

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2247 of 2017

JUDGMENT

This revision under Sections 397 and 401 of Cr.P.C. is filed questioning the propriety, legality and regularity of the judgment passed by the Sessions Judge, Mahila Court, Visakhapatnam, in Crl.A.No.140 of 2014 dated 28.07.2017, dismissing the appeal while confirming the conviction recorded by the trial Court, reducing the substantive sentence of simple imprisonment from one and half year to nine months imposed by the trial Court in C.C.No.542 of 2008 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam, dated 17.07.2014.

2. The second respondent/de-facto complainant lodged a complaint with the police alleging that she was subjected to cruelty by her husband i.e., petitioner/accused. It is alleged that her marriage with the petitioner took place on 23.03.2003 at Simhachalam Devasthanam and it is a love marriage. Thereafter, she joined her husband to lead conjugal life and was blessed with a daughter. Thereafter, the petitioner allegedly started harassing the de-facto complainant for money and therefore, she lodged a complaint in the year 2006 with Malkapuram Police Station, Visakhapatnam, and the same was registered as Cr.No.20 of 2005 for the offence punishable under Section 498-A IPC against the petitioner, but due to intervention of elders, the matter was settled on the promise of petitioner that he will look after her properly and

therefore, the complaint was withdrawn recording compromise on 19.04.2005 in C.C.No.225 of 2005.

3. It is further alleged in the complaint that in terms of the compromise, P.W.1/de-facto complainant joined the petitioner, but the petitioner continued his ill-treatment for money. On 17.10.2008, the petitioner beat P.W.1 and her mother severely and left the house with her daughter along with cash, gold and valuables. Therefore, she lodged the present complaint, which was registered as Cr.No.12 of 2008 for the offence punishable under Section 498-A IPC and issued FIR. P.W.6 took up investigation, examined the witnesses, recorded the statements of witnesses under Section 161 Cr.P.C. and later, filed charge sheet against the petitioner for the offence punishable under Section 498-A IPC.

4. The trial Court took cognizance of the offence punishable under Section 498-A IPC against the petitioner and upon hearing the arguments of both the counsel, the trial Court framed a charge against the petitioner for the offence punishable under Section 498-A IPC. .

5. During trial, On behalf of the prosecution, P.Ws.1 to 6 were examined and Exs.P1 to P4 were marked. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating evidence appearing against him and he denied and reported no evidence, but marked Exs.D1 and D2 in the cross-examination of P.W.4, the Investigating Officer, the statement of witness.

6. The trial Court, upon hearing argument of both the counsel, recorded a fact finding that the accused subjected the de-facto complainant/P.W.1 to harassment. Based on Clause (a) of explanation to Section 498-A IPC, the trial Court having concluded that the petitioner subjected her to cruelty by his conduct which is of such nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, sentenced him to undergo simple imprisonment for one and half year and to pay a fine of Rs.1,000/-in default to suffer simple imprisonment for one month.

7. Aggrieved by the conviction and sentence imposed by the trial Court, the petitioner preferred an appeal before the Judge, Mahila Court, Visakhapatnam. Upon hearing argument of both the counsel, the appellate Court confirmed the conviction, but reduced the substantive sentence of simple imprisonment from one year six months to nine months while maintaining the fine imposed by the trial Court with default sentence.

8. The present revision is filed questioning the propriety, legality and regularity of the judgment of the appellate Court on the ground that the petitioner was insisted by P.W.1 to convert him from Hinduism to Christianity, for which he did not agree and therefore, P.W.1 lodged a complaint to the police as if she was subjected to harassment attracting the offence punishable under Section 498-A IPC. It is stated that the fact findings recorded by both the trial Court and appellate Court are erroneous. It can be seen from the record that P.W.1 was not subjected to any cruelty by petitioner demanding dowry since the marriage itself was a love marriage performed in

Simhachalam Devasthanam, but the trial Court and the appellate Court did not consider the same in proper perspective and committed error and therefore, the petitioner prayed to set aside the conviction and sentence imposed against the petitioner by acquitting him for the offence punishable under Section 498-A IPC.

9. During hearing, learned counsel for petitioner raised two grounds. The first ground is that the petitioner never subjected P.W.1 to cruelty demanding dowry. According to Section 498-A IPC, whoever, being the husband or the relative of the husband of a woman, subjects such woman, to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The word 'cruelty' is explained in Clause (a) and (b) of Section 498-A IPC, as under:

“(a) 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

(b) harassment of woman, where such harassment is with a view to concerning 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”.

But Clause (b) of explanation to Section 498-A IPC is not necessary for deciding the real controversy between the parties since the allegation against the petitioner is that on 17.10.2008, petitioner beat P.W.1 and her mother severely and took away three years old child from her custody. The conduct of petitioner from the beginning is clear that he subjected P.W.1 to cruelty in one way or the other and that the earlier complaint, which was the subject matter of C.C.No.225 of 2005 registered for the offence punishable under Section 498-A IPC, against the petitioner was compromised on the

promise made by him that he will look after her properly, but he did not keep up his promise and continued the same harassment and beat her severely along with her mother and took the child from her custody. Causing physical injury by beating would fall within the meaning of 'cruelty' under Clause (a) of Explanation to Section 498-A IPC. Therefore, mere harassment without demanding money or any dowry, as defined under Section 2 of Dowry Prohibition Act, is sufficient in view of the first limb of Clause (a) of Explanation to Section 498-A IPC. Therefore, the trial Court and the appellate Court recorded concurrent findings based on evidence with regard to subjecting P.W.1 to cruelty by causing physical injury, which endangers her life. Hence, the concurrent finding needs no interference by this Court as it is a fact finding recorded by both the trial Court as well as the appellate Court.

10. The second ground raised by petitioner is that P.W.1 insisted the petitioner to convert him from Hinduism to Christianity, for which he did not agree, she allegedly foisted a false case against the petitioner for the offence punishable under Section 498-A IPC. But no suggestions were put to witnesses, more particularly, P.W.1, about the demand made by her to petitioner to convert himself from Hinduism to Christianity and nothing was stated in the examination under Section 313 Cr.P.C. Therefore, this contention is without any factual foundation before the trial Court and such ground for the first time cannot be accepted while exercising power of revision under Sections 397 and 401 of Cr.P.C. Therefore, I find no grounds to interfere with the fact findings

recorded by the trial Court as confirmed by the appellate Court and the criminal revision case is liable to be dismissed.

11. Learned counsel for petitioner requested this Court to reduce the substantive sentence of simple imprisonment from nine months to three months, but such request cannot be acceded to for the reason that when husband subjected his wife to cruelty, the minimum sentence prescribed for the said offence is life imprisonment as substituted by Act 26 of 1952 or it may extend to 10 years and shall also liable to pay fine. If the substantive sentence of simple imprisonment imposed by the appellate Court is reduced to three months, it is nothing but a flee bite sentence and indirectly encouraging the parties to frustrate the very purpose of enactment since this provision is intended to protect the women from harassment in different ways. Therefore, I am not inclined to accede to the request of petitioner to reduce the substantive sentence of imprisonment further.

12. In view of the aforesaid discussion, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

7th August, 2017

sj