

BAIL SLIP

Petitioner in Crl.R.C.No.1991 of 2007 (Accused in C.C.No.271 of 2004 on the file of the Additional District Judge (FTC II), Kancheepuram was directed to be released on Bail as per order of this court dated 07.01.2008 in M.P.1 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-06-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1991 of 2007

G. NarayanasamyPetitioner/Accused 1

Versus

State represented by
Sub Inspector of Police
All Women Police Station
Kancheepuram
(Crime No.4 of 2004)

... Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code against the judgment passed on 18.12.2007 in C.A. No. 104 of 2006 on the file of Additional District Judge (Fast Track Court No.II), Kancheepuram confirming the conviction and sentence imposed on 02.08.2006 passed in C.C. No. 271 of 2004 on the file of the Judicial Magistrate No.II, Kancheepuram.

For Appellant : Ms. Jaisri Baskar (Legal Aid Counsel)

For Respondent : Mr. V. Arul
Government Advocate (Crl.side)

ORDER

The petitioner is the first accused in C.C. No. 271 of 2004 on the file of the learned Judicial Magistrate No.II, Kancheepuram. After trial in the calander case, the trial court, by a judgment dated 02.08.2006, while acquitting A-2 to A-5, has convicted the petitioner/A-1 under Section 498-A of IPC and sentenced him to undergo rigorous imprisonment for a period of two years. The petitioner was also convicted under Section 4 of Dowry Prohibition Act and he was sentenced to undergo rigorous imprisonment for a period of two years. However, both the sentences were ordered to run concurrently. Assailing the judgment of conviction awarded by

the trial court, the petitioner unsuccessfully filed Criminal Appeal No. 104 of 2006 before the learned Additional District Judge, Fast Track Court No.II, Kancheepuram, inasmuch as it was dismissed on 18.12.2007 confirming the judgment passed by the trial court. The present Criminal Revision Case is filed by the petitioner questioning the correctness of the orders passed by the courts below.

2. The facts which led to the launch of criminal prosecution against A-1 to A-5 are as follows:-

(i) The first accused was employed as a Police Constable in the Tamil Nadu Special Police. The marriage between A-1 and PW1 was solemnised on 25.04.2002 at Karukkupet Thirumurugan Kalyana Mandapam as per Hindu rites and custom. At the time of such marriage, PWs 2 and 3 have offered 15 sovereigns of gold ornaments and other house hold articles to PW1, as has been demanded by the accused. It is the case of the prosecution that after one month after the marriage, the accused 1 to 5 have demanded Rs.50,000/- to be paid by PWs 2 and 3 for purchasing a two wheeler for A-1. The accused also demanded that unless the amount is paid, the family members or relatives of PW1 will not be permitted to see PW1 in the matrimonial home. On this ground, PW1 was also not permitted to visit her parents house. It is also the further case of the prosecution that by demanding dowry from PWs 2 and 3, PW1 was subjected to physical and mental cruelty in all forms and manifestation. According to PW1, there were occasion when A-2 to A-4 have instigated A-1 to even physically assault her for trivial reasons. PW1 was also threatened by the accused to put an end to her life. In fact, during the course of her matrimonial life, the accused 1 to 5 have made PW1 to write a letter dated 28.06.2002 as though it was written by her on her own volition to the effect that if any untoward incident happened to her, the accused or their family members will not be made responsible or liable in any manner. It is also the case of the prosecution that inspite of the personal invitation extended by PWs 2 and 3 to the accused and their family members to take part in the Thalai Deepavali function at their home, as per the prevailing custom, the accused 1 to 5 refused to either participate in the function or to send PW1 to their house on the auspicious occasion as PWs 2 and 3 did not pay the dowry amount demanded by them. Similarly, the invitation extended to the accused to participate in the thalai Pongal festival was also not acceded to by the accused as PWs 2 and 3 did not fulfil their demand for payment of the dowry amount. In such circumstances, unable to bear the physical and mental torture meted out to her, PW1 came back to her parents house on 03.02.2003.

