

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.709 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioner/A1 is directed against the judgment dated 25.05.2007 in CrI. Appeal No.113/2006 passed by the learned III Additional Sessions Judge [holding Full Additional Charge of the Post of IV Additional Sessions Judge, (Judge, Fast Track Court)], Nalgonda.

1. **(a)** By the judgment dated 10.05.2006 in C.C. No.369/2004, the learned Judicial Magistrate of First Class, Nakrekal found the A1 guilty of the offence punishable under Section 498-A of the Indian Penal Code (for short, 'the IPC') and convicted him under Section 248(2) of the CrPC and sentenced him to undergo rigorous imprisonment for a period of one year and pay a fine of Rs.1,000/- and suffer simple imprisonment for one month in default of payment of the said fine amount. The learned Judge of the trial Court acquitted A1 to A5 having found them not guilty of the offence punishable under Section 494 of the IPC. While dismissing the aforementioned appeal preferred by A1, the learned Additional Sessions Judge confirmed the conviction of the said accused for the said offence punishable under Section 498-A of the IPC, but, had modified and reduced the sentence of one year rigorous imprisonment to six months rigorous imprisonment while maintaining the fine amount.

2. I have heard the submissions of the learned counsel for the petitioner/A1 and also of the learned Public Prosecutor. I have carefully perused the material record.

3. The learned counsel for the petitioner/A1 submitted that the Courts below having rightly acquitted A2 to A5 for the offence punishable under Section 498-A IPC and also having rightly acquitted A1 to A5 for

the offence punishable under Section 494 of the IPC, ought to have acquitted A1 also of the offence punishable under Section 498-A of the IPC by holding that the ingredients of the said provision of law are not proved, much less beyond reasonable doubt. The Courts below ought to have seen that the evidence of PW1 is silent in regard to the alleged harassment caused to her by the accused and that on that ground alone the Courts below ought to have acquitted A1. The Courts below had rightly found that the evidence of PWs 2 and 3 is circumstantial in nature but had committed illegality in placing reliance on the evidence of the said witnesses without rejecting their evidence. The Courts below ought to have discarded the evidence of PW1, which is artificial and inconsistent. The Courts below ought to have seen that the marriage of PW1 with A1 had taken place about ten years back and that PW1 had given birth to two male children under the lawful wedlock and that the present case was foisted only on a suspicion that the A1 was having illegal contact with A2 and that therefore, the Courts below ought not to have convicted the accused. When the evidence of the prosecution was found not reliable for convicting A2 to A5 for the offences punishable under Section 498-A and also for not convicting A1 to A5 for the offence under Section 494 of the IPC, the same evidence ought not to have been relied upon for convicting A1 for the offence under Section 498-A of the IPC.

4. Per contra, the learned Public Prosecutor had contended that the Courts below have appreciated the evidence brought on record in proper perspective and had recorded concurrent findings of fact in regard to the guilt of A1 for the offence punishable under Section 498-A of the IPC and that in a case of this nature, the evidence of the victim-wife will always be of significance and the said evidence was given its due weight by the Courts below and that the well reasoned concurrent findings in the well considered judgments of the Courts below do not call for any

interference and that there is no merit in this Criminal Revision Case and that therefore, the Revision Case is liable to be dismissed.

5. Now the points for consideration are: -

1. Whether the prosecution could bring home the guilt of the petitioner/A1, beyond reasonable doubt, for the offence under section 498-A of the IPC?
2. Whether the petitioner/A1 had made out valid and sufficient grounds for his acquittal? And, if so, whether the judgment impugned is liable to be set aside

6. **POINTS:**

6. (a) During the course of trial, PWs 1 to 5 were examined and exhibits P1, P2 and D1 to D7 were exhibited. There is no dispute that A1 is the husband of PW1 and that their marriage was performed about ten years prior to PW1 lodging the complaint in November 2004. It is also not in dispute that after the marriage the couple had lived happily and PW1 had given birth to two male children under lawful wedlock. The said children were aged six and two years by the year 2004. As per the case of the prosecution, PW1 filed a complaint before the Court of the learned Judicial Magistrate of First Class, Nakrekal and the same was referred to the Police by the learned Magistrate on 26.11.2004 and that on receipt of the same by the Station House Officer, Kattangur Police Station, the subject crime was registered and investigated into. In her complaint, PW1 had mentioned that her marriage was performed with A1 ten years ago and that at the time of her marriage her parents had given net cash of Rs.6,000/-, two tolas of gold, 50 tolas of silver and 20 sheep to her husband towards dowry and that after their marriage they had enjoyed conjugal life and were blessed with two male children and that after the birth of the second son her husband started harassing her to bring Rs.10,000/- from her parents as additional dowry and that her parents had expressed their inability to give additional dowry and that for getting the said amount her husband had harassed her and subjected her to cruelty to drive her to commit suicide and that on that her parents held

a Panchayat on 10.09.2004 and that at that Panchayat A1 was advised to lead a peaceful marital life with PW1, but A1 had beaten her in the said Panchayat in the presence of elders and had abused her in filthy language and had refused to take her back in spite of the advice of the elders and had deserted her and her children and that since then she is residing with her parents and that in spite of the fact that PW1 is the wife of A1 and that her marriage with A1 was subsisting. A1 had married A2 – G.Saidamma of the same village on 25.09.2004 and that A1 is now leading conjugal life with his said second wife-A2.

