

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2015

CORAM

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos.247 and 249 of 2008

N.Vasantha

... Petitioner in both the revisions

vs

1. V.Kesavan

2. Priya

... Respondents 1 and 2 in both
the revisions

The Inspector of Police
W-2, All Women Police Station
Adyar, Chennai.

... 3rd respondent in CrI.R.C.No.
249 of 2008

Criminal Revision cases filed under Sections 397 and 401 of Cr.P.C. against the common judgment dated 14.12.2007 passed by the learned III Additional Sessions Judge, Chennai in C.A.Nos.223 and 222 of 2007 in reversing the order dated 14.09.2007 passed by the learned XXIII Metropolitan Magistrate, Chennai C.C.No.4263 of 2002.

For Petitioner : Mr.S.Thiruvengadam

For Respondents : No appearance
1 & 2 in
both the cases

: Mr.R.Prathap Kumar
for R3 in CrI.R.C.No.249 of 2008

COMMON ORDER

Both the revisions are taken up together for disposal.

2. The petitioner has come forward with these Criminal Revision cases against the common judgment dated 14.12.2007 passed by the learned III Additional Sessions Judge, Chennai in reversing the order dated 14.09.2007 passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

3. The case of the petitioner in brief is as follows:

[a] The petitioner/defacto complainant and the first respondent/accused got married on 22.11.1996 as per the Hindu rites and customs. However, their marriage was not consummated. However, the first respondent was having illegitimate intimacy with the second respondent even without a marriage. Therefore, the petitioner herein gave a complaint as against the respondents 1 and 2 for the offences punishable under Sections 498-A, 406 of IPC and Section 4 of Dowry Prohibition Act. The trial court after hearing both sides, convicted the first respondent under Section 498-A of IPC and the second respondent under Section 498-A r/w 109 IPC and sentenced to undergo six months rigorous imprisonment and a fine of Rs.500/- each, failing which, sentenced to undergo one month simple imprisonment.

[b] Aggrieved against the conviction and sentence passed by the trial court, the accused preferred appeals and the first appellate court reversed the conviction and sentence imposed by the trial court.

[c] Challenging the said common judgment, the petitioner/defacto complainant has preferred these criminal revision cases.

4. Though notice was ordered to the respondents/accused at the time of admission during the year 2008, it was returned as unserved. Heard the learned Government Advocate (Criminal side) appearing on behalf of the State.

5. The only point raised by the learned counsel for the petitioner is that the first appellate court has not taken into consideration the fact that the petitioner was denied marital obligation by the first respondent. He would further submit that the petitioner in order to safe guard her married life, has taken longer time to give a complaint lest the very family itself will be ruined. However, this was not taken note of by the first appellate court. He would also submit that time and again, the petitioner was thrown out of her matrimonial house; however the first appellate court has held that the incident was not proved.

6. Learned counsel for the petitioner would further state that in the matrimonial case, even though maintenance was ordered in favour of the petitioner, till date she has not received any amount and the first respondent is evading notice even in these petitions, though it was served. Accordingly, he would pray for setting aside the acquittal order passed by the first appellate court.

7. Learned Government Advocate (Criminal side) appearing on behalf of the State would submit that the first appellate court after taking into consideration the entire facts has come to the correct conclusion, warranting no interference in these revisions.

8. I have heard both sides and perused the records.

9. On a careful perusal of the entire evidence on records, especially the judgment of the first appellate court, one thing is very clear that the first appellate court has taken into consideration that the parties were not living together even according to them from the year 1998. The marriage took place in the year 1996. Even in the maintenance case, though maintenance was ordered to be paid, the same was not paid by the first respondent till date and the respondents are evading notice even in these revision petitions. It is further seen that for the incident said to have taken place in the year 1996, the petitioner has lodged the complaint only in the year 2002. The first appellate court has held that the petitioner having come out of the matrimonial house has not given any valid reason for the inordinate delay in giving the complaint.

10. Secondly, the first appellate court would also point out that when PW2, the brother of the petitioner was cross-examined, he has not stated anything about his sister has been meted out with any cruelty or anything of that nature in her in-laws house. Further, the first appellate court has also stated that the participation of the second respondent/second accused or the initiation or her instigation has not been properly proved. Therefore, the benefit of doubt has been given to the accused. The first appellate court further pointed out that there were many contradictory statements in the evidence given by PWs.1 to 5.

11. Under those circumstances, I do not find any infirmity or illegality in the judgment passed by the first appellate court.

12. However, this Court is of the view that after all the petitioner is the wife of the first respondent and she has not been duly divorced by any proceedings of the Family Court. Though maintenance was ordered, the accused has abandoned both the petitioner as well as the case and the same has not been paid to her till date. In these circumstances, this Court can only sympathize with her case. It is also made clear that the petitioner is entitled to maintenance as ordered by the Family Court and she is given liberty to initiate appropriate action to get her maintenance as against the first respondent. But, as a matter of fact, since the first respondent is absconding and his whereabouts are not known and the notice sent to him also returned as unserved, the respondent-police is directed to give assistance, if any, to the petitioner to trace out the accused.

13. With the above observation, both these criminal revision cases are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vj2

To

1. The III Additional Sessions Judge,
Chennai.
2. The XXIII Metropolitan Magistrate
Saidapet,
Chennai
3. The Public Prosecutor,
High Court, Madras

+2cc's to Mr.S.Thiruvengadam, Advocate, S.R.No.19424 & 19423

CrI.RC.Nos. 247 and 249 of 2008

GP (CO)
CA(23/04/2015)



WEB COPY