

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.779 of 2009

JUDGMENT:

1. This revision is filed by the petitioner-A1 against the Judgment dated 7.5.2009 passed by the II Additional Sessions Judge, Nalgonda at Suryapet in CrI.A.No.75 of 2007.

2. The case of the prosecution is as follows:

On 25.6.2004 at 6 p.m., the de facto complainant, who is the wife of the petitioner herein, lodged a complaint stating that her marriage with the petitioner was performed on 22.5.1996. At the time of marriage, her parents gave Rs.1,50,000/- cash as dowry and after marriage, she joined with the petitioner and lead marital life at Nakrekal and Chittapuram village of Valigonda Mandal. She was blessed with two female children. After giving birth to the second female child, the petitioner started harassing her by saying that she gave birth to two female children. He insisted her to give consent for second marriage or to pay one lakh rupees as additional dowry. Her in laws, sister-in-law and her husband's maternal uncle beat her by demanding to bring additional dowry or otherwise they would perform second marriage to her husband. They threatened and sent her out from their house and as such, she is residing at her parents' house in Suryapet. Basing on the said report, a case was registered against the petitioner and her relations-A2 to A5. After completion of the investigation, charge sheet was filed against A1 to A5.

3. The learned Judicial Magistrate of First Class, Suryapet took the same on file as C.C.No.186 of 2005 for the offence under Section 498-A IPC. The learned Magistrate framed a charge under Section 498-A IPC against A1 to A5, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 6 were examined and Exs.P1 and P2 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of both oral and documentary evidence, the trial Court found the petitioner-A1 guilty for the offence under Section 498-A IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months, while acquitting A2 to A5. Aggrieved by the conviction and sentence imposed by the trial Court, the petitioner-A1 filed appeal in Crl.A.No.75 of 2007 before the II Additional Sessions Judge, Nalgonda at Suryapet and the said appeal was dismissed. Hence, the petitioner-A1 filed this revision.

6. Learned Counsel for the petitioner submitted that all the witnesses are interested one and there is no independent evidence to establish that the petitioner subjected the de facto complainant for additional dowry. He further submitted that the de facto complainant herself deserted the petitioner in the year 2001 and in spite of several efforts to pacify the matter, the de facto complainant did not join him and hence, he filed OP for divorce in the year 2001 whereas, the de facto complainant filed a maintenance case in the year 2001 itself. After filing these two cases by the husband and wife respectively and after a long lapse of 4 years, in the

year 2005, she lodged the present complaint with false allegations for the reasons best known to her and that the Courts below failed to appreciate these circumstances while considering the evidence in a proper perspective. He further added that the trial Court has no jurisdiction to try the case at Suryapet as both the petitioner and his wife last resided at Nakrekal.

7. Learned Additional Public Prosecutor submitted that both the Courts below appreciated the evidence in a proper perspective and convicted the petitioner and that there are no grounds to interfere with the judgment under revision.

8. The offence alleged against the petitioner is cruelty under Section 498-A IPC. In a case of this nature, the evidence of the wife is very significant. It is to be examined as to whether the evidence of wife-P.W.1 inspires any confidence of this Court.

9. P.W.1-wife of the petitioner deposed that after marriage, she joined the company of the petitioner. She was blessed with one female child in the year 1998. While she was carrying pregnancy for the second time, the petitioner took her for scanning and when it was confirmed that she was carrying female child, the accused started harassing her. A1 used to beat her by causing mental torture. He intended to marry her younger sister and he forced to accept the same. The petitioner and other accused sent her out from their house. In the month of February, 2001, while she was carrying pregnancy of her second daughter, she came back to her parents' house. After delivery, the accused did not come to see the child. After four months of her delivery of her second daughter, she took L.Ws.2 to 5 to the house of the accused to settle the matter. But she was again necked out from the house. She waited till 2003 for change in the attitude of the petitioner and

she came to know that the petitioner contacted second marriage with one Hemalatha. Then, she lodged a complaint. In the cross-examination, she admitted that he knew that A1 filed a divorce petition in the year 2001 for divorce.

10. P.W.2-father of P.W.1 deposed that while P.W.1 was carrying second time pregnancy, the petitioner took her for scanning and when it was found that P.W.1 was carrying female child, he beat P.W.1 indiscriminately and sent her out from his house. The accused demanded additional dowry through P.W.1. After delivery, P.W.1 along with her children and L.Ws.4 and 5 went to the house of the accused. But they did not allow her and demanded additional dowry. Then, P.W.1 came back with P.W.1 to his house and since then, she has been residing in their house and after three years, P.W.1 lodged the complaint. During the said three years, they were sending P.W.1 to the house of the accused to lead marital life. But again the accused sent back.

11. P.W.1 deposed that A1 proposed to marry her younger sister for which she refused and she further added that A1 contacted second marriage with some other lady and therefore, she filed this case whereas, P.W.2, who is no other than the father of P.W.1, did not whisper anything in this regard. Therefore, it can be said that the said allegation is nothing but an improvement.