(ii) In an attempt to take back PW1 to the matrimonial home, A-1 had written several letters, the contents of which are per se derogatory. There were also mediations took place between the elders of both sides, twice, but it did not result in re-union of the couple. According to PW1, as the first accused did not seriously took any steps to take her back to the matrimonial home, she had given a complaint dated 04.08.2004 to the respondent, which was marked as Ex.P1. In her complaint, Ex.P1, PW1 had narrated the

sequences of events which led her to return to her parents house. PW7 took up the complaint and registered a case in Crime No.4 of 2004 under Section 498(A) and 506 (ii) of IPC read with Section 4 of the Dowry Prohibition Act. The first information report is marked as Ex.P9. Upon investigation, PW7 arrested A-2, A-3 and A-5 and remanded them to judicial custody. On 06.08.2004, PW7 arrested A-4 and remanded her to judicial custody. Upon registration of the case, the first accused absconded, however, he obtained anticipatory bail and surrendered before the Court. Upon completion of investigation, PW7 filed the charge sheet and it was taken on file in C.C. No. 271 of 2004 on the file of the Judicial Magistrate No.II, Kancheepuram.

3. The trial court questioned the accused under Section 313 (1) (b) of Cr.P.C. about the incriminating materials against them, but they have denied their guilt and stated that a false case has been foisted against them by PW1. The trial court taken into consideration the evidence of the prosecution witness and the documentary evidence and ultimately held that there was a demand for dowry on the part of A-1 and the prosecution witnesses does not specifically point out the role played by A-2 to A-5 in the matter of demand for dowry. The trial court also pointed out that the prosecution witness deposed that only at the instigation of A-2 to A-5, A-1 would beat PW1. The trial court further pointed out that except such a complaint against A-2 to A-5, there was no specific allegation made against them. The trial court also pointed out that even the deposition of PW1 does not specifically point out anything about the demand of dowry by the A-2 to A-5. Therefore, the trial court, while convicting A-1, acquitted A-2 to A5. On appeal, the first appellate Court concurred with the findings of fact rendered by the trial court and dismissed the appeal filed by A-1. There was no separate appeal filed against the acquittal of A-2 to A-5 either by the prosecution or by PW1.

4. Earlier, the petitioner engaged a counsel and on his request, the Criminal Revision Case was adjourned to several dates. On 17.10.2012, the revision petitioner appeared in person and he requested this Court to appoint a counsel from the legal aid. Accordingly, Mrs. Jaisri Baskar, learned counsel was appointed as a legal aid counsel to appear on behalf of the petitioner in this Criminal Revision Case.

5. The learned counsel for the petitioner/A-1 would contend that even though both the courts below have rendered a finding of acquittal in favour of A-2 to A-5 on the basis of documentary evidence available as well as the evidence of the prosecution witness, erroneously, the petitioner/A-1 alone was convicted by the courts below. The learned counsel would further contend that the complaint was falsely given by PW1 especially when the petitioner/A-1 refused to set up a separate residence by leaving the joint family with A-2 to A-5. It is further contended that the testimony of the prosecution witnesses cannot be taken into account as they are

interested witness. The learned counsel for the petitioner also pointed out that the complaint itself was given by PW1 after a long delay and such delay vitiates the entire case projected by the prosecution. Therefore, it can be inferred that the prosecution came to be launched against the accused at the instance of PW1 only to harass the accused. The learned counsel for the petitioner would vehemently contend that Exs. P5 and P6, letters written by A-1 have been collected by the prosecution much after filing of charge sheet by PW7 and therefore, the courts below ought not to have given much credence to Exs. P5 and P6. In any event, the letters written by A-1 to PW1 after she left the matrimonial home will not make out any case for launching prosecution against the accused under Section 498-A of IPC of Section 4 of the Dowry Prohibition Act. Therefore, the learned counsel for the petitioner prayed for setting aside the conviction and sentence awarded to the petitioner/A-1 by the courts below.

6. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent would contend that the prosecution had proved the guilt of the petitioner/A-1 beyond reasonable doubt and it led to the courts below convicting and sentencing him under Section 498-A of IPC read with Section 4 of Dowry Prohibition Act. The learned Government Advocate, in the course of supporting the judgment of conviction passed by the courts below, would contend that the courts below have taken into account the entire evidence available on record to render a judgment of conviction. Further, PW1, the victim, had categorically deposed about the demand for dowry made by the first accused and the consequential restriction imposed upon her to visit her parents house or her parents visiting the matrimonial home. The evidence of PW1 is natural, cogent and clear with respect to demand of dowry made by the petitioner/A1. Such evidence of PW1 was also duly corroborated by PWs 2 and 3. Apart from PWs 2 and 3, PWs 4 to 6, independent witnesses have been examined, who have clearly deposed that PW1 came back to her parents house owing to the demand made by A-1 for purchasing a bike. The very fact that the accused have made PW1 to write a letter that if any untoward incident happened to her, they are not responsible would go to show the extent and nature of matrimonial cruelty inflicted on PW1 by the accused. The learned Government Advocate also relied on the decision of the Honourable Supreme Court in the case of Central Bureau of Investigation vs. R.S. Pai AIR 2012 SC 1644 to contend that there is no bar for the trial court to look into the documents which the prosecution unearthed after filing of the charge sheet and which were marked during the course of trial. According to the learned Government Advocate, the prosecution has clearly proved that an offence as contemplated under Section 498-A of IPC read with Section 4 of the Dowry Prohibition Act have been made out against the petitioner/A1 in this case and therefore interference of this Court is not warranted.

7. I heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) appearing for the

respondent. Before the trial court, the petitioner is arrayed as first accused. The father, mother and two sisters of the first accused were arrayed as A-2 to A-5. In order to prove the offences levelled against the accused, the prosecution examined 7 witnesses. PW1 is the wife of the first accused and victim in this case. PW2 Elumalai and PW3 Mythili are the parents of PW1. PWs 4 to 6 are independent witnesses examined by the prosecution to strengthen their case. PW7 is the investigation officer in this case. The prosecution also marked documentary evidence namely Exs. P1 to P9 to fortify their case.

8. The important point for consideration in this Criminal Revision Case is whether the ingredients of Section 498-A of Criminal Procedure Code has been made out in the complaint, Ex.P1 and whether it was established by the prosecution beyond reasonable doubt during the course of trial.

9. Admittedly, the marriage between the first accused and PW1 was solemnised on 25.04.2002. The first accused is employed as a Police Constable in Tamil Nadu Special Police Force. In her complaint, Ex.P1, PW1 has deposed that one month after the marriage, the accused have demanded Rs.50,000/- to be paid by her parents to purchase a motor bike for A-1. In connection with such demand, according to PW1, she was subjected to verbal and physical torture by the accused and she was inflicted with matrimonial cruelty in all forms and manifestation. It was complained by PW1 that as her parents did not fulfil the demand made by the accused, she was not permitted to go to her parents house and her parents were also not permitted to visit her in the matrimonial home. It is specifically pointed out in the complaint by PW1 that she was made to write a letter by the accused to the effect that even if she died, either the accused or their family members will not be made liable or responsible for such death. With this background, let us analyse the case.

