in favour of the petitioner, whereas the same was prematurely withdrawn from the Bank, which will clearly indicate that the offence of cruelty and harassment was made out, but, the said fact was failed to be taken into consideration by the Appellate Court and the Appellate Court merely based on surmises and conjectures has acquitted accused Nos. 1 to 3.

4. Mr.A.Thiyagarajan, learned counsel appearing for respondents 2 to 4/ accused Nos. 1 to 3 would submit that the marriage between the petitioner and the first accused took place as early as on 24.04.1996. He would further point out that even though, it is alleged that the complaint was given in the year 2001, but, the same was registered only in the year 2007, i.e., beyond the period of seven years from the date of the marriage. He would further bring to the notice of this Court that the Appellate Court has taken into consideration the very theory put forward by the petitioner that the fixed deposit amount of Rs.1,00,000/- was withdrawn from the Bank at knife point and has ultimately rightly held that it cannot be accepted, because, there is a clear admission that the withdrawal of the fixed deposit amount was made in the presence of Manager and other witnesses and if really the withdrawal has taken place at knife point in the presence of Bank Manager, he would not have permitted to withdraw the fixed deposit amount. He would further submit that the demand of dowry or harassment meted out to the petitioner has not been proved by any independent evidence except the bald statement of P.Ws. 1 to 3. He would further submit that there is hardly any evidence to prove the alleged offences against the accused and there is no material on record to support the conclusion of cruelty or harassment and therefore, the Appellate Court has rightly acquitted accused Nos. 1 to 3.

5. Heard bothsides. By consent, the Criminal Revision Case is taken up for final disposal at the stage of admission itself.

6. The main ground of attack made by the learned counsel appearing for the petitioner/defacto complainant is that the Appellate Court has not correctly gone into the question of cruelty meted out to the petitioner and that there was a coercion from her husband and her inlaws for withdrawal of the fixed deposit amount, that too prematurely. In my considered opinion, if the fixed deposit amount of Rs.1,00,000/- was withdrawn from the Bank in the presence of Bank Manager and other witnesses at knife point, the Bank Manager would not have permitted to withdraw the amount. The Appellate Court has rightly gone into the theory put forward by the petitioner and has given a clear finding that there was no clear and cogent evidence to show that she was threatened at knife point in the presence of Manager and if really, she was threatened in the presence of Manager, that too, in the Public Sector Bank, definitely, the Bank Manger would not have permitted to withdraw the fixed deposit amount. But, the Trial Court has taken this as a main ground and stated that

the amount has been withdrawn under Ex.P.3. Per contra, the Appellate Court has given a clear finding as to how the theory put forward by the petitioner cannot be accepted as stated above.

7. Coming to the alleged cruelty of feeding of pudding to the petitioner and consequential abortion, the evidence of the Doctor, who was examined as P.W.10 is to the effect that the child which was delivered is stillborn and the Doctor has clearly stated that the abortion took place naturally and it has got nothing to do with the alleged feeding of pudding and the child is not an abnormal child. The Appellate Court has taken the same into consideration and has rightly come to the conclusion that the abortion was not due to the alleged feeding of pudding, but, it is an ordinary abortion, which is contradictory to the finding as given by the Trial Court that she was forcibly given the feeding of pudding, thereby, abortion was caused.

8. Lastly, coming to the evidence of P.Ws. 7, 8 and 9, the Appellate Court has categorically pointed out that their evidence does not corroborate with the prosecution case. The Appellate Court has further pointed out that the complaint was originally given on 02.06.2001, thereafter another complaint was given on 12.10.2001 under Ex.P.1, but, the complaint dated 02.06.2001, which is the earliest complaint, has not been produced or marked before the Trial Court, which is fatal to the case of the prosecution. Therefore, the Appellate Court came to the conclusion that the petitioner after getting legal advice has changed her stand and had given the fresh complaint dated 12.10.2001 marked as Ex.P.1. Further more, it is seen that the marriage between the petitioner and the first accused took place in the year 1996, whereas, the complaint was given in the year 2001, but, it was registered only in the year 2007, i.e., beyond the period of seven years from the date of the marriage.

9. In the decision of the Honourable Supreme Court reported in (Ram Swaroop and others vs. State of Rajasthan) (2005 SCC (Crl.) 61) it was held that it is well settled that if two views are reasonably possible on the basis of the evidence on record, the view which favours the accused must be preferred. Similarly, it is well settled that if the view taken by the Trial Court, while acquitting the accused is a possible, a reasonable view on the basis of evidence on record, the High Court need not interfere with such an order of acquittal merely because it is possible to take a contrary view.

10. It is evident from the aforesaid judgment of the Honourable Supreme Court that this Court cannot appreciate the evidence and interfere with the order of acquittal passed by the Trial Court if the view taken by the Trial Court is also a reasonable view on the basis of evidence on record and the evidence recorded by the Trial Court are not manifestly erroneous, contrary to the evidence on record or perverse. In this case, the petitioner is unable to

establish by any valid evidence that the judgment passed by the Appellate Court is perverse or contrary to evidence available on record.

11. Applying the aforesaid decision to the facts and circumstances of this case and in the backdrop of the above material evidence, it cannot be said that the trivial misunderstanding between the petitioner and the first accused cannot be construed as a harassment or ill-treatment or cruelty meted out to the petitioner and in the present case, there are no evidence available on record to connect the accused to the offences complained of and the prosecution has miserably failed to establish the guilt against the accused beyond reasonable doubt. Therefore, I am of the view that the order of acquittal passed by the Appellate Court is reasonable, plausible and it need not be slightly brushed aside. Therefore, I hold that the Appellate Court is justified in holding that there is no case made out by the petitioner to launch prosecution against the respondents 2 to 4/accused 1 to 3. I do not find any reason to interfere with the order of acquittal passed by the Appellate Court. The judgment of the Appellate Court, dated 11.07.2014, stands confirmed. The Criminal Revision Case stands dismissed.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The 1st Additional District &
Sessions Judge, Coimbatore.

2. The Judicial Magistrate I,
Coimbatore.

3. The Inspector of Police,
AWPS Police Station, Gandhipuram, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.S.Ramachandran, Advocate SR.No. 21483

1 CC to Mr.A.Thiyagarajan, Advocate SR.No. 21262

CrI.R.C. No. 267 of 2015

KJI (CO)

PSI (13.05.2015)