

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.2070 OF 2009

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 25.09.2008, passed by the I Additional District & Sessions Judge, Krishna, Machilipatnam, in Criminal Appeal No.121 of 2005, whereunder and whereby the conviction passed against the revision petitioner herein for the offence punishable under Section 498-A of the Indian Penal Code, 1860, (for short 'I.P.C'), vide the judgment dated 02.11.2005 in C.C.No.46 of 2000 by the Additional Judicial Magistrate of First Class, Gudivada, was confirmed, but the sentence was modified.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.46 of 2000 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C before the trial Court.

3. The case of prosecution in brief is that basing on the report given by the *de facto* complainant, a case was registered against the accused in Krishna Lanka Police Station, Vijayawada, in Cr.No.340 of 1997 for the offence punishable under Sections 498-A & 506 I.P.C on the grounds that accused is her husband; that their marriage was performed eleven years before the date of incident; that her parents gave Rs.20,000/- towards dowry and other articles at the time of marriage; that soon after the marriage, she joined the accused to lead marital life and out of her wedlock, she was blessed with two sons; that since the accused is working as A.R Police Constable, he put his family in the quarters at Vijayawada; that after some time, accused began to harass her both mentally and physically to get additional dowry; that the brothers of *de facto* complainant had adjusted some

amounts to the accused, but there is no change in his attitude; that the accused used to bring ladies to his quarter; that on 25.05.1997, when the accused brought a lady to his quarter, a confrontation took place between her and the accused, and as such the accused man handled and drove her away; that the accused also threatened that he would kill her and her brothers; that the accused further threatened that he would take divorce from her; and that she endured the ill-treatment of the accused with the fond hope that he would realize his fault, but in vain and hence, she constrained to stay with her parents at Gudivada. After the case was registered, the Sub Inspector of Police, Krishna Lanka Police Station, investigated into and arrested the accused on 08.09.1997, produced him before the Court and after completing investigation, filed charge sheet into the Court.

4. The learned IV Metropolitan Magistrate-cum-Mahila Court, Vijayawada, took cognizance of the case, numbered as C.C.No.750 of 1997 and framed charges for the offences punishable under Sections 498-A & 506 I.P.C against the accused. Thereafter, as there was another case in Cr.No.3 of 1999 lodged against the accused and others, which was numbered as C.C.No.179 of 1999 on the file of the Additional Judicial Magistrate of First Class, Gudivada, for the offences punishable under Sections 406 I.P.C and Section 6 of the Dowry & Prohibition Act, 1961, (for short 'the Act'), the said case C.C.No.750 of 1997 was transferred to the Court of Additional Judicial Magistrate of first Class, Gudivada, for joint trial. After the transfer, the learned Magistrate re-numbered C.C.No.750 of 1997 as C.C.No.46 of 2000, clubbed along with C.C.No.179 of 1999, and conducted joint trial. Thereafter, as the other accused in C.C.No.179 of 1999 died during the pendency of the case, the case against them was abated, and only the accused was tried in both the cases. During trial, on behalf of prosecution, PWs.1 to 14 were examined and Exs.P1 to P38 were got marked.

5. After closure of the prosecution evidence, accused in both cases was examined under Section 313 Cr.P.C, putting the incriminatory material deposed against him. The Accused denied the same and reported no oral evidence, but got marked Exs.D1 to D7 on his behalf. After hearing the arguments and after perusing the record, the learned Magistrate on 02.11.2005, gave a common judgment in both the Cases and convicted the accused and sentenced him to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.500/-, and in default to undergo Simple Imprisonment for a period of three months for the offence punishable under Section 498-A I.P.C; to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1,000/-, and in default to undergo Simple Imprisonment for a period of three months for both the offences punishable under Sections 3 & 4 of the Act.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal Nos.120 & 121 of 2005 before the I Additional District & Sessions Judge, Krishna, Machilipatnam, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, allowed CrI.A.No.120 of 2005 and acquitted the accused for the offences punishable under Sections 3 & 4 of the Act, but dismissed CrI.A.No.121 of 2005 by confirming the conviction passed by the trial Court for the offence punishable under Section 498-A I.P.C and modified the sentence by reducing it from six months to 15 days.

