

HON'BLE SMT. JUSTICE ANIS
CRIMINAL REVISION CASE No. 1497 OF 2007

ORDER:

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 30.10.2007, passed by the IV Additional Sessions Judge, Warangal, in Criminal Appeal No.136 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offences punishable under Section

498-A of the Indian Penal Code, 1860 (for short 'IPC') and under Section 4 of the Dowry Prohibition Act, 1961 (for short 'D.P. Act'), vide judgment dated 21.11.2006 in C.C.No.367 of 2006 by the Judicial First Class Magistrate, Janagaon, was confirmed.

2. The revision petitioner herein is the A.2 and respondent herein is the complainant in C.C.No.367 of 2006 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 the prosecution is that one Maduri Laxminarayana - A.1 is the husband of PW1 and A.2 is the brother of A.1. The marriage of PW1 was performed with A.1 on 12.10.1991 and at the time of marriage, Rs.1 lakh cash, three tulas of gold and household articles were given to A.1 as dowry. The said cash of Rs.1 lakh was given to A.2 as he is the eldest brother of A.1. After marriage, PW1 and A.1 lived 1 ½ years happily and blessed with one daughter by name Manisha. Three years thereafter, the in-laws of PW1 died. Then, A.1 started harassing PW1 mentally and physically demanding additional dowry at the instigation of A.2. A.1 consumed liquor at the instance of A.2 and used to beat PW1. In the year 2001, the parents of PW1 gave additional dowry of Rs.30,000/- to A.1 and again Rs.20,000/- in the

year 2003. Even after that, A.1 and A.2 continued to harass PW1 physically and mentally demanding to bring additional dowry of Rs.50,000/-.

A panchayat was held where A.1 and A.2 promised to look after PW1 properly, but they have continued their harassment. About one year back, A.1 and A.2 necked out PW1 from their house. Therefore, PW1 filed a private complaint before the Court. On receipt of the complaint from the Court, a case in Crime No.22 of 2006 was registered under Section 498-A IPC and Sections 3 and 4 of D.P. Act. The Sub-Inspector of Police recorded the statements of PWs 1 to 3 and conducted the scene of offence panchanama. The Investigating officer apprehended both the accused and sent them to judicial custody, and after completion of investigation, filed Charge sheet into the Court.

4. The learned Judicial First Class Magistrate took cognizance of the case and framed charges for the offences punishable under Section 498-A IPC and Sections 3 and 4 of D.P. Act against A.1 and A.2. During trial, on behalf of the complainant, PWs.1 to 9 were examined and Exs.P1 to P3 got marked.

5. After closure of the prosecution evidence, A.1 and A.2 were examined under Section 313 Cr.P.C putting all incriminating material available against them. They denied the material evidence and reported no oral or documentary evidence on their behalf.

6. The trial Court after hearing the arguments and after perusing the record, convicted A.1 and A.2 and sentenced them to undergo Simple Imprisonment for a period of six months and also to pay a fine of Rs.100/- each, in default to suffer Simple Imprisonment for one month for the offence punishable under Section 498-A IPC and to undergo Simple Imprisonment for a period of six months and also to pay a fine of Rs.500/- each, in default to suffer Simple Imprisonment for one month for the offence punishable under Section 4 of D.P. Act, while

acquitting both A.1 and A.2 for the offence punishable under Section 3 of D.P. Act.

7. Aggrieved by the conviction and sentence passed by the trial Court, A.2 preferred Criminal Appeal No.136 of 2006 before the IV Additional Sessions Judge, Warangal. After considering the oral and documentary evidence and after hearing both the sides, the appellate Court confirmed the judgment of the trial Court on 30.10.2007.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.136 of 2006, A.2 preferred the present revision case.

9. The learned counsel appearing for the revision petitioner/ A.2 argued that the Court below erred in appreciating the evidence on record and convicted the petitioner without satisfying the ingredients of Section 498-A IPC and Section 4 of D.P. Act; that A.1, who is the husband of *de facto* complainant/PW1 already served sentence of imprisonment; that the allegations of demand of dowry and harassment were made against A.1; that there is no legal evidence on record to base conviction on the petitioner; that there is no evidence to show that the revision petitioner instigated the husband of PW1 for payment of additional dowry; that the evidence of prosecution witnesses are interested one and they had no animus against the petitioner and A.1, therefore their evidence has to be scrutinized with due care and caution and that there is no independent evidence to prove the allegations against the petitioner, and finally argued to allow the revision case.

10. On the other hand, the learned Public Prosecutor for the State of Telangana argued that the evidence on record clearly established the fact that the petitioner instigated A.1 and demanded dowry from the parents of the *de facto* complainant; that the evidence of PW1 is consistent in respect of giving dowry at the time of marriage to the

petitioner and his brother in the year 1991; that the evidence of PW1 also supported by the independent witnesses like PWs 4 to 8; that the prosecution is able to prove the charges levelled against the petitioner along with A.1 – husband of PW1, and therefore, the findings of both the Courts needs no interference by this Court. The learned Public Prosecutor finally prayed the Court to dismiss the revision case.

11. Now, the point for determination is --

Whether the prosecution could bring home the guilt of the petitioner for the offences punishable under Section 498-A IPC and Section 4 of D.P. Act?

12. **POINT:**

Before going into the merits of the case, provisions of law is to be seen with which the revision petitioner/A.2 was convicted:

Section 498-A IPC reads thus:

“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.
Explanation.—For the purpose of this section, “cruelty” means —

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

Section 4 of D.P. Act reads thus:

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.

13. A perusal of the oral and documentary evidence produced by the prosecution, there is no dispute about the relationship that A.1 is the husband of PW1 and A.2 is the brother of A.1, and A.2 is the petitioner herein. It is also an admitted fact that the marriage of the *de facto* complainant with A.1 was performed on 12.10.1991 and they were blessed with a daughter by name Manisha.

14. The main contention of the *de facto* complainant is that with the instigation of revision petitioner/A.2, A.1 used to demand dowry and used to beat her. Except the oral testimony of PW1, the other witnesses' evidence is hearsay evidence as they were not present when the revision petitioner instigated the husband of the *de facto* complainant regarding demand of dowry and harassment. The evidence of Investigating Officer (PW9) is relevant, who categorically stated in his evidence that PW2 in his Section 161 Cr.P.C. statement not stated about giving dowry of Rs.30,000/- to the revision petitioner in the year 2002-2003 and he also not stated before police that the accused demanded Rs.50,000/- and he gave Rs.20,000/- to the revision petitioner/A.2. PW9 – Investigating Officer also stated that PW6 not stated in his Section 161 Cr.P.C. statement specifically that Rs.30,000/- was given to revision petitioner/A.2. Therefore, the evidence of elders cannot be considered. There is no direct evidence to prove the demand made by the revision petitioner to the parents of the *de facto* complainant/PW1.

15. In the absence of specific evidence, the prosecution not able to prove that the revision petitioner committed the offences

punishable under Section 498-A IPC and Section 4 of D.P. Act beyond all reasonable doubt.

16. Accordingly, the Criminal Revision Case is allowed. Conviction and sentence passed in C.C.No.367 of 2006 on the file of the Judicial First Class Magistrate, Janagaon as confirmed in Criminal Appeal No.136 of 2006 on the file of the IV Additional Sessions Judge, Warangal in respect of revision petitioner/A.2, is set aside and the bail bond of the revision petitioner/A.2 shall stand cancelled. The revision petitioner herein is also entitled for refund of the fine amount.

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

ANIS, J

Date: 30.01.2015

Anr