

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRIMINAL APPEAL No.983 of 2016

JUDGMENT:

Vide the present appeal, the appellant seeks a direction, thereby to set aside the judgment dated 21.06.2016 in CrI.A.No.62 of 2014 on the file of V Additional District & Sessions Judge, Karimnagar and consequently to punish the accused/respondent No.2 herein for the offence punishable under Section 498-A of IPC and Section 4 of Dowry Prohibition Act (for short "D.P.Act").

The case of the prosecution is that 15 days after the marriage, A1 started harassing PW.1 for additional dowry and the same was presented by her parents. To prove the said fact, the prosecution has examined PWs.1 to 4. According to the evidence of PW1, A1 started harassing PW.1 for additional dowry of Rs.50,000/- immediately 15 days after the marriage and the same was informed to her parents. During Sankranthi, her parents' invited her and A1 to their house and they fulfilled the demand and paid an amount of Rs.50,000/- as additional dowry at their residence. She also stated that prior to marriage, A1 informed her that he worked in Australia for some time and thereafter worked in TATA Company at Hyderabad by saying so he made them to believe that he is employee and induced her to marry him. Subsequently, she came to know that he was an un-employee. At the time of filing her report as he is working in

Reliance INFO Company Ltd., he was not working anywhere. Subsequently also A1 along with father-in-law Ramaswamy and mother-in-law Manemma and sisters-in-law demanded additional dowry and A1 confined her in a room and A5 used to instigate A1 through phone. Therefore, a panchayat was held on 10.11.2005, and in the said Panchayat, A1 agreed to look after PW.1 well. A1 gave undertaking and compromised with PW.1. However, A1 continued harassing PW.1 even after the compromise also. Therefore, PW.1 presented a report and accordingly a case under Section 498-A IPC and Section 3 and 4 of D.P.Act was filed against the respondent/accused (A1).

A perusal of evidence of PW.1, she failed to establish what was the source of her father to give that amount to A1? She admitted that Ex.P3 (Pabandinama dt 10.11.2005 executed before elders) and Ex.P4 (Pabandinama dt 10.11.2005 executed by A1) are written by A1 after filing of Ex.P1 report. Thus, it is crystal clear from the evidence of PW.1 that A1 with a view to compromise the dispute might have executed Ex.P3 and Ex.P4 and that does not mean that A1 had admitted about the alleged harassment made by him for additional dowry.

PW.2 is no other than the mother of PW.1. She deposed that after marriage, both PW.1 and A1 lived happily for one year. Thereafter, they started harassing PW.1 demanding

additional dowry. Whereas, as per the evidence of PW.1, 15 days after the marriage A1 started harassing her for additional dowry.

So far as the aspect noted above concerned, there is no corroboration between PW.1 and PW.2. She further stated that they presented the additional dowry of Rs.50,000/- on the occasion of Sankranti festival by inviting them to their house. She further stated that PW.1 became pregnant and A1 to A5 necked out PW.1 while she was carrying six months pregnancy. They demanded additional dowry of Rs.1 lakh and they threatened PW.1 with dire consequence, but whereas, PW.1 did not state that A1 and other accused necked out from her house while she was in six months pregnancy.

As per the evidence of PW.1, A1 used to confine her in a room, that was not stated by PW.2 and on that aspect also there is no corroboration between PW.1 and PW.2. According to the evidence of PW.1 and PW.2, in the year 2005, a panchayat was held and Ex.P2 was executed. As per contents of Ex.P2, since 33 months, PW.1 and A1 were living separately for some reasons and as per the advise of elders they agreed to live together and he will take PW.1 on 10.08.2008 to his house and would look after her with love and affection and he also agreed to give Rs.1 lakh in the name of their daughter. However, nowhere in Ex.P2, it is recited

that the accused harassed PW.1 for additional dowry. Therefore, they are staying separately. So, basing on Ex.P2, it cannot be said that accused harassed PW.1 for additional dowry.

Ex.P3 is executed subsequent to Ex.P1. As per Ex.P3, PW.1 did not commit any mistake and the A1 has to release the gold which was pledged and A1 has to take his house near to the house of maternal uncle of Srinivas and A1 has to deposit Rs.1 lakh, which was paid to him by parents of PW.1. However, nowhere in Ex.P3, the signature of A1 was there. So, it cannot be taken into consideration to establish that the accused harassed PW.1 for additional dowry.

