

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASES NO.1998 OF 2006 & 959 OF 2007
&
CRL.R.C.M.P.Nos. 2223 of 2010 & 2986 of 2015

COMMON JUDGMENT:

1. The judgment challenged in the above two Criminal Revision Cases and the parties therein, are one and the same. But the above two revision cases have been filed by one and the same petitioner challenging the same judgment passed in Crl.A No:85 of 2002 on the file of the III Additional District and Sessions Judge, Nellore, dated 4.4.2006. Therefore, Crl.R.C.1998 of 2006 is taken up for consideration for adjudication of the issue.

2. The case of the petitioner is as follows:

P.W.1 is the wife of the accused and both are employees. As per the case of the prosecution, P.W.1 has been working as a teacher whereas the accused has been working in Judicial Department by the time of their marriage. The marriage of P.W.1 with the accused took place on 1.5.1987 at Sullurpet. They started their marital life at Gudur by which time, P.W.1 has been working as a teacher at Bodanam village whereas the accused is working in the Court of Judicial Magistrate of First Class, Sullurpet. Out of their wedlock, P.W.1 was blessed with two daughters. Thereafter, the accused started harassing P.W.1 since 1992 by involving in so many businesses and by developing illicit intimacy with one Prasanna Kumari, advocate. The accused stopped visiting the house of P.W.1. The accused is running chit funds business in the name of his brother and cloth business in the name of his father. Whenever P.W.1 questioned the accused, he used to beat her. Ultimately, P.W.1 lodged a complaint against the accused. On

the basis of the said report, a case was registered and investigated into. After completion of the investigation, charge sheet was filed against the accused. The learned II Additional Judicial Magistrate of First Class, Nellore took the same on file and subsequently, it was transferred to the learned Judicial Magistrate of First Class, Special Mobile, Nellore and the case was numbered as C.C.No.192 of 2000.

3. The trial Court framed a charge under Section 498-A IPC, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 5 were examined and Exs.P1 and P2 were marked on behalf of the prosecution. Exs.D1 to D4-contradictions were marked through P.Ws.3 and 4.

5. On appreciation of both oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 498-A IPC, convicted and sentenced him to undergo simple imprisonment for a period of one and half year and to pay fine of Rs.700/- in default to suffer simple imprisonment for a period of two months. Aggrieved by the same, the accused filed appeal in Crl.A.No.85 of 2002 before the III Additional District & Sessions Judge (FTC), Nellore. The learned Additional District & Sessions Judge allowed the appeal and set aside the conviction and sentence imposed by the trial Court against the accused for the offence under Section 498-A IPC. Aggrieved by the acquittal of the accused, the petitioner-wife filed the above revisions.

6. Learned Counsel for the petitioner submitted that there are no reasonable grounds to reverse the judgment of the trial Court and that the case of the petitioner was proved by examining as many as four witnesses

and that the accused married another woman viz., Prasanna Kumari and got two children through her and that on the complaint of the petitioner, departmental proceedings were initiated and it was proved that the accused contracted second marriage during subsistence of first marriage with the petitioner and that penalty was also imposed. The learned Counsel for the petitioner further submitted that the conduct of the accused itself establishes the case of the petitioner and that the petitioner was subjected to physical and mental harassment in the hands of the accused and that the lower appellate Court has failed to consider all these aspects.

7. Learned Counsel appearing for the 1st respondent-accused submitted that the judgment of the lower appellate Court does not warrant any interference by this Court.

8. Now, the point that arises for consideration is:

“Whether the judgment of the lower appellate Court in Crl.A.No.85 of 2002 suffers from any illegality or perversity warranting interference by this Court?

9. It is the case of the petitioner that she was subjected to harassment by the accused. In a case of this nature, the evidence of wife-P.W.1 plays a significant role for adjudication of the issue involved in this case. Now, it is to be examined as to whether the evidence of P.W.1 inspires confidence of this Court.

10. P.W.1 in her evidence stated that her marriage with the accused was performed in the year 1987 and they lived happily till the year 1995. In the year 1995, while the accused was working at Nellore, he did not visit her house regularly by involving in other businesses under benami transactions and he used to visit her house once in a month. On enquiry,

she came to know that the accused developed illicit intimacy with one Prasanna Kumari. Whenever, she questioned the accused regarding his attitude of visiting her house irregularly and about his illegal contacts, he used to beat her. The accused filed divorce OP against her and the said OP was dismissed for default. After knowing about the OP, she filed the present complaint in the year 1997.

11. In the cross-examination, she admitted that the main problem between them is that the accused had to come down to Nellore to reside along with her. She also used to visit the house of the accused at Sullurpet now and then while she was working at Pallepadu. She visited the house of the accused in the year 1992, 1993 and 1994. She did not visit the house of accused after 1994. She admitted that the accused stopped visiting Nellore where she was working and she stopped going to Sullurpet where the accused was working. She stated in her cross-examination that she does not know whether the accused purchased any site in the name of her eldest daughter at Tada on instalment basis. She voluntarily stated that the accused told her by handing over two chits that he purchased site in the name of her daughter. She did not try to visit the said site. She came to know about the OP filed by the accused prior to filing of the present complaint. She admitted in her evidence that she is a woman of angry and it depends upon the acts of the accused.

12. P.W.2-mother of P.W.1 deposed that till the birth of two children, there were no disputes between P.W.1 and the accused. Subsequently, P.W.1 got transferred to Nellore from Ongole, by which time, the accused used to work at Sullurpet. During the said period, they asked the accused to get transfer to Nellore. But he did not heed to their words by saying that he had to look after his parents. He did not visit Nellore properly and

when P.W.1 used to question the accused, he used to beat P.W.1. In cross-examination, she deposed that P.W.1 got transfer to Nellore at their request. She admitted that they did not make any efforts to settle the issue between P.W.1 and the accused.

