

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.281 OF 2008

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ORDER:
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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 calendar and judgment dated 10.10.2006, passed by the Judicial Magistrate of First Class, Rajampet, in C.C.No.46 of 2002.

2. The revision petitioner herein is the *de facto* complainant, respondent No.1 is the State and respondent Nos.2 to 6 are accused Nos.1 to 5 in C.C.No.46 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 Assistant Sub-Inspector of Police received a complaint from the *de facto* complainant on 03.01.2002 at about 9:00 p.m, wherein the *de facto* complainant stated that her marriage with accused No.1 was performed on 19.04.1987 and they were blessed with three children. About 1½ year prior to 03.01.2002, accused No.1 on the instigation of accused Nos.2 to 5 harassed the *de facto* complainant to get more dowry and use to beat her. The *de facto* complainant further stated that at the time of Ramzan festival, accused No.1 scolded her and her parents, and also beat her with chappel 15 times on her head. Further on 03.01.2002 morning, accused scolded the *de facto* complainant in filthy language and demanded her to get Rs.50,000/- as additional dowry and 10 tulas of gold. After receiving the complaint, PW.5 registered the case in Cr.No.1 of 2002 for the offence punishable under Section 498-A read with 34 of I.P.C and under Sections 3 & 4 of the Dowry Prohibition Act, 1961. The Investigating Officer recorded the statements of all the

witnesses and after completion of investigation, he filed charge sheet into the Court.

4. The learned Judicial Magistrate of First Class, Rajampet, took cognizance of the case and framed a charge for the offence punishable under Section 498-A of I.P.C against all the accused. During trial, on behalf of the *de facto* complainant, PWs.1 to 5 were examined and Exs.P1 to P3 were got marked.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposed against them. The Accused denied the incriminatory material and reported no oral or documentary evidence on their behalf. After hearing arguments and after perusing the record, the learned Magistrate acquitted all the accused for the offence punishable under Section 498-A read with 34 of I.P.C.

6. Aggrieved by the conviction and sentence passed by the trial Court, the *de facto* complainant preferred the present revision case.

7. The learned counsel appearing for the revision petitioner/*de facto* complainant argued that the first respondent started harassing the *de facto* complainant in the year 2000 when the marriage of her second sister was performed, wherein her father gave dowry and other items to her sister; that the trial Court ought to have convicted the accused instead of acquitting them holding that PWs.3 & 4 turned hostile and they did not support the prosecution case; that the evidence of PWs.1 & 2 is consistent, cogent and in their cross-examination, nothing has been elicited to disprove their case; that in the absence of independent evidence, the evidence of the victim is sufficient to record the conviction and prayed the Court to allow the revision case.

8. On the other hand, the learned counsel appearing for respondent

Nos.2 to 6/accused Nos.1 to 5 argued that first respondent was working in military when his marriage with the *de facto* complainant was taken place; that she stayed with her parents for about a considerable time and after retirement, when accused No.1 asked her to stay with him in a village, she refused to stay with him and wanted to stay with her parents, which is situated in an urban place; that there is no harassment made by accused No.1 and *de facto* complainant also failed to prove the evidence of date and time of demanding dowry; that the *de facto* complainant has not given any complaint to the police, whereas her brother-in-law, who is an Advocate, gave a complaint and he also wrote the Case Diary file to prove the case of the *de facto* complainant; and therefore, there are no grounds to interfere with the findings of the trial Court, which are based on the oral and documentary evidence and prayed the Court to dismiss the revision case.

9. Now, the points for determination are --

1. Whether the prosecution could bring home the guilt of the accused for the offence punishable under Section 498-A read with 34 of I.P.C, with which they are charged?
2. Whether the revision petitioner has made out any case to set aside the judgment dated 10.10.2006, passed by the Judicial Magistrate of First Class, Rajampet, or not?

10. **POINTS:** A perusal of the oral and documentary evidence shows that marriage of the *de facto* complainant with accused No.1 took place on 19.04.1987 and they were blessed with three children. Accused Nos.2 to 5 are related to Accused No.1 as mother-in-law, sister-in-laws and brother-in-laws. At the time of marriage, Accused No.1 was working in Army. In the year 1997, he retired from Army and was staying in his village by doing agriculture work.

11. The main contention of the revision petitioner/*de facto* complainant is that when her sister's marriage was performed in the year 2000 and when her father gave more dowry to her sister, from

that day onwards, accused No.1 on the instigation of accused Nos.2 to 5 started demanding additional dowry of Rs.50,000/- and 10 tulas of gold. It is the case of the revision petitioner/*de facto* complainant that, as she failed to bring the additional dowry and gold, accused No.1 started beating and abusing her in filthy language.

12. The *de facto* complainant to prove her case was examined as PW.1 and her father was examined as PW.2. They had supported the case of prosecution. PWs.3 & 4, who are the independent witnesses, not supported the prosecution case and turned hostile. PW.5 is the Investigating Officer, who registered the case and recorded the statements of the witnesses and filed charge sheet into the Court.

13. PWs.3 & 4 are the eye witnesses for the occurrence and they have personal knowledge about the case of the *de facto* complainant-PW.1. But, they had not supported the prosecution case and there is no complaint made by the *de facto* complainant about the harassment till 2000 from 1987, when her marriage was performed with accused No.1. Even the evidence of PWs.1 & 2 is silent about the acts of harassment and also dates when the accused harassed her, when the accused beat on her head with the chappel for 15 times and there is no evidence on record to show the date and time of demanding the dowry by accused No.1. The contention of the learned counsel for respondent Nos.2 to 5/accused is that PW.1 has not made any complaint and her brother-in-law, who is an Advocate, gave a compliant and he himself wrote the Case Diary. The evidence of PW.5 is relevant to show that he admitted in the cross-examination that he registered the complaint after receiving the same from the *de facto* complainant. He also admitted that the hand writing in Case Diary file is different from that of in the First Information Report. PW.5-Investigating Officer also admitted in his evidence that he has not recorded the statements of PWs.1 to 4 and one Shaik Md. Ghouse

(LW.5). The trial Court after considering the evidence of PW.5 held that prosecution failed to explain why such differences arose and also held that the evidence of PW.1 is not sufficient to prove the harassment made by the accused for additional dowry and gold.

Therefore, I am of the view that the trial Court basing on the oral and documentary evidence, rightly acquitted the accused and the said finding needs no interference of this Court.

14. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 10.10.2006, passed by the Judicial Magistrate of First Class, Rajampet, in C.C.No.46 of 2002.

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

ANIS, J

Date: 04.02.2015

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