

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.825 of 2007

ORDER:-

The revision case is filed against the Judgment dated 15-12-2006 in Criminal Appeal No.163 of 2000 on the file of the V-Additional Sessions Judge (FTC) at Mahabubnagar. The appeal was filed by the petitioner/accused questioning his conviction for the offence punishable under Section 498-A I.P.C., and imposing sentence of rigorous imprisonment for a period of two years and also imposing a fine of Rs.500/- for the offence punishable under Section 323 I.P.C., in C.C.No.171 of 1997, dated 28-08-2000, on the file of the Judicial Magistrate of First Class, Narayanpet. The appellate Court dismissed the appeal confirming the conviction and sentence. Hence, the revision.

2. The case of prosecution, in brief, is as under:-

On 21-10-1997 at 10.20 a.m., PW.2 – Answar Hussain came to the police station and lodged a complaint stating that his second daughter – Sadiya Sulthana (PW.1) was given in marriage to the petitioner/accused about six years back, that they lived happily for about four years, but for the last one year, the husband started harassing his daughter by beating her constantly to procure additional dowry. It is further alleged that on 30-04-1997 negotiations were made at Marikal and compromise was entered into but the accused did not change his attitude. Hence, the complaint. After registering the case as Cr.No.68 of 1997, investigation was taken up. Charge-sheet was filed only against the petitioner/A.1. During the course of trial, after examining PW.1 partly, on an application by the prosecution, A.2 to A.4 being the father and brothers of A.1 were impleaded and the case proceeded against them. The trial Court, however, acquitted A.2 to A.4.

3. On behalf of the prosecution, PWs.1 to 7 were examined and Exs.P.1 to P.8 were marked. No defence was produced. The accused

denied the allegations and the evidence on record.

4. The contention of the petitioner/accused is that he has not committed any offence and that it is the wife/PW.1 who left the matrimonial home when her demand for setting up separate residence at Dhanwada village where her parents were living was not being acceded to by the petitioner/husband. The petitioner/husband was living with his family members at Ramkistapally village and was doing business and agriculture.

5. Learned Counsel appearing for the petitioner/accused submits that both the Courts below have not appreciated the evidence on record in proper perspective and erred in believing the interested and discrepant testimony of PWs.1 and 2, who are the daughter and father, even though PWs.3, 4, 5 and 6 who were the independent witnesses of both the villages have turned hostile and denied the case of the prosecution. Learned Counsel further submits that there is inordinate delay in lodging the complaint and therefore the petitioner/accused cannot be found guilty.

6. Learned Public Prosecutor submits that the evidence on record is properly appreciated by both the Courts below and the petitioner/accused was convicted and the said findings do not warrant any interference.

7. The admitted facts are that PW.1 and the petitioner/A.1 were married on 30-06-1991. They are blessed with two sons. For about four years i.e., till about 1995, according to the prosecution, all was well in between the couple. Troubles, however, started when the petitioner/accused started demanding certain amounts to be brought from her parents since he incurred losses, he having purchased a tractor in partnership with another. As already stated, the prosecution has examined four independent witnesses. Two are from Dhanwada village where the parents are living and two are from Ramkistaipally village where the husband is living. All the four turned hostile and denied that there was any demand in their presence. PW.3 is said to

be the Sarpanch of Dhanwada and PW.4 is a distance relative of the wife PW.1. According to the prosecution, while the father PW.2 came to know about the harassment of the accused/husband, he requested the Sarpanch PW.3 and PW.4 to go over to Ramkistaipally and settle the disputes. It is in the evidence of PW.3 that he went to village Ramkistaipally and suggested both the wife PW.1 and the husband/A.1 not to quarrel. He further deposed that nothing significant happened in his presence. The other independent witness PW.4 deposed that he also went to Ramkistaipally at the instance of PW.2 for mediation. When PW.4 wanted A.1 to send PW.1 with him to Dhanwada village, A.1 refused to send her and picked up a quarrel and beat PW.1 four or five times. This beating of PW.1 by A.1 is said to be since the wife/PW.1 was suspecting that her husband A.1 is maintaining illicit relationship with other women. Both these independent witnesses of Dhanwada village who were admittedly sent by the father PW.2 to mediate the dispute in between the couple did not corroborate the claim of the prosecution that in their presence the accused demanded any amount from PW.2. That apart, the dispute in between the couple appears to be the suspicion being nurtured by the wife PW.1 against her husband A.1 that he is maintaining illicit relations with other ladies.

8. The other two independent witnesses who are examined as PWs.5 and 6 belong to Ramkistaipally village where the petitioner/accused and the wife PW.1 lived. Both of them turned hostile and categorically denied that at any point of time they have seen the petitioner/accused subjecting the wife PW.1 to harassment.

