

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.864 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the petitioner/*de facto* complainant/first informant ('petitioner' for brevity) is directed against the judgment dated 03.03.2008 of the learned Judicial Magistrate of First Class, Kurnool in CC.No.53 of 2007.

1. **(a)** The said Calendar Case was taken on file against the respondents 1 to 4/accused 1 to 4 ('A1 to A4' for brevity) for the offences punishable under Sections 498-A and 506 of the Indian Penal Code, 1860 ('the IPC' for short) and Sections 3 and 4 of the Dowry Prohibition Act. In fact, charges were framed for the offences punishable under Sections 498-A and 506 of the IPC and the accused were tried for the said offences with which they were charged. And, no charges were framed for the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act. By the said judgment, which is impugned in this criminal revision case, the Court below found the accused not guilty of the offences punishable under Sections 498-A and 420 of the IPC and had acquitted them of the said offences.

2. I have heard the submissions of the learned counsel for the petitioner, the learned counsel for the A1 to A4 and the learned Additional Public Prosecutor appearing for the 5th respondent/State. I have perused the material record.

3. Now the points that arise for determination in this revision are:

Whether the judgment impugned is liable to set aside in the facts and circumstances of the case and in the light of the submissions made on behalf of the petitioner?

And, if so, what shall be the appropriate order to be made in this revision case?

4. POINTS:

4. (a) The case of the prosecution and the facts necessary for consideration, in brief, are as follows: - "On 15.06.2005 at about 05:00 PM, PW1-Rita Kumari went along with her parents to IV Town Police Station, Kurnool and had presented a written report *inter alia* alleging as follows: 'She is the 2nd daughter of her parents. Her marriage was performed with A1 on 16.08.2003. At the time of marriage, dowry in a sum of Rs.1.50 lakh besides 6 tolas of gold and other gold ornaments were given. Household articles were also presented. A sum of Rs.70,000/- was spent towards marriage expenses. A1 was working as a Record Assistant on temporary/part time basis in Balasiva Degree College. After the marriage, the petitioner had joined her husband and they had lived together happily for about one year in Bababrindavan Nagar of Kurnool. While so, A1 had developed illicit intimacy with one Hemalatha. After the said woman gave birth to a boy, A1 had brought the said Hemalatha and her one month old boy to his house and had directed the petitioner to attend on them and serve them. Whenever the petitioner used to refuse to serve them, A1 used to indiscriminately beat her by saying that he would send her dead body to her house in case she ventured to say anything against the said Hemalatha. On 18.11.2004, A1 came to the house in a drunken state. As there was no money in the house he had forcibly taken the gold necklace of the petitioner and pledged it on 19.11.2004 with Deep finance. Again, A1 came to the house on the night of 08.12.2004 in a drunken state and demanded the petitioner to get money from her house and beat her and necked her out

of the house. The petitioner informed about the same to her parents on telephone. On that her parents sent a DD for Rs.3,150/- dated 11.12.2004 favouring A1. A1 had spent away that amount. On 21.12.2004 A1 having demanded for money had taken away the gold bangles of the petitioner and pledged them. With that money, A1 and his friends had consumed drinks in the house. Again as there was no money for spending on the drinks of A1, he had again taken the golden bangles of the petitioner on 01.01.2005 and pledged them. In February 2005, A1 beat the petitioner and sent her away to Kambham of Prakasam District to get money from her house. She had accordingly brought Rs.2,000/- from her house in the same month and gave it to A1. From then onwards, A1 had started insisting that the petitioner should bring Rs.2 lakhs from her parents and used to ill treat her and abuse her in filthy language. He used to say that he will see the face of the petitioner only if she brings Rs.2 lakhs from her house and used to say that her presence is not necessary in the house and she can leave the house. On 31.03.2005 at about 08:00 PM A1, Hemalatha and his friends (in all four persons) had entered the house and threatened the petitioner for not getting Rs.2 lakhs from her house by saying that they will see her end. At that time, Hemalatha (A2) held the right hand while one Das (A4) held the left hand of the petitioner. One Mani (A3) picked the stick of an easy chair and in the meanwhile the husband of the petitioner (A1) held her neck. Then the petitioner had raised hue and cry. Hearing the cries of the petitioner, A1 to A4 were taken aback. Taking advantage of the same, the petitioner had unbolted the doors and had escaped from the house. In stead of proceeding to the bus stand she had proceeded to C.Camp Centre and then to Kambham Centre and from there to Nandyal. She had caught hold of a train and reached Kambham. She had informed about the incident to her parents. The father of the petitioner tried to inform about the incident to the elder sister of the A1 by name Lalitha Santha Kumari. But he could not do so. Hence, a report