So far as Ex.P3 is concerned, it was executed by A1. As per Ex.P3, his wife filed case against him and elders settled the matter and they would live together. Accordingly, on 01.12.2005 he could take his wife. Ex.P3 is executed by A1 after filing of the case only to get rid of the case, A1 might have executed Ex.P3. The appellate Court has rightly taken into consideration that A1 subjected PW.1 to cruelty for additional dowry. But the trial Court without taking into consideration the above facts observed that PW.3 is an independent witness and PW.2 the mother of PW.1 have supported PW.1. The trial Court further observed that the evidence of PW.1 goes to show that the accused demanded

additional dowry and as such the parents presented the additional dowry.

It is an admitted fact that the parents of PW.1 have no capacity to pay the additional dowry of Rs.1 lakh. PW.3 is the elder, who stated that LW.2 Anjaiah presented Rs.2,50,000/- in cash, one motor cycle and cash of Rs.80,000/- towards household articles to A1 towards dowry. Thereafter, they lived happily for some time, subsequently A1 started harassing PW.1 on the instigation of A2 to A5 by demanding additional dowry, on one occasion for Rs.50,000/- and Rs.1 lakh on the another occasion. A1 used to beat PW.1 on demanding additional dowry. The same was informed by A1 to him. However, the said fact has not stated by PWs.1 and 2. He further deposed that the father of PW.1 fulfilled the demand of A1 by paying an amount of Rs.50,000/- to A1 in the presence of A2 to A5. However, subsequently A1 demanded further amount of Rs.1 lakh and when the parents of PW.1 expressed their inability, A1 had beaten PW.1 and necked her out of the house when she was pregnant. He further deposed that 10 or 12 times panchayats were held, in which, himself, LW.5 Ashalu and LW.7 Chandra Mouli acted as elders. During panchayat, A1 to A5 did not heed their words. Ex.P3 and Ex.P4 were executed by A1 in panchayat. But Ex.P3 was not executed by A1 and Ex.P4 was executed by A1 which was subsequent to Ex.P1 report.

In cross-examination, he categorically stated that he did not attend the marriage talks and he came to know about the payment of dowry through LW.2-M.Anjaiah. But the said Anjaiah, father of PW.1 was not examined by the prosecution. He also deposed that he never went to Hyderabad. But he deposed as if he is a direct witness, he is deposing against A1 about the presentation of dowry and also about the alleged harassment caused to PW.1 by A1 for additional dowry. Accordingly, the Court below has not taken into consideration the evidence of PW.3.

PW.4 is co-brother of LW.2-M.Anjaiah. He deposed that he did not attend the said marriage of PW.1 with A1. The parents of PW.1 have presented an amount of Rs.2,50,000/-, one two wheeler and household articles worth of Rs.80,000/- towards dowry to A1. According to PW.4, A1 and PW.1 lived happily for more than three months, which is not at all corroborated by PWs.1 and 2. Thereafter, PW.1 informed him that A1 to A5 started harassing her demanding additional dowry of Rs.50,000/- and LW.2 Anjaiah fulfilled the desire by paying Rs.50,000/-. Thereafter, A1 looked after PW.1 well for some time and again A1 to A5 continued harassing PW.1 demanding additional dowry of Rs.1 lakh. Himself and others held panchayats and A1 agreed to look after PW.1 well. Therefore, they sent PW.1 along with A1 to her in-laws house. He also deposed that they reduced into writing the resolution of panchayat dated 10.11.2012, which contains his signature

on Ex.P5 on the resolution. Ex.P4 is the Pabandinama executed by accused on 10.11.2015 and his signature on Ex.P4 is marked as Ex.P6. The Court below observed that PW.4 is an interested witness and his evidence cannot be taken into consideration.

Basing on the evidence of PW.1 to PW.4 only, the trial Court came to the conclusion that A1 harassed PW.1 for additional dowry. Accordingly, the trial Court opined without taking into consideration Ex.P3 and Ex.P4 that the ocular evidence of PWs.1 to P4 is sufficient to prove that A1 harassed PW.1 for additional dowry. But the evidence of PWs.1 to 4 is not at all sufficient to hold that A1 subjected PW.1 for ill-treatment demanding additional dowry.

