

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

CRL.R.C.No.690 OF 2007

ORDER

The petitioner-appellant herein was tried by the Special Judicial Magistrate of First Class for trial of cases under Prohibition and Excise Act, Mahabubnagar, in C.C.No.267 of 2005 for the offence punishable under Section 498-A read with 34 IPC and having considered the oral and documentary evidence, the learned Magistrate by order dated 18.05.2006 came to the conclusion that the petitioner was guilty of the said offence, and accordingly, sentenced him to undergo simple imprisonment for a period of six months and also to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for a period of three months. Questioning the same, the petitioner filed Crl.A.No.68 of 2006 on the file of I Additional Sessions Judge, Mahabubnagar, which was dismissed on 17.05.2007 confirming the order of the learned Magistrate. Feeling aggrieved, the petitioner filed the present revision.

The brief facts of the prosecution case are

that the petitioner is the resident of Anantasagar Village, Kulkacherla Mandal, Ranga Reddy District, whereas PW1-Krishnaveni is resident of Fatepur, Mahabubnagar. The petitioner married PW1 in 1998. They lived happily for about two years and blessed with a female child. Thereafter, the petitioner demanded PW1 to bring additional dowry of Rs.25,000/- to keep the same in fixed deposit for the marriage of their just born daughter. When the parents of PW1 expressed their inability, the petitioner beat her and necked her out of the house. When the mediations proved futile and the petitioner did not mend his ways, PW1 lodged a complaint against the petitioner before the Sub-Inspector of Police, Rural Police Station, Mahabubnagar, who in turn, registered the same as a case in Cr.No.163 of 2005 for the offence punishable under Section 498-A read with Section 34 IPC. After completion of investigation, charge sheet was filed against the petitioner and his mother, who were arrayed as A1 and A2 respectively.

To substantiate its case, the prosecution examined PWs.1 to 5 and marked Exs.P1 and P2.

No oral or documentary evidence was adduced on behalf of the defence.

Having considered the submissions of the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and after perusing the material on record, the learned Magistrate while acquitting A2, found petitioner-A1 guilty of the charge and convicted and sentenced him as stated supra. On appeal, the same was dismissed confirming the conviction and sentence imposed against the petitioner.

Learned counsel appearing for the petitioner submits that both the Courts have not appreciated the evidence in proper perspective and erroneously found the petitioner guilty of the charge. Learned counsel further submits that none of the witnesses were examined from Anantasagar Village where, even according to the de facto complainant, the alleged acts of harassment and cruelty took place. He also submits that the Rural Police Station, Mahabubnagar has no jurisdiction to entertain the complaint as the alleged harassment and cruelty did not take place at Mahabubnagar.

Further, as no case was made out from the evidence of PWs.1 to 4, against the petitioner, he is entitled for acquittal. Learned counsel further submits that the petitioner filed O.P.No.32 of 2007 on the file of the Senior Civil Judge, Vikarabad for dissolution of marriage and on contest, the same was decreed and the marriage between the petitioner and the de facto complainant was dissolved and that the petitioner has got married another woman and having children. The learned counsel placed reliance on the judgment of the Apex Court in *Amarendu Jyoti vs State of Chattisgarh* ^[1] wherein it is held as under:

“We find that the offence of cruelty cannot be said to be a continuing one as contemplated by Sections 178 and 179 of the Code. We do not agree with the High Court that in this case the mental cruelty inflicted upon the respondent No.2 “continued unabated” on account of no effort having been made by the Appellants to take her back to her matrimonial home, and the threats given by the Appellants over the telephone. It might be noted incidentally that the High Court does not make reference to any particular piece of evidence regarding the threats said to have been given by the appellants over the telephone. Thus, going by the complaint, we are of the view that it cannot be held that the Court at Ambikapur has jurisdiction to try the offence since the appropriate Court at Delhi would have jurisdiction

to try the said offence. Accordingly, the appeal is allowed.”

In view of the ratio laid down by the Apex Court in the aforesaid case, it is clear that the police at Fathepur, Mahabubnagar, have no jurisdiction to entertain the complaint or try the case, for the reason that the offence alleged to have been committed at Anantasagar Village of Ranga Reddy District and no part of the offence is said to have been taken place at Fathepur. Therefore, there is sufficient force in the submissions of the learned counsel appearing for the petitioner that the complaint ought not to have been entertained by the police at Mahabubnagar and the learned Magistrate ought not to have tried the case on the point of jurisdiction.