10. PW1, the victim in this case, has given a cogent sequence of the evidence in her deposition and it was duly corroborated by her parents PWs 2 and 3. PWs 1 to 3 in their evidence had categorically deposed that immediately after the marriage, an invitation was extended to the petitioner/A-1 as also his family members to come to their house for celebration of first Deepavali after the marriage between Petitioner/A-1 and PW1, however, they refused to accept such invitation owing to non-payment of money for purchase of a motor bike and unless such demand is fulfilled, it was made clear that even PW1 will not be sent to their house for such festival. A similar invitation was extended to the accused to participate in the thalai Pongal festival which was also not acceded to by the accused for the same reason. At the time of extending invitation for the Thalai Pongal Festival, PWs 1 and 2 were accompanied by PW6. It is also evident that the marriage between the Petitioner/A-1 and the PW1 was solemnised on 25.04.2002, however, within a period of ten months, on 03.02.2003, PW1 came back

to her house. It is also deposed by PWs 1 to 3 that the accused never turned down to take back PW1 to the matrimonial home. There is also no contra evidence adduced on behalf of the accused/A-1 that they made attempts to bring back PW1 to the matrimonial home.

11. It is contended on behalf of the petitioner that PWs 1 to 3 are interested witness and their testimony cannot be relied on to base a conviction. Even assuming without admitting that they are interested witness, still, the prosecution has examined independent witnesses namely PWs 4 and 6. PW4 and 6 belong to the same community of PW1. A cumulative reading of the testimony of PWs 4 and 6 would indicate that there were misunderstanding between PW1 and the first accused as well as the family of PW1 and the accused. Their testimony also establishes that due to non-payment of amount demanded by the accused for purchase of motor bike for petitioner/A-1, PW1 came back to her parents house and she was not taken back to the matrimonial home owing to non-fulfilment of such demand for payment of money. PW6 is also one of the persons who accompanied PWs 2 and 3 to invite the accused family for commemoration of Thalai Pongal festival. The testimony of PW4 and 6 is therefore cogent and trustworthy and there is no reason to disbelieve their evidence. There is no reason for the independent witnesses PWs 4 and 6 to attribute anything against the family of the accused.

12. PW5 is yet another independent witness who accompanied PWs 1 to 3 to the police station for conciliation where conciliation took place between the parties. PW5 deposed that PW1 has written a letter for taking back her belongings from the accused. PW5 further deposed that there was a demand for dowry which led to the separation of the couple. Therefore, it is evident that there are evidence to establish the demand for dowry on the part of the accused and based on such evidence, the courts below came to an irresistible conclusion that the petitioner/A-1 is guilty of the offence complained of.

13. Now, let me analyse the documentary evidence projected by the prosecution to prove the guilt of the petitioner/A-1. When PW1 was staying in the matrimonial home, she was made to write a letter to the effect that even if she die, the accused or their family members cannot be made responsible in any manner. No prudent house wife could write a letter with such contents voluntarily and it should have been made to be written by the accused by exerting pressure on her. There is no necessity for the accused to make PW1 write a letter with such contents at that point of time. This idea to make PW1 to write letter with such contents could have be the brain child of the Petitioner/A-1 as he is working as a Policeman. Such a letter was made to be written by Petitioner/A-1 only to safeguard him from being prosecuted at the instance of PW1 at a latter point of time. Petitioner/A-1, a policeman is not expected to write such letters and it reflects his character and behaviour. These letters written by Petitioner/A-1 fortifies the case of the prosecution that there was a demand for dowry and the ingredients of

Section 498-A of IPC are duly attracted.

14. Further, after separation, Petitioner/A-1 had written various letters addressed to PW1. I had gone through the contents of those letters and it has to be stated that the contents contained in such letters are per se derogatory and are unprintable. The contents of those letters contain obscene words which need not be dealt with any further. Suffice it to state that the manner in which these letters were written by Petitioner/PW1 only gave rise to fortify the conclusion arrived at by the courts below.

15. The learned counsel for the petitioner would contend that the prosecution, after filing charge sheet, has collected documentary evidence and used it against the accused and it is legally impermissible. This submission of the counsel for the petitioner cannot be accepted. Even after filing charge sheet, if the investigation officer could collect some material evidence to be used during the trial, it is well open to the investigation officer to do so. It is for the courts to examine the reliability and validity of those documents to arrive at a conclusion in the Criminal case. At any rate, there is no bar for the prosecution to produce material evidence which the investigation officer gathered after filing the charge sheet. This could be fortified from the decision of the Honourable Supreme Court rendered in the case of Central Bureau of Investigation vs. R.S. Pai AIR 2012 SC 1644 relied on by the learned Government Advocate. In the above decision, it was held in clear terms that there is no bar for the Court to look into the documents which the prosecution unearthed after filing of the charge sheet and which were marked during the course of trial.

