

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Crl. R.C.No.536 of 2008

Solaikumar

...Petitioner/Appellant/Accused

vs.

The State rep. by
Inspector of Police
W6, Womens Police Station,
Royapuram,
Chennai 600 013.

...Respondent/Respondent/Complainant

PRAYER : Revision has been preferred under Sections 397 & 401 of Criminal Procedure Code against the judgment passed in C.A.No.77 of 2008 dated 02.04.2008 on the file of the III Additional Sessions Judge, Chennai confirming the order passed in C.C.No.8148 of 2003 dated 12.02.2008 on the file of the learned Chief Metropolitan Magistrate, Chennai.

For petitioners : Mr.R.Sundaramurthy

For respondent : Mr.T.Arul
Govt. Advocate (Crl.side)

O R D E R

This Criminal Revision Petition has been filed against the order dated 02.04.2008, made in C.A.No.77 of 2008 on the file of Additional District and Sessions Judge, Chennai.

2. This case has been posted for more than three occasions. In all these occasions, the petitioner's counsel has been absent. Even today also there is no representation for the petitioner though the case is posted under the caption 'For Dismissal'. Hence, the matter is taken up for final disposal to pass orders on merits as per the decision rendered in K.S.Panduranga vs. State of Karnataka reported in 2013(3) SCC 721.

Heard the learned Government Advocate (Crl.side) for the respondent.

It is seen that the petitioner was arrayed as accused before the trial court. After trial he was convicted under Section 498(A) of IPC and sentenced to undergo six months rigorous imprisonment and sentenced to undergo six months rigorous imprisonment under Section 4 of Dowry Prohibition Act and the same was confirmed by the Appellate Court. Aggrieved by the same, this Criminal Revision Petition has been filed by the petitioner/accused.

Mr.T.Arul, learned Government Advocate (Crl.side) appearing for the respondent.

It is the case of the complainant that the marriage between the accused and the complainant were solemnized on 11.11.2002 with the consent of elders and as per the Hindu Rights and Customs. Both the accused and the complainant married knowing fully well that both of them were handicapped. It is not disputed that 15 sovereigns of jewels along with Seedhana properties were given at the time of marriage. It is stated that after marriage, the accused demanded dowry of Rs.50,000/- and tortured her denoting her inability. It is also stated that the accused compelled her to do abortion. After analysing the oral and documentary evidence, the trial Court came to the conclusion that the accused is guilty of the offence alleged and convicted him.

An appeal has been preferred by the accused against the order of the trial Court on the ground that the Seedhana properties were returned to the complainant and no dowry harassment has been made. According to the appellant, taking into the evidence of P.Ws. 1 and 2, who were the complainant and her father, the Court below has gone wrong in coming to the conclusion that the accused demanded dowry. P.W.3, the investigating officer has prepared the final report without conducting proper enquiry. He has not enquired the individual witnesses i.e., Vijaya and Latha who were neighbours. It is also the case of the accused that the complainant has given indiscriminating statements in the FIR and in the evidence.

On a careful consideration of the evidence and judgment of the both the court below even though the petitioner has raised the discrepancy with regard to the fact whether wife has taken to doctor for abortion whether it was by the sister or by the husband of the

complainant, one thing is clear that the petitioner had asked to abort is not changed. It had caused great hardship to her. Similarly in so far as to the payment of money is concerned as rightly pointed out by both the courts below the return of the goods at the time of marriage may not be a reason to say that there was no demand. The fact remains even in the cross examination no reason for elicited. In so far as to the discrepancy that the petitioner left the matrimonial house pointing out her incapacity in the right hand, P.W.1 had categorically stated that she has been subjected to tortured for the indiscrepancy even though the accused married her knowingly fully well about her incapability. Ofcourse, as rightly pointed out by P.W.2, father of the wife that on the basis of the information given to him he came and enquired about the tortured with the accused and accused demanded dowry of Rs.50,000/- to him and refused to take the wife and the child. Therefore, it is clear that the wife of abused for her incapacity and compelled to leave the matrimonial life for the demand of dowry. Section 498A contemplates whether the husband or the relative of a woman subjecting her to cruelty. Cruelty also includes harassment pointing out on the incapacity, torture and further asking her to abort. After about 45 days of pregnancy taking her to the doctor for abortion would also amount to cruelty. Therefore, both the Courts have come to the conclusion that an offence of cruelty is made out.