There cannot be any dispute that under section 498-A IPC, the prosecution has to establish that PW.1 who is no other than the wife of A1 was subjected to cruelty by A1. Such a cruelty sometimes drive the women to commit suicide or to cause grave injury, or danger to life, limb or health (whether mental or physical), or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

However, in the case in hand, as per the evidence of PWs.1 to 4, the parents of PW.1 were given Rs.2,50,000/- in

cash, one two wheeler and Rs.80,000/- towards household articles. But even the trial Court has opined that father of PW.1 had no financial capacity to pay such amount. Accordingly, the respondent/accused were acquitted for the offence punishable under Section 3 of D.P.Act. However, the trial Court opined that after so-called harassment made by A1 to PW.1, the father of PW.1 had paid an amount of Rs.50,000/- to A1, for which, LW.2 Anjaiah, father of PW.1 was not examined to establish that he got money and how he got that sufficient amount to pay the dowry or he managed from someone else. Apart from that PWs.1 and 2 were examined, however, they are not corroborated each other with regard to how many days after the marriage A1 subjected PW.1 to cruelty by demanding additional dowry. PW.3 is not a direct witness and PW.4 is also not a direct witness to show that PW.1 was subjected to cruelty by A1 for additional dowry.

In addition to above, the appellant has failed to place any material on record that her parents have purchased a two wheeler before marriage to give as dowry to A1. It has also not established that they paid amount for purchasing two wheeler and the accused persons purchased two-wheeler by the said amount. In addition to above, as ingredient of 498-A IPC is concerned that has to be established and proved by the prosecution beyond reasonable doubt.

Learned counsel for the respondent No.2 has relied on a decision of Supreme Court reported in **Ramaiah alias Rama v. State of Karnataka**¹ “Demand of dowry and giving of dowry - When not proved, further version of prosecution witnesses that there was a demand for payment of remaining amount of dowry and harassment of deceased on that account, becomes doubtful.

In another case reported in **Shakson Belthissor v. State of Kerala and another**², wherein the Hon’ble supreme Court held that for the purpose of section 498-A IPC, to constitute cruelty within the meaning of Explanation (a) conduct on part of husband or relatives of husband of woman, must be of such a nature as to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman.

To constitute cruelty of nature as mentioned in Explanation (b) there must be harassment of woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security.

It is not out of place to mention here that in the case on hand the above ingredients are not at all established by witnesses examined by the prosecution.

¹ 2015 (1) ALD (Crl.) 196 (SC)

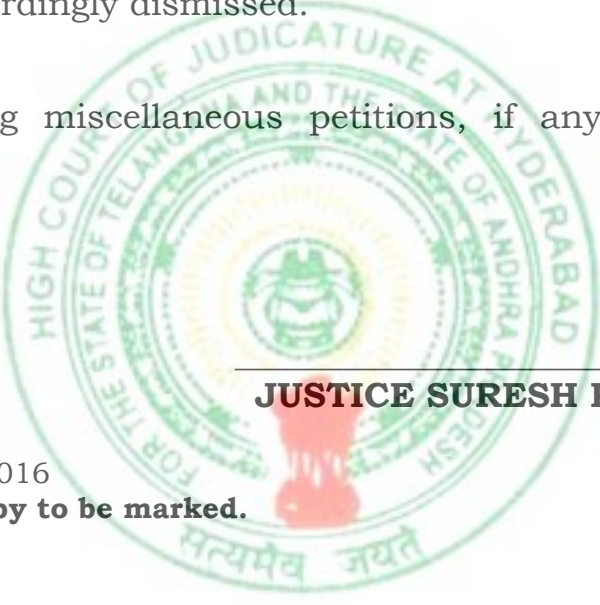
² 2009 (2) ALD (Crl.) 497 (SC)

Accordingly, the appellate Court has rightly acquitted the respondents/accused from the offence punishable under Section 498-A of IPC.

Keeping in view the facts recorded above, I find no discrepancy in the order passed by the appellate Court and no substance in the arguments of learned counsel for the appellant.

Therefore, I find no merit in the instant appeal and the same is accordingly dismissed.

Pending miscellaneous petitions, if any, shall stand closed.



JUSTICE SURESH KUMAR KAIT.

Date : 16-12-2016

Note : **L.R. Copy to be marked.**

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