16. The learned counsel for the revision petitioner placed reliance on the decision of the Honourable Supreme Court in the case of (Manju Ram Kalita vs. State of Assam) reported in (2010) 1 Supreme Court Cases (Crl) 1015 to contend that to prove the ingredients of the offence punishable under Section 498-A of IPC, the complainant should show that she was subjected to cruelty continuously/persistently or atleast in close proximity of time of lodging the complaint. It was further held that in the absence of the same, it cannot be said that the ingredients of Section 498-A of IPC are proved rather the evidence of mental or physical harassment can best be taken note of to grant a decree of divorce. Relying on the aforesaid decision, the learned counsel for the revision petitioner would contend that there is no evidence to show that the petitioner was subjected to continuous harassment especially when she lived in the matrimonial home only for a period of 10 months. This decision could not lend support to the case of the petitioner. In that case before the Honourable Supreme Court, the wife left the matrimonial home in the year 1993 and stayed with her father, but she preferred the complaint only during the year 1997 alleging commission of offence under Section 498-A of IPC. In such circumstances, the Honourable Supreme Court held that there is no proof to show that the wife was subjected to mental agony

continuously. The ratio laid down by the Honourable Supreme Court in that case cannot be made applicable to the facts of this case. In the present case, the defacto complainant/PW1 left the matrimonial home on 03.02.2003 and thereafter, there were mediations took place between the elders of both sides. In fact, the defacto complainant/wife was forced to leave the matrimonial home only due to the demand for dowry made by the petitioner for purchase of a motor bike. Even after the petitioner left the matrimonial home, the petitioner written several letters, the contents of which are per se derogatory by which the defacto complainant was subjected to mental agony. Such mental agony become unbearable which led to the defacto complainant giving complaint before the respondent police. Therefore, the decision cited by the learned counsel for the petitioner cannot be made applicable to the facts of this case.

17. To sum up, the prosecution had proved beyond reasonable doubt that the ingredients of Section 498-A are attracted as against the Petitioner/A-1. PW1 was sent back to her parents house within 10 months of the marriage. Even during such short stay, Petitioner/A-1 made her to write a letter to the effect that even if she die, it cannot be attributed against the family of the accused. Further, for non-fulfilment of dowry, PW1 was restrained to visit her parents house and consequently, the parents of PW1 were also restrained to visit PW1 in the matrimonial home. The invitation extended by PW2 and 3 to the family of the accused to visit their house for commemoration of Thalai Deepavali festival as also the Thalai Pongal festival was not accepted mainly due to non-payment of money to the tune of Rs.50,000/- by PWs 2 and 3 for purchase of a motor bike for Petitioner/A-1. When such evidence looms large against the petitioner/A-1, this Court can only come to the conclusion that the judgment of conviction rendered by the courts below are on the basis of evidence adduced by the prosecution and there is no reason for this Court to interfere with such conclusion arrived at by the Court below.

18. In the result, the orders passed by the courts below are confirmed and the Criminal Revision Case is dismissed. The trial Court is directed to take necessary steps as are necessary to secure the presence of the petitioner/A-1 to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge
(Fast Track Court No.II),
Kancheepuram
2. The Judicial Magistrate No.II
Kancheepuram.
3. -do- Through The Chief Judicial Magistrate,
Kancheepuram.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Sub Inspector of Police,
All Women Police Station,
Kancheepuram.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mrs.Jayasri Baskar, Advocate, S.R.No.31018

Crl.R.C. No. 1991 of 2007

TEJ(CO)
CA(07/07/2015)



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