

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.153 OF 2008

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 09.08.2005, passed by the II Additional District & Sessions Judge, (Fast Track Court), Adilabad in Criminal Appeal No.62 of 2004, whereunder and whereby the conviction and sentence passed against respondent No.1 herein for the offence punishable under Section 498-A of the Indian Penal Code (for short, 'I.P.C') vide the judgment dated 16.08.2004 in C.C.No.505 of 2002 by the Judicial Magistrate of First Class, Adilabad, was set aside.

2. The revision petitioner herein is the *de facto* complainant, whereas respondent Nos.1 & 2 are accused No.1 and State respectively in C.C.No.505 of 2002 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 brief facts of the case are that the *de facto* complainant is the legally wedded wife of accused No.1 and their marriage was performed about 20 years back. During their wedlock, they were blessed with four children. Accused No.1 used to harass the *de facto* complainant on the instigation of his brother-accused No.2 and his uncle-accused No.3 to get additional dowry of Rs.50,000/- from her parents. When she expressed her inability, all the accused harassed her both mentally and physically, on 07.04.2002 at 8:00 p.m accused No.1 picked up a quarrel with the *de facto* complainant and mercilessly beat and necked her out from the house and since then, she and her children were staying with her parents at Adilabad. Basing on the complaint given by the *de facto* complainant on 19.04.2002, the

Investigating Officer registered a case in Cr.No.82 of 2002 for the offences punishable under Section 498-A of I.P.C and Sections 3 & 4 of the Dowry Prohibition Act, 1961, and after completion of investigation, he filed charge sheet against the accused.

4. The learned Judicial Magistrate of First Class took cognizance of the case and framed a charge for the offence punishable under Section 498-A read with 109 of I.P.C against the accused. During trial, on behalf of the *de facto* complainant, PWs.1 to 5 were examined and Exs.P1 & P2 were got marked.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C and after hearing arguments and after perusing the record, the learned Magistrate convicted accused No.1 alone for the offence punishable under Section 498-A I.P.C and sentenced him to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1,000/-. In default of payment of fine, he is further sentenced to undergo Simple Imprisonment for a period of two months. The learned Magistrate further acquitted accused Nos.2 & 3 who are the brother and uncle of accused No.1 for the offence punishable under Section 498-A read with 109 I.P.C.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused No.1 preferred Criminal Appeal No.62 of 2004 before the II Additional District & Sessions Judge, (Fast Track Court), Adilabad, where the Appellate Court after considering the evidence on record held that the trial Court erred in appreciating the evidence properly and came to an erroneous conclusion that accused No.1 committed the offence punishable under 498-A I.P.C and allowed the appeal by acquitting him and setting aside the judgment of the trial Court.

7. Being aggrieved by the judgment of the Appellate Court passed in

Criminal Appeal No.62 of 2004, the *de facto* complainant preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/*de facto* complainant argued that there is no dispute of the marriage between the *de facto* complainant and accused No.1, which occurred about 20 years back and that they were blessed with four children; that the first respondent in order to marry for the second time, started harassing the *de facto* complainant for additional dowry and also coerced her to sign on the stamp papers giving her consent to marry for the second time; that the Appellate Court has not considered the evidence of PWs.1 to 3 properly and also not considered the independent evidence of PW.4; that on 07.04.2002, accused No.1 beat the *de facto* complainant and necked her out from the house with her children and from that day onwards, she was staying with her parents and prayed the Court to allow the appeal and convict accused No.1.