Whether they are living separately because of the cruelty and misunderstanding is also a point to be taken on ground. Taking into consideration the totality of circumstances, whether the punishment can be reduced, in this matter, the lower Court has awarded six months imprisonment and the accused has also been arrested on 22.01.2003 and he has been in judicial custody for some days. It would suffice to state that in respect of punishment made for six months and taking into consideration the age of the accused and there is a child also the punishment can be modified to one that the period undergone and also it will be given as compensation to the wife, she being an incapable lady by payment of certain amount. Hence, the accused/petitioner is directed to pay a sum of Rs.5000/-, as he is stated that he is only a coolie. In default to pay the amount of Rs.5,000/- the accused shall undergo simple imprisonment for one month. The amount will be deposited in the Lower Court within a period of four weeks. On such deposit, the Lower Court will thereafter disburse the same to the wife/complainant as compensation duly after verifying the identity. If the amount is not deposited the Court below is at liberty to pass suitable orders for securing the accused.

This Civil revision Petition is partly allowed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Smi

To

1. The Additional District and Sessions Judge,
Chennai

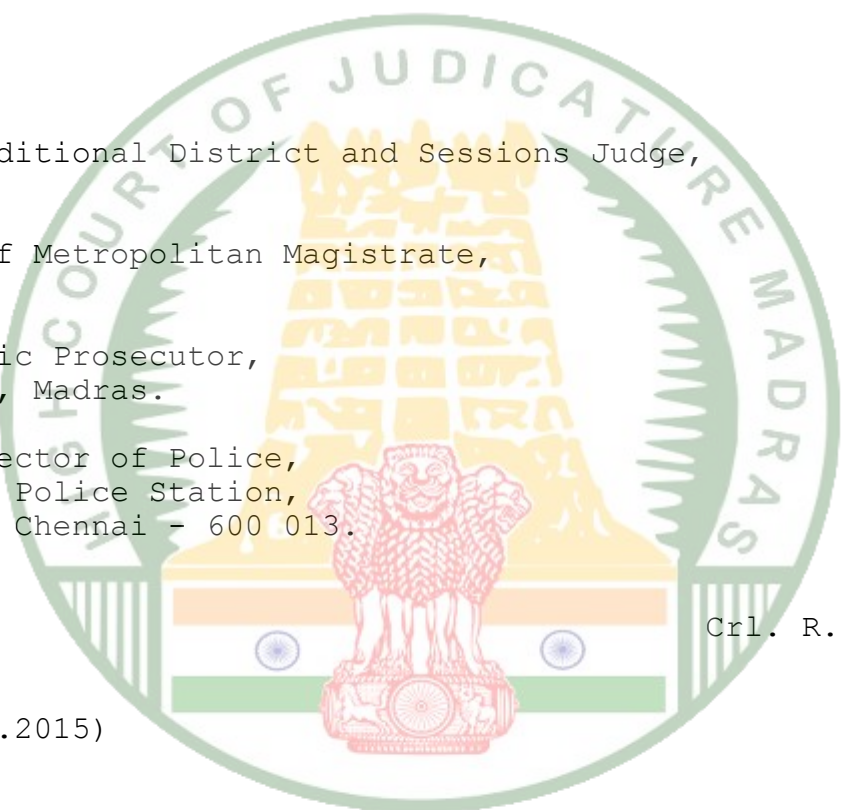
2. The Chief Metropolitan Magistrate,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

4. The Inspector of Police,
W6, Womens Police Station,
Royapuram, Chennai - 600 013.

CNR (CO)
PSI (03.07.2015)

Crl. R.C.No.536 of 2008

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The gopuram is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green circular border around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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