9. What is manifest from the above is that even though two independent witnesses each from the villages of the parents of PW.1 and the husband were examined but the material allegation insofar as it is against A.1 has not been spoken to by any of them.

10. That leaves the evidence of the wife PW.1 and her father PW.2. It may be stated here that even though the wife PW.1 is said to have

informed the father PW.2 about the cruel treatment of the husband A.1 by way of a letter, he sent PW.3 the Sarpanch of the village and PW.4 a distant relative of PW.2, but he himself did not go all along with them to enquire from her daughter as to what happened. PW.1 has not filed the complaint. It is PW.2 who filed the complaint on the basis of the information that is furnished to him by the daughter PW.1. PW.1 deposed that she was married to A.1 on 30-06-1991 at Dhanwada village. Customary cash and jehaz articles were given. She says that she lived with the husband happily for about a year and thereafter the husband started torturing her. She claims to have given certain amounts to the husband. Again, the husband started demanding money and demanded Rs.30,000/- for repairing the tractor which was damaged. She claims to have given Rs.5,000/- to the husband. She further claims that the accused got a stamp paper written in which she was forced to sign. What was that paper is not known. She further claims to have been kept under lock. She further claims that the accused husband beat her in the presence of the Sarpanch PW.3. PW.3 do not speak about it. It is further spoken to by her that thereafter her father PW.2 filed a complaint with the police, which is Ex.P.3. She also states that she sent a letter Ex.P.1 to her father. She, however, do not say as to how that letter was sent namely whether it is sent by post or by a person and if so, through whom. Ex.P.1 is the letter purported to have been written by PW.1 to her father. The date on which it is written is not mentioned. It is not clear as to whether the said letter was sent through post or a special messenger. Neither PW.1 nor her father PW.2 could give the information as to how that letter was received. The specific contention of the petitioner/accused is that this letter has been brought into existence after lodging the police complaint. If the letter PW.1 is carefully perused, what appears is that it is not a letter but a kind of detailed information. The first para of the said letter pertains to the salutations and enquiring about the well being and narrating the vows of the wife. Thereafter, the specific

allegations are made against A.1 and his relations. This do not seem to be a letter, for the reasons that at the beginning of the second paragraph, it is mentioned that my husband and thereafter, allegations are mentioned against him. Thereafter, the name of A.3 is mentioned and allegations are levelled. So also with regard to A.3 and A.4. A daughter writing a letter to the father making allegations against her husband and in-laws will not be in the manner in which Ex.P.1 is written. That apart, what is all that is mentioned in Ex.P.1 is that her husband is coming home drunk and beating her. He is also threatening that he will get the parents of the wife killed with the help of naxalites. It is also alleged that the husband has kept mistress and is not coming near her and when she is calling, he is stating that he has pains in his body. She further mentioned that when she requests her husband to come and sleep with her, the husband beats her and abuses her.

11. It is not mentioned in Ex.P.1 that the petitioner/husband was subjecting the wife to harassment or cruel treatment on the demand of any dowry not being met. Absolutely, there is no reference, whatsoever, to the payments made or demanded. A reading of Ex.P.1 shows that the disputes between PW.1 and the husband/A.1 were in connection with personal matters such as non-cooperation of the husband in fulfilling the matrimonial obligations and his keeping relations with other women.

12. Another document on which reliance is placed by the prosecution is Ex.P.2 which is said to be a compromise memo or undertaking recorded in the police station duly signed by the husband/A.1. A perusal of this memorandum of settlement, dated 30-04-1997, instead of supporting the case of prosecution corroborates the claim of the petitioner/husband that the real problem between them is due to the demand being made by the wife PW.1 to set up separate residence with her at Dhanwada village where her parents are living. The entire contents of Ex.P.2 clearly shows that absolutely there is

nothing which can be said to connect the accused with the alleged offence of subjecting the wife to cruel treatment or harassment. There are five clauses in Ex.P.2. They are:-

- 1) The husband will take separate residence at Dhanwada village within 15 days and keep the wife there;
- 2) The parents and other relations of the wife can visit them at any time;
- 3) The parents of the wife and her relations can come and take the wife to the house at any time for which he will have no objection;
- 4) He will not show any vindictive attitude towards the wife or her relations for they having filed a police complaint; and
- 5) He will not file any police complaint against his wife or her people and even if he makes the complaint, the same shall not be valid.

Ex.P.2, as already stated, does not, in any way, support the case of the prosecution that it is the accused who himself voluntarily admitted that he subjected the wife to any harassment or cruel treatment and therefore he gave the undertaking Ex.P.2 on 30-04-1997.