7. Being aggrieved by the judgment of the appellate Court in CrI.A.No.121 of 2005, accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that the alleged incident was happened on 25.05.1997, whereas the *de facto* complainant gave a complaint on 07.09.1997 i.e., after a

delay of 3½ months and she kept quiet all the way and not filed any complaint to the police and the delay was not explained; that PWs.9 & 10 are the independent witnesses and they had not supported the prosecution case to prove the offence under Section 498-A I.P.C, therefore accused is entitled for acquittal; that accused is a Government servant and if a lenient view is taken, he will be re-instigated into service and therefore, prayed the Court to allow the revision case and acquit the accused.

9. On the other hand, the learned Public Prosecutor appearing for the State of Andhra Pradesh argued that the evidence of PWs.1, 2 & 6 supports the prosecution case and all the three witnesses categorically stated that on 25.05.1997, accused brought a woman to his quarter in the presence of PW.1 and children, and he is leading bad vices; that when PW.1 questioned the accused, at that time he beat and driven her out from the house and as such, she went to her parents house and informed the same; that PW.2 is the father and PW.6 is the brother of PW.1, and they also categorically stated that PW.1 informed them about the alleged offence dated 25.05.1997, therefore in view of the evidence of PWs.1, 2 & 6 the prosecution able to prove the guilt of the accused and both the Courts below rightly convicted the accused and further, the appellate Court by taking a lenient view, modified the sentence and reduced it from six months to 15 days and therefore, the findings of both the Courts below needs no interference and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the judgment passed by the appellate Court, as prayed for or not?

11. **P O I N T**: A perusal of the record shows that PW.1, who is the *de facto* complainant, has lodged two different complaints and the same were registered as Cr.No.340 of 1997 and Cr.No.3 of 2999 on the

ground that accused used to demand more dowry and used to harass PW.1; that the accused used to beat her and used to bring ladies to the marital home for sexual intercourse, for which she objected. It is stated by PW.1 in her evidence that accused used to demand additional dowry amount and other valuable articles; that on 25.05.1997 and A.1 brought one lady to his house to spend night, and when she questioned the accused about his unlawful activities, he beat her and necked her out from his house in the night time and that she informed the incident to her parents and relatives. PWs.2 & 6, who are the father and brother of PW.1, categorically stated that PW1 informed them about the incident dated 25.05.1997. Basing on the evidence of these witnesses, the appellate Court though acquitted the accused from the charges of Sections 3 & 4 of the Act, convicted him for the offence punishable under Section 498-A I.P.C.

12. The main contention of the learned counsel for revision petitioner/accused is that the delay of 3½ months in lodging the complaint is not explained, and therefore it is fatal to the prosecution case. In this regard, the appellate Court rightly discussed in its judgement that the *de facto* complainant being a Muslim lady, did not approach the police during night time and she went to her parents house and lodged the complaint. Therefore the delay as claimed by the learned counsel for revision petitioner is not fatal to the prosecution case.

13. The other contention of the learned counsel for revision petitioner/accused is that PWs.9 & 10 had not supported the prosecution case to prove the incident that happened on 25.05.1997. Admittedly PW.9 & 10 are the neighbours and their husbands are also police constables. They turned hostile because accused is also a police constable and the appellate Court rightly held that neighbouring residents will not generally interfere with the matters between the wife and husband. Therefore, the said above contention of the learned

counsel for revision petitioner also cannot be accepted.

14. Coming to the evidence of PWs.1, 2 & 6, they categorically stated that accused used to harass PW.1 and he is having bad vices and used to get ladies to his house and when PW.1 questioned the accused, he used to beat her. PW.1 also stated that accused is having bad vices like drinking, gambling and debauchery and when accused necked her out from the house, she went to her parents and informed the incident to them. PWs.2 & 6 in their evidence clearly stated that PW.1 informed them about the alleged incident dated 25.05.1997, and that accused used to harass PW.1. Therefore, by taking into consideration the evidence of PWs.1, 2 & 6 and the evidence of Investigating Officer, the appellate Court rightly confirmed the conviction of the trial Court for the offence punishable under Section 498-A I.P.C, but after considering the contentions raised by the accused that for the last ten years, he is suffering due to criminal cases filed by PW.1, reduced the punishment from six months to fifteen days taking a lenient view. Therefore, in view of the evidence on record, I am of the view that the concurrent finding regarding the conviction for the offence punishable under Section 498-A I.P.C, passed by both the Courts below needs no interference, and as already the appellate Court has taken a lenient view and as the imprisonment of 15 days was already undergone by the accused, the revision is devoid of merits and is liable to be dismissed.

15. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 25.09.2008, passed by the
I Additional District & Sessions Judge, Krishna at Machilipatnam, in Criminal Appeal No.121 of 2005.

16. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 18.03.2015
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