

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1953 of 2006

ORDER:

The Petitioner-Accused No.1 preferred the present Criminal Revision Case by invoking the provisions under Section 397 and 401 of the Code of Criminal Procedure, being aggrieved by judgment, dated 24.11.2006, passed in CrI.A. No.06 of 2006 by the II-Additional Sessions Judge, Warangal, whereby the learned Sessions Judge confirmed the conviction and sentence imposed against the petitioner by the Special Judicial Magistrate of First Class for PCR Cases, Warangal, in CC No.290 of 2004 vide judgment, dated 28.12.2005, wherein the learned Magistrate convicted the petitioner for the offence punishable under Section 498-A IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- in default, to suffer simple imprisonment for one month.

The case of the prosecution, as recorded by the appellate Court, is as follows:

“About ten years prior to 2001, the marriage of the PW1/ Bejjanki Revathi was performed with the accused by PW2/ Kasula Raja Narasaiah, who is the father of the victim. After the marriage, PW1 and the accused lived happily for seven years and they were blessed with one daughter and one son. Subsequently, the accused started harassing PW1 by beating her on the pretext that she is black and not looking fair and also by making unlawful demand for additional dowry amount of Rs.1,00,000/- . The accused had developed illicit intimacy with another woman. PW1 has informed about the harassment subjected by her in the hands of the accused to PW2. At the request of PW2, a panchayat was held in the presence of PWs.3, 4 and 5/ Pittala Kumaraswamy, Sheelam Saraswathi and Gourusetty Vidyasagar, who are elders in

Hasanparthy village. The elders in the panchayat advised the accused not to make unlawful demand for additional dowry amount and to live with PW1 with love and affection. Even after the panchayat, the accused did not change his attitude. Since the accused has been continuing his illicit intimacy with an another woman and harassing PW1 by making unlawful demand for additional dowry amount, she came to her parents house, one month prior to the date of giving complaint and finally, she lodged Ex.P1/ complaint before the S.I. of Police, P.S. Hasanparthy, on 26.04.2001. The police registered a case in Cr.No.96/ 2001 under Section 498-A I.P.C. and also under Sections 3 & 4 of D.P.Act. After completion of investigation, the S.I. of Police of P.S.Hasanparthy, filed a charge sheet against the accused, for the offences punishable under Sections 498-A of I.P.C. and under Sections 3 & 4 of D.P. Act.”

The learned Magistrate framed charges under Sections 498-A IPC and 3 & 4 of the Dowry Prohibition Act against the petitioner-accused. To prove its case, the prosecution examined PWs.1 to 6 and marked Exs.P1 and P2. On behalf of the accused no oral evidence was adduced, but Exs.D1 to D5 were marked.

The learned trial Judge after considering the oral and documentary evidence available on record, found the accused guilty of the offence under Section 498-A IPC and found him not guilty of the offences under Sections 3 & 4 of the Dowry Prohibition Act, and accordingly, convicted and sentenced the accused to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month for the offence punishable under Section 498-A IPC. Challenging the same, the accused preferred appeal in CrI.A. No.06 of 2006 before the II-Additional Sessions Judge, Warangal. The learned Sessions Judge after re-appreciation of

the evidence, dismissed the appeal by confirming the conviction and sentence recorded by the trial Court. Challenging dismissal of the appeal, the present revision case is filed by the accused.

Heard and perused the material available on record.

Learned counsel for the petitioner submitted that the judgment under revision suffers from material irregularities such as improper appreciation of basic and fundamental facts, which are germane to the main issue and also non-consideration of the improvements in the evidence of PW.1 and therefore, he prays to allow the revision.

On the other hand, learned Additional Public Prosecutor submitted that the findings of the Courts below need not be interfered with, inasmuch as the findings are based upon proper appreciation of evidence and therefore, he prays to dismiss the revision.