On the other hand, learned Additional Public Prosecutor submits that both the Courts below have rightly appreciated the evidence on record and found the petitioner guilty of the charge, and since the findings are based on legally acceptable evidence, the same do not warrant any interference.

Now the point for consideration is as to whether the prosecution has proved the guilt of the accused for the offence punishable under Section 498-A IPC beyond reasonable doubt?

Admittedly, the marriage of the petitioner-accused and the de facto complainant was performed in the year 1998; they lived happily for two years and blessed with a baby child. According to the *de facto* complainant, after the birth of baby child, the accused started harassing her to get additional dowry of Rs.25,000/- from her parents so as to deposit the same for performing the marriage of just born daughter. When the parents of the de facto complainant expressed their inability, the accused along with his mother started harassing the de facto complainant and used to beat her and necked out her from the house. In the cross-examination, PW1-de facto complainant stated that even after filing of the complaint, she went to the house of the petitioner and lived for six days and during that period also, the petitioner subjected her to cruelty.

There is no dispute about the fact that after

marriage, the couple lived at Anantasagar Village, Ranga Reddy District and the alleged offence of cruelty has taken place there only. But the de facto complainant filed the case at Mahaboobnagar. If a person comes to the Court, which has no jurisdiction to try the case, the Court at Mahabubnagar ought not to have entertained the matter, and vitiated the entire proceedings and has caused prejudice to the petitioner, there by resulting miscarriage of justice.

Be that as it may, what is required to be seen is that whether the finding arrived at by both the Courts is sustainable?

PW1 is the de facto complainant. PW2 is her father. PWs.3 and 4 are said to be the elders of Fathepur village. None of the witnesses were examined from the village of Anantasagar. If really the wife was subjected to harassment, ill-treatment, even necked out from the matrimonial home, the neighbouring residents of Anantasagar are the best witnesses to speak about the harassment. The investigating agency failed to produce the witnesses from

Anantasagar village, where the alleged harassment has taken place. PW1 in her evidence stated that after birth of the baby child, she was ill-treated by the petitioner-accused. Except vague allegation, no specific allegations are made by PW1 as to what is the nature of cruelty meted out by her. When PW1 states that she was beaten by the petitioner several times, absolutely, no medical evidence was placed on record. PW1 herself admitted in the cross-examination that even after marriage, she stayed with her parents for one year for the purpose of pursuing her education and thereafter, she went to the matrimonial home and joined the husband. She also admits that all the expenses are met by the petitioner-husband. Though PW1 denied that her father along with other elders beat the petitioner, she admits that the petitioner gave report against her father and others at Kulkacherla Police Station and the police have brought a compromise with reference to that incident. PW1 also admits that she is living with her parents since one and half year and the accused along with their Village Sarpanch and

other elders came to her father for compromise and tried to take to the company of A1, but she did not accept to go to her matrimonial home. Though she stated that the accused beat her several times and the same was witnessed by some of the villagers, she did not specifically mention the names of the villagers, who witnessed the same. She categorically admits that she did not inform any of the neighbours of the village about the harassment of the accused and they did not convene any panchayat at that village. At one point, PW1 denied that she used to go to her parents house without informing to the accused, but subsequently, she admits that the village elders by name Veera Reddy, Rani Ramulu, Hanumanthu and Chenchu Chennaiah advised her to stay with A1 and not to go to her parents house frequently. Thus, it is clear that the disputes between the couple arose due to the attitude of PW1 in leaving the matrimonial home and more frequently going to the parents house. The other evidence of Pws.2 to 4 is no way helpful to the case of the prosecution insofar as the alleged act of cruelty is

concerned. Even in the cross-examination, PW1 stated that after marriage, she stayed at her parents house more than a year, continued education and thereafter joined the husband and the petitioner himself incurred the said expenses. Therefore, PW1 is not interested in doing the coolie works as demanded by the petitioner and as she was interested in education, she deserted the petitioner and started living at her parents house. This conduct of PW1 also strengthens the case of the accused from the fact that when she deserted the petitioner, he filed OP for divorce and on contest the marriage was dissolved and the matter was not proceeded further.

The above crucial facts have not been taken into consideration by both the Courts below and the judgment of conviction suffers from material irregularity and warrants interference.

Accordingly, the Criminal Revision Case is allowed. The conviction and sentence recorded against the petitioner for the offence punishable under Section 498-A IPC is set aside. The fine

amount, if any paid, shall be returned to the petitioner.

JUSTICE M.S.K.JAISWAL

3rd August, 2015
rkk

[\[1\]](#) 2014(9) SCALE162