13. P.W.3-sister of P.W.1 deposed in the same manner as spoken to by P.W.2. P.W.3 in her cross-examination stated that P.W.1 informed her that after filing of divorce OP by the accused, P.W.1 gave the report to the police and that she gave the report to the police because of filing of divorce OP against P.W.1.

14. P.W.4 is an independent witness. He deposed that he is a scooter mechanic. He has a shop near the house of P.W.1 at Kotamitta. The accused used to visit the house of P.W.1 at Kotamitta often and some galata took place between the accused, P.W.1 and P.W.2 while visiting the house of P.W.1. He does not know the actual facts of the said galata. On one day, P.W.1 enquired him whether the accused was taking any lady on his scooter, for which he told that he saw the accused taking one lady on his scooter.

15. The lower appellate Court acquitted the accused on the following grounds:

- i) P.W.1 stated in her evidence that the accused is having illegal contacts with one lady advocate and when she questioned the accused, he used to beat her, whereas the investigation officer stated that his investigation never revealed any illegal contacts between the accused and the advocate-Prasanna Kumari;
- ii) It is the evidence of P.W.1 that she was subjected to harassment and cruelty in the hands of the accused and during the course of her evidence she stated that she was treated happily in the year

1994 and 1995. Even according to P.W.1, since 1994, there was no communication between P.W.1 and the accused. Therefore, it cannot be believed that P.W.1 was subjected to harassment.

iii) Further, P.W.1 did not speak any single incident, when she was ill-treated by the accused, and she did not speak the manner of harassment and the words uttered by the accused in causing harassment to her;

iv) It is the stand of P.W.1 that she reported the matter on coming to know about the divorce OP filed against her;

v) There are many contradictions and omissions in the evidence of P.Ws.1 to 4.

16. A perusal of the entire material available on record coupled with the judgment of the lower appellate Court, establishes that the petitioner and the accused lived happily from the date of the marriage i.e., 1987 till 1995 and from the year 1995, they used to live separately at their respective working places. The evidence of the mother of the petitioner as P.W.2 also shows that the reason for the differences between the petitioner and the accused, is only due to the failure of the accused to get his transfer to the place of the petitioner and apart from that, the fact that remains undisputed is that the accused used to look after the petitioner with love and affection till 1995. Admittedly, both the parties used to live separately at their respective working places from the year 1995 and therefore, the allegation of dowry harassment attracting the ingredients of Section 498-A I.P.C is omnibus.

17. The FIR in question was registered for the offence under section 498-A I.P.C in the year 1997. The Investigating Officer also stated in his evidence that his Investigation did not reveal as to the illegal contacts between the accused and one Prasanna Kumari. At this stage, it is brought

to the notice of this Court that there is another case in C.C.No:325/2007 for the offence under Section 494 I.P.C.

18. The entire evidence of the witnesses on behalf of the petitioner goes to show that the differences arose between the petitioner and the accused only due to the misunderstandings as well as the gap in communication between them. Such differences cannot be construed as that of the harassment under section 498-A I.P.C as rightly observed by the lower Appellate Court. Therefore, this Court is of the view that the judgment of the lower appellate Court does not suffer from any perversity warranting interference by this Court and accordingly, the above Crl. R.C. No.1998 of 2006 is liable to be dismissed.

19. It is relevant to note that the petitioner filed Crl.R.C. M.P.Nos:2223 of 2010 and 2986 of 2015 seeking to receive the material papers filed along with the said petition as additional evidence. In view of the nature of the offence registered in the instant case, this Court does not find any relevancy to entertain this petition and therefore, the above Crl.R.C.M.Ps are liable to be dismissed.

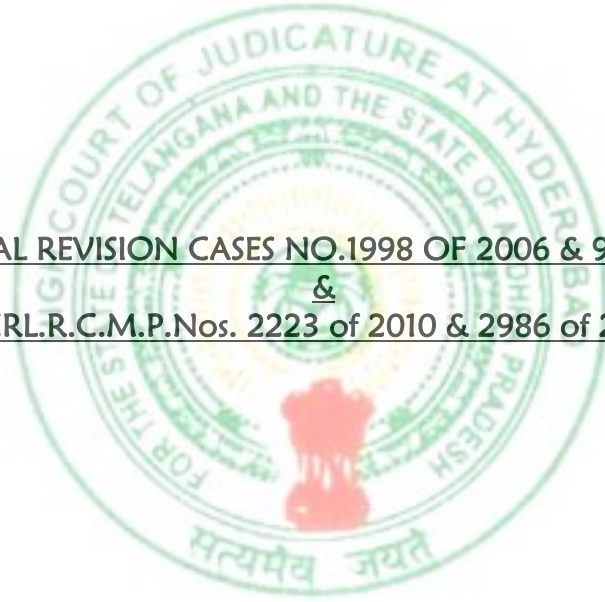
20. Accordingly, Crl.R.C.No:1998 of 2006 is dismissed confirming the Judgment dated 4.4.2006 passed by the III Additional District & Sessions Judge, Nellore, in Crl.A.No:85 of 2002. In view of the dismissal of Crl.R.C.No:1998 of 2006, no orders need be passed in Crl.R.C.No:959 2007 and accordingly, the same is closed. Crl.R.C.M.P.Nos:2223 of 2010 and 2986 of 2015 are dismissed.

RAJA ELANGO, J

Date: 21st November, 2016
Nn

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASES NO.1998 OF 2006 & 959 OF 2007
&
CRL.R.C.M.P.Nos. 2223 of 2010 & 2986 of 2015



Date: 21st November, 2016

Nn