

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.633 of 2005

ORDER:

This revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), questioning the propriety, legality and irregularity of the judgment, passed by the Sessions Judge, Mahila Court, Visakhapatnam, in CrI.A.No.86 of 2003, finding respondent Nos.1 to 3/accused Nos.1 to 3 not guilty for the offence under Section 498-A IPC and acquitting them for the same.

2. The de facto complainant-petitioner herein lodged a complaint against respondent Nos.1 to 3 for the offence under Section 498-A IPC alleging that on 13.06.1993 the marriage of petitioner was performed with respondent No.1-A.1 and he was unemployed at that time and later secured employment in the year 1994 in Port Trust on compassionate grounds. After he secured employment, he subjected petitioner to harassment both physically and mentally for her failure to meet illegal demand of dowry of Rs.2,00,000/-. It is also contended that respondent No.1 has developed illicit intimacy with another lady, viz., Nagamani. Respondent No.1 beat the petitioner and she underwent treatment in a private hospital. During 1994, the petitioner blessed with a female child and since then respondent Nos.1 to 3 used to harass her and sent her to parents house. Later, she filed maintenance case against respondent No.1 for payment of

maintenance and filed other petitions. While the matter stood thus, in the month of March, 2001, respondent No.1 promised that he will look after the petitioner well and took the children in the presence of elders and withdrew the maintenance case. Again, respondent No.1 subjected her both physically and mentally for her failure to meet the illegal demand of dowry. Therefore, she lodged a complaint on 06.01.2002. Ex.P.1 is the complaint. On the strength of complaint, a case was registered in Crime No.11 of 2002 and issued F.I.R, which is marked as Ex.P.2, dated 06.01.2002. During investigation, the police examined the witnesses and recorded their statements and filed charge sheet. The trial Court took cognizance against respondent Nos.1 to 3 for the offence under Section 498-A IPC.

3. On securing the presence of respondent Nos.1 to 3 and following necessary procedure under Section 207 Cr.P.C., framed charge against respondent Nos.1 to 3 for the offence under Section 498-A IPC read over and explained to them, they pleaded not guilty and claimed to be tried.

4. During trial, on behalf of prosecution PWs.1 to 5 were examined and marked Exs.P.1 and P.2. After closure of prosecution evidence, respondent Nos.1 to 3/accused were examined under Section 313 Cr.P.C. explaining the incriminating material appeared against them in the prosecution evidence and they denied and reported no defence.

5. Upon hearing argument, the trial Court found guilty for the offence punishable under Section 498-A IPC, convicted and sentenced respondent Nos.1 to 3 to undergo simple imprisonment for six months and shall pay a fine of Rs.500/- each with default sentence.

6. Aggrieved by the conviction and sentence under the impugned calendar and judgment, dated 22.07.2003, in C.C.No.52 of 2002, respondent Nos.1 to 3 filed Crl.A.No.86 of 2003 before the Sessions Judge, Mahila Court, Visakhapatnam, which was allowed setting aside the conviction and sentence passed by the trial Court finding them not guilty.

7. Aggrieved by the judgment, the present revision is filed by the petitioner on various grounds mainly on the ground that the appellate Court did not appreciate the evidence in proper perspective and committed an error in allowing the appeal. However, the evidence of PWs.1 and 2 is worthy of credence regarding subjecting petitioner to cruelty for her failure to meet the illegal demand for payment of dowry of Rs.2,00,000/-. But, the appellate Court did not consider the evidence in proper perspective and committed an error in finding respondent Nos.1 to 3 not guilty and prayed to set aside the same and convict them for the offence under Section 498-A IPC.

8. During hearing, Sri G. Rama Gopal, learned counsel for the petitioner, would contend that the evidence on record is sufficient to record conviction of respondent Nos.1 to 3 for the offence punishable

under Section 498-A IPC. But, the appellate Court discarded evidence of PW.1 on the ground that she is interested witness in the prosecution case, therefore, there is an illegality committed by the appellate Court and the sole testimony of victim is suffice to record conviction for the offence under Section 498-A IPC. Therefore, acquittal of respondent Nos.1 to 3 for the offence punishable under Section 498-A IPC is illegal and said finding is perverse.