13. PW.2 is the father of the wife and he is the *de facto* complainant. He deposed that he is working as a Telephone Line Inspector in Narayanpet. The marriage was performed on 30-06-1991 and for about five years, they lived happily and they were blessed with two sons. Thereafter, it is spoken to by PW.2 that A.1 started beating his daughter demanding money. He claims to have paid money two or three times. He further claims that he gave Rs.10,000/- to A.1 in the presence of the Sarpanch PW.3. This fact is not at all spoken to by PW.3. He further deposed that thereafter again his daughter came and informed that the accused is demanding Rs.30,000/-. He further claims that PW.1 wrote letter Ex.P.1 about the harassment and demand of money. As already stated, in Ex.P.1, not even a single word is written about there being any demand of money, more particularly, Rs.30,000/- by her husband A.1. PW.2 further deposed that he sent PWs.3 and 4 after showing them the letter Ex.P.1. After

coming to know as to what happened when PWs.3 and 4 went there, he filed the complaint Ex.P.3.

14. From the evidence of PW.2, what could be gathered is that even though the disputes in between his daughter PW.1 and son-in-law/A.1 were in connection with other affairs, he has tried to rope in the accused under the offence punishable under Section 498-A I.P.C., saying that the accused/husband demanded money which he paid two or three times and ultimately the accused husband demanded Rs.30,000/- and when he did not pay, his daughter was subjected to cruel treatment.

15. It is no doubt true that in matrimonial disputes, the best witnesses will be the victim/wife and her close relations. If there are allegations of any violent activities on the part of a husband or his people, the neighbouring residents can also be said to have knowledge about such activities. In the instant case, the specific allegation is that the petitioner/A.1 used to frequently beat the wife PW.1 and as a matter of fact, it is in the evidence of PW.1 that she used to inform about the harassment to the neighbouring resident by name Venkataiah and his wife. They are not examined by the prosecution. Significantly, the Investigating Officer PW.7 says that having registered the crime on 21-10-1997, he went to Ramkistaipally village on 10-11-1997 only for the purpose of arresting the accused but not for investigation as admitted by him. That means, the Investigating Officer after having received the complaint Ex.P.3 and registering it as F.I.R., did not visit the village for investigation where the alleged offences were said to have been committed by the accused. In order to investigate the crime, when it is alleged that the accused person was beating PW.1 in his house at Ramkistaipally and even locked her up in the house, the Investigating Officer ought to have conducted investigation and enquiries from the Ramkistaipally village and the neighbouring residents. Significantly, PW.7 the Investigating Officer admits that he did not at all visit the village of the accused where the

offences are said to have been committed but went there only for the purpose of effecting the arrest of the accused.

16. Learned Counsel appearing for the petitioner/accused submits that the marriage having been performed in the year 1991, the couple lived comfortably for about six years and they were blessed with two sons. From the year 1997 onwards, the husband/A.1 and the wife PW.1 are living separately. The wife also filed a maintenance case. The petitioner/accused further submits that the instances as alleged have not taken place and that even though the wife is living separately from him from 1997, he has not initiated any steps for giving divorce either customary or legal. The parties belong to muslim community. The petitioner/accused further submits that a false complaint has been foisted against him only with the sole intention of seeing that the wife/PW.1 along with her husband/A.1 shift to Dhanwada village where her parents were staying.

17. If the evidence of PWs.1 and 2 and Exs.P.1, P.2 and P.3 is carefully perused, what could be made out is that the relations between the husband and wife were strained and they were quarrelling over the alleged illicit relationship said to have been developed by A.1 with other ladies in the village. There is no convincing evidence to the effect that the wife Ex.P.1 was being subjected to harassment or cruel treatment due to non-fulfilment of demand for dowry. The nature of the allegations are such that it may be relevant for invoking the provisions of other enactments such as for obtaining divorce or maintenance but when it comes to a criminal prosecution, for an offence punishable under Section 498-A I.P.C., it is incumbent on the part of the prosecution to prove by cogent, convincing, consistent and reliable evidence that it is the accused who was subjected the wife to cruel treatment warranting his conviction and sentence. In the instant case, I do not find that the material evidence is sufficient for holding that the accused has committed the offence as alleged and the evidence both oral and documentary on record do not

inspire the confidence of the Court. Both the Courts below have not properly appreciated the evidence on record and erred in convicting the accused. The same cannot be sustained and is liable to be set aside.

18. In the result, the Criminal Revision Case is allowed. The conviction and sentence are set aside. The fine amount, if paid, be refunded to the petitioner/accused.

Miscellaneous petitions, if any, pending in this revision shall stand cancelled.

M.S.K.Jaiswal, J

8th September, 2015

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