

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.200 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 calendar and judgment dated 04.09.2006, passed by the II Additional Judicial Magistrate of First Class, Nellore, in C.C.No.1058 of 2002.

2. The revision petitioner herein is the *de facto* complainant, respondent No.1 is the State and respondent Nos.2 to 4 are A.1 to A.3 in C.C.No.1058 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 marriage of the *de facto* complainant with A.1 was performed on 05.06.2002 and at the time of marriage, her parents presented Rs.50,000/- cash as dowry along with other articles, spent Rs.60,000/- towards marriage expenses, and also gave 15 sovereigns of gold to PW.1. After the marriage, PW.1 joined the house of A.1 to A.3 and led happy marital life for three months. Thereafter, father of A.1 died and A.1 to A.3 started harassing PW.1. When PW.1 was carrying 9th month pregnancy, A.1 to A.3 deliberately made her to starve by not providing food in their house. After giving birth to a male child, PW.1-*de facto* complainant went to the house of her in-laws, where A.1 with active instigation of A.2 & A.3 started harassing the *de facto* complainant mentally and physically and demanded additional dowry of Rs.50,000/- . Due to unbearable harassment, she lodged a complaint with V Town Police Station, Nellore, against A.1 to A.3. Later, the accused effected compromise with PW.1 through negotiations. Thereafter, PW.1 and A.1 set up a separate family, but there also A.1 with active instigation of

A.2 & A.3, harassed PW.1 continuously without providing food and thereafter, PW.1-*de facto* complainant decided to end her life by committing suicide near the railway track. A.1 brought her back to the house and beat her indiscriminately and she informed these facts to her parents, who took her to their house. After receiving the complaint, the Investigating Officer registered the case and investigated the matter. During the course of investigation, he recorded the statements of all the witnesses and after completing the investigation, filed charge sheet into the Court.

4. The learned II Additional Judicial Magistrate of First Class, Nellore, took cognizance of the case and framed charges for the offences punishable under Sections 498-A of I.P.C and Sections 3 & 4 of the Dowry Prohibition Act, 1961 (for short 'the Act') against all the accused. During trial, on behalf of the *de facto* complainant, PWs.1 to 5 were examined and Exs.P1 & P2 were got marked. Exs.D1 & D2 were marked during the cross examination of PWs.1 & 3.

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 held that the evidence of the *de facto* complainant was not supported by the evidence of other witnesses regarding the harassment made by the accused to the *de facto* complainant; and that only PW.4 was examined as independent witness and as per his evidence, he does not know anything personally, he came to know about the demand of dowry and harassment from the parents of the *de facto* complainant. The trial Court also gave a finding that the evidence of PWs.1 to 3 does not disclose that PW.1 was harassed by the accused for demand of additional dowry and on the other hand, the

evidence available on record disclosed that there was no demand of dowry by the accused and dismissed the case by acquitting all the accused for the offences with which they were charged.

6. Aggrieved by the acquittal order 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 trial Court has not believed the evidence of PWs.1 to 3, who categorically stated about the harassment and the demand of additional dowry by the accused; that the evidence of PWs.1 to 3 is consistent and their evidence clinchingly proved that accused committed the offences punishable under Sections 498-A I.P.C and Sections 3 & 4 of the Act and prayed the Court to set aside the judgment of the trial Court and remand back the matter for fresh consideration.

8. On the other hand, the learned counsel appearing for respondent Nos.2 to 4/A.1 to A.3 argued that after considering the evidence on record, the trial Court rightly held that PWs.1 to 3 have not stated about the harassment made by the accused; that PW.4 is the important independent witness. her evidence is hearsay evidence and it cannot be believed; that the prosecution is not able to prove any of the ingredients of the offences punishable under Section 498-A I.P.C and Sections 3 & 4 of the Act, therefore prayed the Court to dismiss the revision case.

9. Now, the point for determination is:

Whether the revision petitioner herein is entitled to set aside the judgment dated 04.09.2006 passed by the trial Court in C.C.No.1058 of 2002, as prayed for or not?

10. **P O I N T:** A perusal of the record shows that though PW.1 stated that A.1 at the instigation A.2 & A.3 harassed and beat her, it

was not corroborated by any other evidence. PW.1 admitted that she gave a report to police before woman Police Station and she filed this complaint when the police came to conclusion that her report was false. Further, PWs.2 & 3, who are the mother and brother of PW.1, in their evidence has not stated about the harassment made by the accused to PW.1. Though PWs.1 to 3 has stated that the marriage of PW.1 with A.1 was performed by giving dowry and other articles, it was not supported by any other evidence. PW.4 is the independent witness and according to her, she came to know about the harassment of PW.1 and she also came to know from PW.1 that they have presented Rs.50,000/- cash to the accused at the time of marriage. Therefore, PW.4 being an independent witness, had not given evidence regarding the harassment made by the accused to PW.1. PW.5 is the investigating officer. His evidence was not believed by the trial Court on the ground that the investigation is a table investigation and he was unable to produce the Part-I Case Diary and the Investigating Officer has not examined the independent witnesses to prove the alleged harassment meted out by PW.1 in the hands of the accused.

11. A perusal of the record further shows that A.1 was already granted divorce on the ground of cruelty by the Principal Senior Civil Judge, Nellore, in O.P.No.85 of 2002. The said O.P was filed by A.1 against the *de facto* complainant on the ground that PW.1 and her family members are harassing him and he was subjected to cruelty. The said Court granted divorce in favour of A.1. Even the evidence of PW.3-brother of PW.1 is also not sufficient to prove that accused harassed the *de facto* complainant. Considering the evidence on record, the trial Court rightly dismissed C.C.No.1058 of 2002 and held that A.1 to A.3 are not guilty of the offences punishable under Sections 498-A I.P.C and Sections 3 & 4 of the Act and therefore, I am of the view that the revision petitioner has not made out any ground to interfere with the findings of the trial Court and the revision is devoid of

merits and liable to be dismissed.

12. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 04.09.2006, passed by the II Additional Judicial Magistrate of First Class, Nellore, in C.C.No.1058 of 2002.

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

ANIS, J

Date: 19.03.2015

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