

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1259 of 2009

JUDGMENT:

1. This revision is filed by the petitioner-complainant against the Judgment dated 21.4.2009 passed in S.C.No.16 of 2003 by the Assistant Sessions Judge, Madanapalle, Chittoor District.

2. Brief facts of the case are as follows:

P.W.1-petitioner herein filed a private complaint on 21.9.2001 against respondents Nos.2 to 5 and the same was forwarded to the Station House Officer, II Town Police Station, Madanapalle by the II Additional Judicial Magistrate of First Class, Madanapalle. On such reference, a case in Crime No.114 of 2001 was registered against respondents 2 to 5 for the offence under Sections 498-A, 307, 494 and 494 r/w 109 IPC. After completion of the investigation, the police filed the charge sheet. The learned Magistrate took the case on file against A1 for the offence under Sections 498-A, 494, 307 IPC; against A2 for the offence under Section 494 IPC and against A3 and A4 for the offence under Sections 494 r/w 109 IPC. After following the procedure, the learned Magistrate committed the case to the Court of Sessions, Chittoor Division. The learned Sessions Judge made over the same to the learned Assistant Sessions Judge, Madanapalle for disposal.

3. The trial Court framed charges under Sections 498-A, 494 and 307 IPC against A1; charge under Section 494 IPC against A2 and a charge under Section 494 r/w 109 IPC against A3 and A4, 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 9 were examined and Exs.P1 to P34 were marked on behalf of the prosecution. Exs.D1 to D9 were marked on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court, having found all the accused not guilty for the charges levelled against them, acquitted them. Aggrieved by the same, the petitioner-complainant filed this revision.

6. Learned Counsel for the petitioner submitted that the trial Court having accepted the harassment made by A1 erred in holding that it does not amount to harassment as defined under Section 498-A IPC and that the trial Court disbelieved the relationship of wife and husband between the complainant and A1 and that Exs.P12 to P17 clearly establishes that the petitioner is the wife of A1 and that the trial Court erred in holding that the prosecution failed to prove the marriage between the petitioner and A1. He further submitted that the trial Court has not appreciated the evidence in a proper perspective and that the evidence adduced on behalf of the prosecution clearly establishes the guilt of the accused beyond all reasonable doubt.

7. Learned Counsel appearing for respondents No.2 to 5 submitted that there is no prima facie material on record to connect the accused with the offences alleged and that the findings of the trial Court are on sound footing and they do not warrant any interference by this Court.

8. It is the case of the petitioner that she is working as a teacher. A1 is her husband. A2 is the second wife of A1. The marriage of the petitioner with A1 was performed on 11.3.1990 at Sri Satyanarayana Swamy Temple, Basanikonda

village, Madanapalle. It is a love marriage. Her marital life with A1 was very happy for a period of two years. While the petitioner was working at Kona, Ananthapur of Mailavaram Mandal, A1 was working in Atmakur. The petitioner used to visit A1 occasionally. Later, he was transferred to Hyderabad and Kurnool. Later, A1 developed some sort of intolerance towards her. Till 1999, moderate relation continued between the petitioner and A1. After the death of the brother of the petitioner, A1 used to take the entire salary of the petitioner towards household expenses and he used to pay the subscription amount of Margadarsi also. On 26.2.2000, the petitioner went to Hyderabad to meet A1 and found in his quarter, a number of photographs taken by A1 with A2 along with the child. She took all the documents and handed over the same to her elder sister. When the petitioner questioned A1, he beat her. A few days later, on 4.3.2000 while she was working in Badvel, A1 came to the house of elder sister of the petitioner and quarrelled with the petitioner and demanded to return all the documents, for which she refused. Then, A1 beat her. Later, he went into the bathroom, where kerosene was available and sprinkled it on the body of the petitioner and set fire, as a result of which she sustained burn injuries on her right hand. Immediately, her sister came to her rescue. Later, A1 requested the petitioner to excuse him. She was admitted in hospital and treated as inpatient. Thereafter, A1 went to Hyderabad. The petitioner came to know that A1 married A2 on 25.12.1996 at Tirupati. When she questioned A1, he expressed his desire to live with A2. Till September, 2001, she waited for him and later, she filed a complaint before the police. As they did not take any action, she filed the private complaint.