was lodged with the police.’ The said report which was registered as case in Cr.No.141 of 2005 of Kurnool IV Town Police Station set the criminal law in motion. After investigation, the police laid a charge sheet and the learned Magistrate has taken the CC on file against A1 to A4. During the course of the trial, the petitioner and her supporting witnesses were examined as PWs1 to 5. The investigating Officers were examined as PWs6 and 7. Exhibits P1 to P8 were marked on the side of the prosecution. During the cross examination of PW1, exhibit D1 was marked. No oral and documentary evidence was adduced on the side of the accused.”

4. (b) The learned counsel for the petitioner had contended as follows: ‘The trial court had erred in acquitting the accused despite the fact that sufficient evidence was adduced showing the complicity of the accused for the offences punishable under Sections 498-A and 420 of the IPC. The trial court erroneously failed to place reliance on the evidence of PW1 and the other witnesses who had supported the case of the prosecution and had erroneously held that the prosecution had failed to prove the guilt of the accused beyond all reasonable doubt. The trial court ought to have accepted the evidence adduced and ought to have found the accused guilty of the offences with which they were charged. When admittedly exhibits P2 to P4 pawn tickets were issued in the name of A1, the trial court ought not to have brushed aside the said documentary evidence which fully corroborated the version of PW1. The trial court ought not to have brushed aside the credible and legally valid evidence and ought to have seen that in cases involving matrimonial disputes and offences relating to marriage, the evidence of the victim woman if reliable and credible is by itself sufficient to base a conviction. The trial court had framed two charges namely one under Section 498-A and another under Section 506 of the IPC and examined the accused with reference to the said charges on 19.10.2006. But in the impugned

judgment, there was no reference to the charge under Section 506 of the IPC against the accused; and, strangely the court below had dealt with a charge under Section 420 of the IPC though no charge was framed against the accused for the said offence.'

4. (c) Per contra, the learned counsel for A1 to A4 had submitted as under: - 'The alleged incident had occurred on 31.3.2005. But, as per the evidence of PW6 the police officer, the first information with the police was lodged on 15.06.2005. There is inordinate delay in lodging the report. The accused are falsely implicated after deliberations. The accused are innocent. Admittedly there is no relationship either by blood or consanguinity between the A2 to A4 on one hand and the petitioner and her husband (A1) on the other and that in the absence of such relationship as contemplated under law, the said accused (A2 to A4) ought not to have been prosecuted for the offence punishable under Section 498-A of the IPC. The ingredients of Section 420 of the IPC are not attracted. The trial court had rightly appreciated the evidence on record and held that there is no credible and legal evidence to bring home the guilt of the accused beyond all reasonable doubt and therefore, had rightly acquitted the accused. When a view which is plausible is taken by the court below, this court while exercising revisional jurisdiction need not substitute its view even if another view is possible. The well reasoned findings in the well considered judgment of the court below do not call for interference. The revision is devoid of merit and is liable to be dismissed.'

5. There is no need to go into the merits of the matter in view of the following facts and circumstances. The two charges which were framed by the trial court against A1 to A4 are for the offences punishable under Sections 498-A and 506 of the IPC. However, no charge was framed at least against A1 under Sections 3 and 4 of the Dowry Prohibition Act though there are necessary averments in the exhibit P1-report, the

charge sheet and the evidence collected by the investigating agency in support thereof. The law is well settled that the Judge while considering question of framing the charges has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The law is also well settled that at the time of framing charges, there is no need to deeply examine the evidence and that if the uncontroverted averments in the charge sheet and the evidence collected by the prosecution make out a case and create a grave suspicion that by itself is sufficient to frame charges.