6. (b) Coming to evidence on record, PW1 had testified in line with the case pleaded in her complaint. She had categorically deposed that A1 started beating her to bring additional dowry of Rs.10,000/- from her parents and that the issue was placed before the elders and that the elders advised A1 to live amicably with PW1 but, he did not heed the advice of the elders and that he had married A2 at Cheruvugattu temple and that therefore, she had lodged a private complaint-exhibit P1 before the Court of the learned Magistrate. In her cross examination, she had maintained her stand. PW2 is the mediator and an elder. He had testified that he knows PW1 and also the accused persons and that PW1 and A1 lived together cordially till the birth of two children and that A1 had illegal contact with A2 and that for that reason A1 had started ill-treating PW1 to bring additional dowry of Rs.10,000/- and that for the said reason a Panchayat was held and in that Panchayat he and others had advised A1 to live amicably with PW1 but, he did not oblige and had demanded to bring additional dowry of Rs.10,000/- from the parents of PW1 and that about 10 days after the Panchayat the second marriage of A1 with A2 was performed at Cheruvugattu temple and that A2 is living with A1 in his house while PW1 was living in her parents house. PW2 is the uncle of PW1. He stated in his cross examination that he came to know about the illegal contact between A1 and A2 through PW1. He had

asserted in his cross examination that he had conducted the Panchayat on 10.09.2004. When it was suggested to him that he did not conduct the Panchayat, he had denied the said suggestion as 'not true'. PW3, a resident of Kurmarthy village had testified that he was a mediator and elder for the marriage and that for six or seven years after the marriage PW1 and A1 lived happily and that they are blessed with two children and that later A1 had developed illegal contact with A2 and had started harassing PW1 to bring additional dowry and hence, they had conducted a panchayat and that in that Panchayat he had advised A1 to live amicably with PW1, but A1 did not oblige and had demanded for bringing additional dowry and did not take back PW1. He is an independent witness not related to PW1. In his cross examination, it was elicited that he belongs to CPM party. When it was suggested to him that the parents of PW1 also belong to CPM party and that he did not conduct any Panchayat, he had denied the said suggestions. PW4 is the mother of PW1. She had supported the version of her daughter-PW1. She spoke about the ill-treatment meted out to her daughter after the birth of the second child and A1 beating PW1 to bring additional dowry of Rs.10,000/- and about her coming to know of A1 marrying A2. She had also stated that A1 and A2 are living together while PW1 is living with her. However, she did not state anything about any Panchayat which was said to have been held in the presence of PWS 2, 3 and others. PW5 is the Inspector of Police who had laid the charge sheet.

6. (c) Be that as it may. PW1 had categorically deposed that A1 had demanded additional dowry and that accordingly the matter was placed before the elders including PWs 2 and 3 and that in the Panchayat also A1 had demanded for additional dowry without heeding the advice of the elders to live amicably with PW1. She had also deposed about the illegal contact between A1 and A2. Both the elders consistently deposed that A1 had developed illegal contact with A2 and

had harassed PW1 for additional dowry. Thus, considering the above evidence on record, both the Courts below had consistently held that the ingredients of the penal provision are attracted to the case on hand and the prosecution adduced sufficient evidence to bring home the guilt of A1 for the offence punishable under Section 498-A of the IPC. Having examined the evidence analytically, this Court is satisfied that there are no infirmities or illegalities or irregularities or improprieties in the findings recorded by the Courts below. Viewed thus, this Court finds that there is no merit in the revision and the same is liable to be dismissed.

6. (d) Coming to the quantum of sentence, the learned counsel for the petitioner/A1 had alternately contended that the accused is below 45 years of age and that if a long term of sentence of imprisonment is imposed on him he would be put to hardship; he had, therefore, submitted that the sentence may be modified and reduced to one already undergone. As already noted, the learned Additional Sessions Judge had reduced the sentence of rigorous imprisonment from one year to six months. Having regard to the mitigating and extenuating circumstances and the explanatory statement offered, the sentence of rigorous imprisonment is modified and reduced from six months to two months.

7. In the result, the Criminal Revision Case is dismissed. However, the substantive sentence of imprisonment is modified and reduced from six months to two months while maintaining the fine amount. The accused is entitled to the benefit of set off. It is stated that A1 is at large being on bail. Therefore, A1 is directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order. On failure of the accused to do so, the trial Court shall take steps for his apprehension and send him to prison for serving the remaining period of sentence.

Miscellaneous petitions pending, if any, in this Criminal

Revision Case shall stand closed.

19th January 2015
MVA

M.SEETHARAMA MURTI, J