Being it is a case arising out of matrimonial disputes, the evidence of PW.1, who is the wife of the petitioner, gains importance. The said evidence has to be appreciated for just a decision of the case and inspiring the confidence that the petitioner committed the offences. The evidence of PW.1 in her chief-examination would go to show that she married the appellant in the year 1992 and thereafter, they lived together for a period of ten years and meanwhile, due to some misunderstandings, there was a quarrel between the herself and the petitioner. She further deposed that her husband developed illegal intimacy with another lady and therefore, he assaulted her and also not provided the minimum necessities in the house and when she asked for money, he used to beat her and abused her. A lengthy cross-

examination was made by the petitioner to nullify the contents in the chief examination of PW.1, which runs as follows:

"I stayed with my husband after marriage till 1999 at Sudha Nagar. During my stay at Sudha Nagar I was blessed with two children. It is true the accused got my children admitted in school and paid fees. My parents did not give any immovable property to me after my marriage. It is true for three years myself and A-1 lived in the said house at Sudha Nagar separately from my in-laws. It is true prior thereto we lived with my in-laws jointly. Due to some petty differences my in-laws asked me and A-1 to live in the same house and separately from them. After 1999 myself and accused lived at Housing Board Colony in a rented house. The accused used to pay the rent to the said house. It is true that the accused provided ration and other provisions to myself and my children. For six months after 1999 the accused looked after welfare of myself and my children. It is true accused provided all the requirements to me. It is true myself and accused used to visit my parents' house for festivals and live there happily. It is true at the time of marriage of my younger sister also we lived happily without any problems like demanding to bring additional dowry. Marriage of my elder brother Manohar took place in the year 1997. It is true accused attended to affairs of house of our parents being elder son-in-law. We resided at Housing Board Colony for two years. It is true my husband purchased house in my name with the number LIG 75/ 11, situated at Housing Board Colony, Hanamkonda and Ex-D1 is agreement of sale for the said house.

It is true that on my demand the accused gifted one house plot in my favour and Ex.D2 is registered gift settlement deed in that connection.

It is true on my demand the accused deposited Rs.1,00,000/- in my name. It is true Exs.D3 and D4 are Xerox copies of Kisan Vikasa Partas for the said Rs.1,00,000/- (Rs.50,000/- each). It is true my elder brother is nominee for the said deposit. It is true my younger brother Gopi was arrested in a Blue Film case.

It is true accused attended to the affairs of the said case against my brother and made efforts to get him released. It is true on my demand the accused purchased colour T.V., Fridge and Cooler in Ex-D5 is bill for purchase of said articles. It is true accused got legal notice to me demanding to restitute conjugal rights and Ex-D6 is copy of said notice. Prior to police report in this case I did not give any other police report against accused or his brother or any other family members of accused. I did not file any case against the lady with whom accused developed illicit intimacy. I gave police report. I do not have idea as to who scribed the police report."

The above evidence adduced by PW.1 in her cross-examination categorically proves the fact that the petitioner has taken care of the family and he provided everything more than the basic necessities and he has also purchased properties in the name of PW.1, and the same was also admitted by PW.1. Apart from that, the petitioner has taken care about the family affairs of PW.1 also. It is also evident from the record that during the pendency of the case, the petitioner issued a notice to PW.1 for restitution of conjugal rights. PW.1 also admitted the said notice. Even though it was denied by PW.1 that a sum of Rs.2,00,000/- was paid to the petitioner as dowry and also petitioner assaulted her and torn her clothes, the same were not stated before the investigation officer. Therefore, the evidence of PW.1 in her cross examination creates a doubt about the allegations made against the petitioner in her chief examination and it can be said that the allegations stated by PW.1 in her chief examination are improved by her and due to some misunderstandings over the financial status and non-providing for additional funds for the family expenses, the present complaint was lodged by PW.1 against the petitioner for the offence punishable under Section 498-A IPC.

The attract the offence under Section 498-A IPC, there should be any wilful conduct, which is of such a nature which necessitates the woman to commit suicide, or to cause any grave injury or danger to life, limb or health of the woman. Here no such incident was mentioned by PW.1. Hence, this Court is of the view that since the allegations in the complaint and also in the chief-examination made by PW.1, are not attracted the offence under Section 498-A IPC, it is highly unsafe to convict the petitioner - accused for the offence under Section 498-A IPC

and therefore, the conviction and sentence recorded against the petitioner are liable to be set aside.

Accordingly, the Criminal Revision Case is allowed and the conviction and sentence recorded by the Special Judicial Magistrate of First Class for PCR Cases, Warangal, in CC No.290 of 2004 vide judgment, dated 28.12.2005 for the offence under Section 498-A IPC, as confirmed by the II-Additional Sessions Judge, Warangal in Crl.A.No.06 of 2006 vide judgment, dated 24.11.2006, are set aside. Consequently, the petitioner-accused is acquitted for the said charge. The fine amount, paid if any, shall be refunded to the petitioner – accused. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous applications, pending if any, shall stand closed.

August 05, 2016.
KTL

RAJA ELANGO, J

