

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.1108 of 2011

K.Palanichamy ... Petitioner

Vs

P.Maheshwari ... Respondent

Prayer:-

This Criminal Revision is filed under Section 397(1) r/w. 401 of Cr.P.C., to set-aside the judgment passed in C.A.No.169 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court-III, Coimbatore, dated 31.05.2011 confirming the judgment of the Judicial Magistrate-VI, Coimbatore in C.C.No.48 of 2002 dated 28.07.2010.

For petitioner : Mr. A.Mohamed Ismail

O R D E R

A1 in C.C.No.170 of 2010 on the file of the Additional District and Sessions Court, Fast Track Court, No.III, is the revision petitioner herein. There are totally 10 accused. A1 stood charged for the offence under Section 494 IPC and A2 to A10 stood charged for the offence under Section 494 r/w.109 IPC. The trial Court, by judgment dated 28.07.2010, convicted A1 under Section 494 IPC and sentenced him to undergo simple imprisonment for 3 years and also imposed a fine of Rs.1000/-, in default, to undergo simple imprisonment for 2 weeks and convicted A2, A3, A5 and A6 under Section 494 r/w. 109 IPC and sentenced them to undergo simple imprisonment for two years and imposed a fine of Rs.1,000/- , in default , to undergo simple imprisonment for 2 weeks. Challenging the above said conviction and sentence, A1, A3, A5 and A6 filed an appeal in C.A.No.169 of 2010 and A2 filed an appeal in C.A.No.170 of 2010. The lower

appellate court, confirmed the conviction and sentenced imposed on the petitioner/A1 and acquitted the other accused. Aggrieved by the same, the petitioner/A1 is before this court with this revision.

2. The case of the prosecution, in brief, is as follows:-

The respondent/complainant is the first wife of the revision petitioner/A1. The marriage between them took place on 03.09.1998, subsequently, A1 demanded dowry and harassed her and had driven her out of the matrimonial house. Thereafter, on 06.04.2011, A1 married A2, while the first marriage with the respondent was in existence, at Maruthamalai Kuzhanthai Velauthasami Temple. P.W.2, and one Thangavel, who had witnessed the marriage, informed the same to the respondent/complainant. Thereafter, she filed a complaint against the petitioner and the other accused for an offence under Section 494 IPC.

3. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case, the respondent examined herself as P.W.1 and one Thangaraj, who was an eye-witness to the second marriage, was examined as P.W.2.

4. According to P.W.1, P.W.2 informed her that on 06.04.2011, when he went to Maruthamalai, he saw preparations were going on for marriage between A1 and A2, and the other accused were also present in the temple, A7 and A10 were marking arrangements. Subsequently, the marriage between A1 took place in the temple and A1 tied thali to A2. On the very same day, at about 4.00 p.m., P.W.2 informed the same to P.W.1. Then, P.W.1 lodged a complaint.

5. P.W.2 is an eye-witness to the occurrence. He had stated that on 06.04.2001, at about 9.00 a.m., he had gone to Maruthamalai Murugan temple. At that time, he saw A1 and A2, along with their relatives, were making preparations for the marriage. Then, in front of the Vinayagar Temple, they performed some poojas for the mangal sutra and thereafter, A1 tied thali to A2, and the other accused were also present there and celebrated the marriage. P.W.2 returned to the village and informed the same to P.W.1.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or

marked any documents.

7. Having considered all the above materials, the trial Court convicted A1, A2, A3, A5 and A6 as stated in the first paragraph of this order. Challenging the same, A1, A3, A5 and A6 filed an appeal in C.A.No.169 of 2010 and A2 filed an appeal in C.A.No.170 of 2010 before the Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore and the lower-appellate court partly allowed the appeal in C.A.No.169 of 2010 and convicted A1 under Section 494 IPC and acquitted the other accused and allowed the appeal in C.A.No.170 of 2010 and acquitted A2. Aggrieved by the same, the petitioner/A1 is before this Court with this revision.

8. I have heard Mr. A.Mohamed Ismail, learned counsel appearing for the petitioner.

9. Even though notice was served on the respondent and her name was printed in the cause list, and the respondent was called, there was no representation either in person or through the counsel and hence, this court is left with no other option but to pass orders after hearing the learned counsel for the petitioner and having regard to the materials placed on record.

10. According to P.W.1, there are two persons, said to have witnessed the marriage. One Thangavel and P.W.2 were said to have seen the marriage. P.W.2 alone was examined and he had admitted that Thangavel is the uncle of the respondent/complainant, but he was not examined as a witness. Now, the one and only eye-witness available to prove the marriage is P.W.2. It is admitted by P.W.2 that he is a close friend of the complainant's brother and hence, he is an interested witness and his evidence should be considered with due care and caution. It could be seen from the evidence of P.W.2 that he is a permanent resident of Karaivzhi Madhapoor village and when he went to Maruthamalai temple on the date of occurrence, he is said to have seen the marriage between A1 and A2, which took place in Thanthondri Vinayagar Temple at Maruthamalai. Thereafter, P.W.2 informed the same to complainant/P.W.1. But, in the cross-examination, he had stated that he was not aware as to whether any such temple is there in Maruthamalai. Even in his chief examination, he did not specifically state the names of the relatives said to have been present in the marriage. In his cross examination, he had deposed that though 20 persons were present in the marriage, and out of them only 4 persons were known to him, but, whereas the complaint has been given against 10 persons. In the above circumstances, it is unsafe to rely upon the evidence of P.W.2, who is an interested witness, and in the absence of any other independent witness to corroborate his evidence, to convict the

petitioner/A1, especially the courts below acquitted other accused disbelieving his evidence in respect of the other accused.

11. Apart from that, even though, P.W.1 came to know about the marriage on 06.04.2001, complaint has been lodged after 2 months, i.e., on 19.06.2001. Though a plea was made that immediately after marriage, she had given a complaint, but copy of the complaint was not marked, the court-below also acquitted all the other accused. In the above circumstances, the revision petitioner is also entitled for acquittal.

12. In the result, the Criminal Revision Petition is allowed and the conviction and sentence imposed on the petitioner/A1 in C.A.No.169 of 2010 dated 31.05.2011, is set -aside and he is acquitted of the charge. Bail bond, if any, shall stand cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court-III,
Coimbatore.
2. The Judicial Magistrate-VI,
Coimbatore.
3. The Public Prosecutor,
High court, Madras.

rr(CO)
md(21/03/2017)

WEB COPY

Cr1.R.C.No.1108 of 2011