9. On the other hand, the learned counsel appearing for respondent No.1/accused No.1 argued that the *de facto* complainant was already divorced and she admitted this fact in M.C.No.21 of 2002, and therefore question of harassing the *de facto* complainant and necking her out from the house on 07.04.2002 does not arise; that the evidence of prosecution clearly shows that the parents of the *de facto* complainant have no capacity to give any dowry and accused No.1 is paying maintenance to his children as per the directions of the Lok Adalath. It is also argued that accused No.1 divorced the *de facto* complainant on 16.04.2002 before she lodged the complaint with the police on 19.04.2002; that in the evidence of PW.2, who is the mother of *de facto* complainant, clearly stated that on 13.03.2002, the *de facto* complainant gave a complaint to the Masjit Committee stating that accused No.1 beat the *de facto* complainant and sent her out of the house. This admission clearly established that accused No.1 has not beat the *de facto* complainant

on 07.04.2002 and the contents of the complaint are false. As such, the Appellate Court rightly held that the prosecution failed to establish that accused No.1 harassed the *de facto* complainant and that finding needs no interference of the Court and prayed the Court to dismiss the revision petition.

10. Now, the point for determination is --

Whether the prosecution could bring home the guilt of accused No.1 for the offence punishable under Section 498-A of I.P.C with which he is charged?

11. **P O I N T:** Before going in to the merits of the case, it is to be seen whether Section 498-A I.P.C will apply to this case. Section 498-A I.P.C reads as follows:

498-A. 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 purposes 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.

12. As per the evidence on record, there is no dispute of the fact that about 20 years back, prior to 19.04.2002, the *de facto* complainant and accused No.1 were married and they had four children. It is the case of the *de facto* complainant that on 07.04.2002 at about 8:00 p.m, accused No.1 picked up a quarrel with her demanding additional dowry of Rs.50,000/- and as she was unable to pay the said amount, she was mercilessly beat by accused No.1 and also necked out from the house.

13. PWs.1 to 3 deposed about the fact of harassment made by accused No.1 on the *de facto* complainant. As per the evidence of PW.2-mother of PW.1, *de facto* complainant and her children were

staying in her house and the evidence of PW.1 also corroborated that by 14.03.2002, she was residing at her parents' house. Therefore, the fact that on 07.04.2002, accused harassed and beat the *de facto* complainant cannot be believed. It is no doubt that the *de facto* complainant was divorced on 16.04.2002 and the same was published in the newspaper and accused No.1 filed the documents during the examination under Section 313 Cr.P.C and after publication of the said fact about divorce in Urdu Daily on 19.04.2002, the *de facto* complainant approached the police and gave a complaint under Ex.P1 on the same day. There is no independent evidence on record to show that accused No.1 beat and harassed the *de facto* complainant. The evidence of PW.3 is interested one.

14. Admittedly, the *de facto* complainant was the wife of accused No.1 filed maintenance case M.C.No.7 of 2002 for her four children and the matter was settled before the Lok Adalath and accused No.1 agreed to pay maintenance to his four children.

De facto complainant also filed M.C.No.21 of 2004 in which she admitted about divorce given by accused No.1. The Appellate Court after considering the evidence of PWs.1 & 2 held that the *de facto* complainant was residing with her parents even prior to Ex.P1 complaint. Therefore, the evidence of PW.1 that accused No.1 beating her and driving her out from the matrimonial house on 07.04.2002 cannot be accepted.

15. In M.C.No.21 of 2004, *de facto* complainant clearly mentioned that the accused No.1 divorced her. It is settled law that a divorced woman cannot be considered as wife. In these circumstances, it is clear that the *de facto* complainant was not the wife of accused No.1 by the date of giving complaint under Ex.P1 on 19.04.2002. Therefore, after considering the evidence on record, the Appellate Court rightly acquitted accused No.1 of the charge punishable under Section 498-A

I.P.C and the finding of the Appellate Court in Criminal Appeal No.62 of 2004 needs no interference. Further, the State has not preferred any revision against the orders of the Appellate Court in Criminal Appeal No.62 of 2004 dated 09.08.2005. Therefore, I am of the view that the revision case is devoid of merits and is liable to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 09.08.2005, passed by the II Additional District & Sessions Judge, (Fast Track Court), Adilabad, in Criminal Appeal No.62 of 2004.

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

ANIS, J

Date: 22.01.2015

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