9. The learned Public Prosecutor for the State of Andhra Pradesh supported the case of the petitioner in all respects.

10. The burden is upon the prosecution to establish the guilt of respondent Nos.1 to 3 beyond reasonable doubt. The relationship between the petitioner and respondent Nos.1 to 3 is not in dispute. But, the contention of the petitioner that at the time of marriage they paid an amount of Rs.40,000/- towards dowry besides payment of Rs.4,000/- towards adapaduchu lanchanam and presentation of household articles worth of Rs.70,000/- to respondent Nos.1 to 3. This is also not in dispute seriously before the trial Court and appellate Court.

11. To substantiate the contention of the petitioner that she was subjected to cruelty for her failure to meet the illegal demand for payment of dowry of Rs.2,00,000/-, the petitioner herself examined as PW.1 and she testified about the harassment meted in the hands of respondent Nos.1 to 3 and her evidence goes to show that respondent Nos.1 to 3 demanded for payment of Rs.2,00,000/- for securing

employment (job) while admitting that her husband secured employment within one year after the marriage in a Port Trust on compassionate grounds. Whereas PW.2, who is no other than the mother of the petitioner, testified that as respondent No.1 secured employment he demanded Rs.2,00,000/- as additional dowry. The appellate Court on appreciation of evidence of both PWs.1 and 2 concluded that there is material discrepancy with regard to the demand, disbelieved the evidence of both PWs.1 and 2 as to subjecting the petitioner to cruelty for her failure to meet the illegal demand for payment additional dowry since their testimony inspires no confidence.

12. The prosecution though examined other witnesses i.e., PWs.3 to 5, they categorically admitted that they are not aware about the family affairs of the petitioner and respondent Nos.1 to 3. But, they received some information about payment of dowry, etc., Therefore, the evidence of PWs.3 to 5 is not worthy of credence since they are residing at a distant place, where the petitioner and respondent No.1 are residing as wife and husband. Thus, the reason recorded by the appellate Court for not believing the testimony of PWs.3 to 5 is justified. Whereas, the evidence of PWs.1 and 2 are concerned, the trial Court in para 14 pointed out certain material discrepancies with regard to subjecting the petitioner to harassment. However, Sri G.Rama Gopal, learned counsel for the petitioner, contended that the sole testimony of the victim is sufficient to convict respondent Nos.1

to 3, if inspires confidence. It is not the specific case that the petitioner was subjected to cruelty for her failure to meet the illegal demand of payment of additional dowry of Rs.2,00,000/-. More over, Section 498-A IPC prescribed certain punishment and it is necessary herein to extract clause (a) of explanation to Section 498-A IPC.

Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

13. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. Here, the sole testimony of PW.1 is totally conflicting with the evidence of PW.2, who is no other than her mother. In such case, the testimony of either of the witnesses inspires confidence of this Court and, therefore, the appellate Court rightly disbelieved the evidence of PWs.1 and 2. If the evidence of PWs.1 and 2 is excluding from consideration, there is absolutely nothing to conclude that respondent No.1 subjected petitioner to cruelty for her failure to meet the illegal demand for payment of dowry. Therefore, the appellate Court rightly disbelieved the case of the prosecution and acquitted respondent Nos.1 to 3 for the offence under Section 498-A IPC.

14. When revision is filed before this Court under Sections 397 and 401 Cr.P.C., the powers of this Court are very limited and this Court can exercise such power to interfere with the acquittal in exceptional

circumstances, where there is manifest perversity or apparent error in appreciation of evidence while recording fact findings. But, in the present case on hand, there is no such perversity or apparent error in appreciation of evidence by the appellate Court. On the other hand, this Court cannot convert the acquittal into conviction in view of the bar under sub-Section 3 of Section 401 Cr.P.C., but can order re-trial in extreme circumstances and cannot remand the matter. Here, I find no such circumstances for ordering re-trial of the case or remanding the matter. On the other hand, the evidence on record is totally discrepant on material aspect, which would creates any amount of suspicion on the prosecution case. Therefore, I find no merit in the contention raised by Sri Rama Gopal, learned counsel for the petitioner, to convert the acquittal into conviction. In view of the bar under sub-Section 3 of Section 401 Cr.P.C., it is difficult to restore the judgment of the trial Court while exercising the power under Sections 397 and 401 Cr.P.C. Hence, I find no merit in the revision and the revision deserves to be dismissed.

15. In the result, the criminal revision case is dismissed.

16. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

17th August 2017.

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