9. It is the defence of the accused that the marriage of the petitioner was performed in the year 1979 with one Suresh and she gave divorce to him and

she got a daughter through her first husband. Further, it is the defence that A1 and the brother of the petitioner were classmates and A1 used to reside in her house as paying guest. The prosecution failed to prove the marriage in between A1 and the petitioner and the photographs submitted by the petitioner would not establish the fact that the petitioner and A1 are wife and husband and that there was no material on record showing that there was harassment by A1 and any demand of dowry and therefore, the ingredients of Section 498-A IPC would not attract. It is further contended that A2 is a divorcee and she developed acquaintance with A1 and the factum of marriage between A1 and A2 was not established by the prosecution. Therefore, the offence under Section 494 IPC would not attract. Insofar as the offence under Section 307 IPC is concerned, the alleged incident took place on 4.3.2000. But the complaint was lodged in the year 2001. The delay in lodging the complaint would falsify the version of the petitioner.

10. Insofar as the offence under Section 498-A IPC is concerned, from the material on record, it is apparent that even according to the petitioner, her marriage was performed 13 years prior to the date of the complaint. After a period of 13 years, she alleged that her husband used to harass her from the beginning. According to her, on 26.2.2000 she went to the quarters of A1 and found a bunch of photographs and letters, which would disclose relationship of A1 with A2. But there was no proper explanation for the delay in lodging the complaint in the year 2001. Further, it is evident that the prosecution filed Ex.P3-marriage certificate issued by the Registrar of Marriage Mulbagal dated 18.8.1992. According to the petitioner, the marriage was performed in Sri Satyanarayana Swamy Temple at Madanapalle. But the prosecution failed to explain as to why the marriage was not registered at Madanapalle. The accused denied the genuineness of the said certificate. It is contended by the

petitioner that in L.I.C. policies and GPF policies, A1 nominated her as wife. Mere mentioning the name of the petitioner in the policies is not sufficient to prove the relationship of wife and husband. Therefore, the trial Court disbelieved the marriage between the petitioner and A1. There is no cogent material with regard to the marital relationship of P.W.1 with A1. Further, except stating that A1 harassed her, she did not specifically state the manner in which she was subjected to harassment and on which date and time, she was subjected to harassment. In the above circumstances and in the absence of sufficient proof of marriage between A1 and the petitioner, it can be said that the acquittal of the accused for the offence under Section 498-A IPC does not warrant any interference.

11. Insofar as the offence under Section 494 IPC is concerned, there was no sufficient material to prove the second marriage of A1 with A2. According to the case of the prosecution, P.Ws.5 and 6 are the eye witnesses to the second marriage of A1 with A2. But they turned hostile. Further, P.Ws.5 and 6 are the class mates of P.W.1. If really, the second marriage would have taken place, they would have certainly supported P.W.1. As there was no convincing material on record with regard to the alleged second marriage, the trial Court acquitted the accused for the offence under Section 494 IPC.

12. Insofar as the offence under Section 307 IPC is concerned, no material was placed before the Court below as to how P.W.1 sustained burn injuries. If really, A1 sprinkled the kerosene on the body of P.W.1 as alleged by the prosecution, P.W.2, who is the wife of the brother of P.W.1, who is practicing as an advocate, and who is present at the time of the alleged incident, would not have kept quiet as rightly observed by the trial Court. Therefore, the evidence of the prosecution witnesses in this regard creates a doubt.

13. The trial Court has given reasonable findings for acquitting the accused. After going through the findings of the trial Court, this Court is of the view that the judgment of the trial Court does not warrant any interference by this Court.

14. Accordingly, the Criminal Revision Case is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

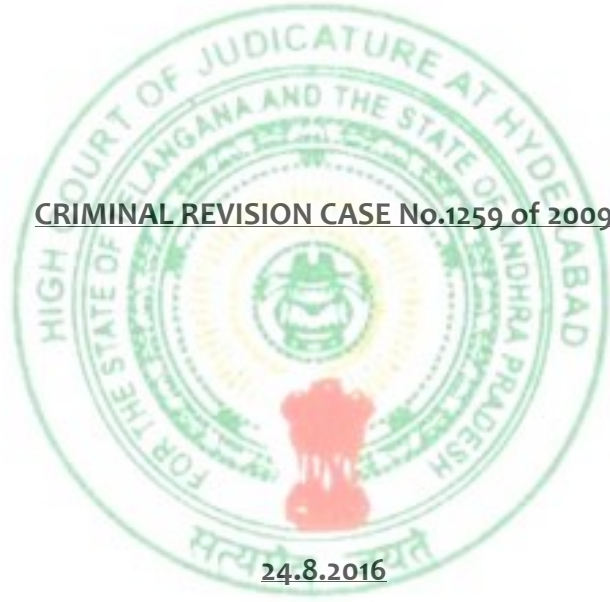
JUSTICE RAJA ELANGO

Dated:24th August, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO



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24.8.2016

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