12. P.W.3-mother of P.W.1 deposed that while P.W.1 was carrying second time pregnancy, the petitioner took her for scanning and when it was found that P.W.1 was carrying female child, he expressed his intention to contract a second marriage and that the petitioner started harassing P.W.1 for want of additional dowry of one lakh on account of two female

children. After delivery, P.W.1 along with her children and L.Ws.4 and 5 went to the house of the accused. But they did not allow her and demanded additional dowry. Then, P.W.1 came back with her children to their house and since then, she has been residing in their house and as the petitioner contacted second marriage, P.W.1 lodged the complaint.

13. P.W.4-Boddu Buchaiah deposed that he knew A1 and P.Ws.1 to 3. P.W.1 was blessed with two female children. As P.W.1 gave birth to two female children, A1 refused to maintain her and beat her and necked out from the house. P.W.1 came back to her parents' house on demand by A1 to bring additional dowry of Rs.1,00,000/-. After two or three months, they went to Nakrekal with P.Ws.1 to 3 and L.W.5 and tried to pacify the matter with the accused. A1 demanded Rs.1,00,000/- as additional dowry.

14. P.W.5-Boddu Saidulu deposed in the same manner as spoken to by P.W.4. P.W.6 is the police official.

15. Coming to the cross-examination of the above witnesses, their testimony is not consistent and corroborative. In the complaint, P.W.1 did not mention about the mediation of elders and about the intention of the petitioner to contact a second marriage with her younger sister and about the scanning of second time pregnancy. On one hand, she deposed that the accused demanded additional dowry and on the other, she deposed that the accused intended to contact another marriage. But her version is not supported by P.Ws.2, 4 and 5. Except stating that the accused demanded additional dowry as P.W.1 gave birth to female children, P.Ws.2, 4 and 5 did not speak about the issue of second marriage. Further, P.W.1 stated in her evidence that when she went to the house of the accused along with P.Ws.4 and 5, the accused did not allow her and

they beat her. But, the other witnesses did not speak that the accused beat her in their presence.

16. It is pertinent to note that mere demand for dowry is not an offence punishable under Section 498-A IPC. The said Section attracts only when cruelty was made on account of non-compliance of the dowry. Except saying that the petitioner subjected her to cruelty, P.W.1 did not speak as to the manner, in which she was subjected to cruelty, and the specific instances of such cruelty. Admittedly, P.W.1 has been living in the house of her parents since 2001 and the petitioner filed OP in the year 2001 itself for divorce. She also filed maintenance case in the year 2001 itself. If the petitioner subjected P.W.1 to cruelty as alleged by her in her evidence, it is not known as to what prevented her from lodging the complaint, even after failure of the alleged attempts made by the elders. The above circumstances coupled with the silence on the part of P.W.1 continuously for a period of 4 years after filing of O.P. for divorce by the petitioner and M.C for maintenance by P.W.1 in the year 2001, itself, lead to draw an adverse inference against P.W.1 that she has not come to the Court with clean hands.

17. In the circumstances, this Court is of the view that both the Courts below have failed to appreciate the above circumstances in proper perspective and therefore, the findings of both the Courts below suffer from perversity. Hence, the Judgments of both the Courts below are liable to be set aside.

18. In the result, the conviction and sentence imposed by the Courts below against the petitioner-A1 for the offence under Section 498-A IPC are set aside. Consequently, the petitioner-A1 is acquitted for the said charge.

The fine amount paid, if any, shall be refunded to the petitioner. Bail bonds shall stand cancelled.

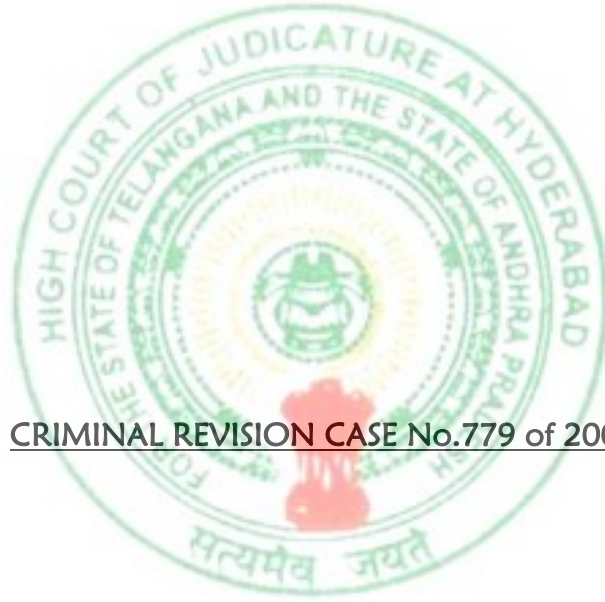
19. Accordingly, the Criminal Revision Case is allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated: 14.11.2016
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