Section 498-A of the IPC reads as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty – Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Section 506 of the IPC reads as follows:

506. Punishment for criminal intimidation – whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 503 of the IPC reads as under:

503. Criminal intimidation – whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Section 3 of the Dowry Prohibition Act reads thus:

3. Penalty for giving or taking dowry:-- (1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable, [with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more;]

Provided that Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [Five years]

(2) Nothing in sub-section (1) shall apply to, or in relation to --

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given”]

Section 4 of the Dowry Prohibition Act reads thus

[4. Penalty for demanding dowry: - If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be any dowry he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months”]

6. Be it noted that the prosecution adduced evidence in support of its case by examining PW1 and other supporting witnesses. As already

noted, no charges under Sections 3 and 4 of the Dowry Prohibition Act were framed. Though a charge under Section 506 of the IPC was framed, there was no discussion in the judgment impugned in that regard and no finding against the accused either acquitting or convicting them was recorded by the trial Court. There is nothing on the material record to show that the charge under Section 506 of the IPC was subsequently deleted or altered. When there is a specific charge under Section 506 of the IPC, no reasons are forthcoming as to why the trial court did not advert to the said charge and the evidence, if any, adduced by the prosecution attracting the ingredients of the said penal provision of law. The trial court proceeded in its judgment as if there was no charge at all framed under Section 506 of the IPC and completely ignored the case of the prosecution on the said charge. Further, even though no charge under Section 420 of the IPC was framed, the trial Court had dealt with the said charge and found the accused not guilty of the said offence. Therefore, the way the trial Court dealt with the matter is totally unsatisfactory and not in accordance with the facts and the law. Therefore, this court is of the well considered view that the judgment of the trial court is unsustainable and is liable to be set aside.

7. Indisputably, this case arises out of a police report. By the judgment impugned, the trial court recorded a finding of acquittal against the accused. The State did not prefer any appeal. The present revision case under Sections 397 and 401 of the CrPC is preferred by the informant/victim who is the wife of A1. The informant/petitioner did not seek leave of this court for preferring an appeal and had not preferred any appeal. Under Section 372 of the CrPC, no appeal shall lie from any judgment or order of a Criminal Court except as provided for by the Code or by any other law for the time being in force. By the time this criminal revision was instituted in the year 2008, the proviso which was introduced by Act 5/09 with effect from 31.12.2009 was not on the statute

book. Therefore, since the case arises from a police report and as the calendar case was taken on file pursuant to the police report, a revision is maintainable. However, Section 401(3) of the CrPC says nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction while exercising the powers of revision. Therefore, in the light of the legal position and the facts peculiar to the case, the only course open to this court is to remit the matter to the trial court for disposal of the matter afresh in accordance with the procedure established by law. In view of the said decision of this court to remit the matter to the trial court for fresh consideration of the case on merits in all respects, this court did not examine the credibility and reliability and adequacy or otherwise of the evidence in regard to the charge under Section 498-A of the IPC.

8. Accordingly, the criminal revision case is allowed and the judgment of the court below is hereby set aside and the matter is remitted to the trial court for fresh disposal of the case on merits in accordance with the procedure established by law having regard to the charges specifically framed against the accused. It is made clear that the trial Court is at liberty to frame any other additional charges, if necessary, against all or any one of the accused by following the procedure established by law. However, it is also made clear that the prosecution as well as the accused are at liberty to recall any witness already examined either for examination in chief or cross examination as the case may be and also to adduce further evidence, if any, which the law permits. The trial court shall consider the entire evidence on record in proper perspective while disposing the case afresh on merits.

Miscellaneous petitions pending, if any, in this CrIRC shall stand closed.

M.SEETHARAMA MURTI, J

30th January 2015

Note: LR copy to be marked.

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