

BAIL SLIP

The Accused namely C.Jayakumar/(Sole Accused in C.C.No.230/05 on the file of the Additional District Munsif cum Judicial Magistrate, Ambur, Vellore) was released on Bail as per order dated 07.02.2011 in CrI.Mp.No.2/11 in CrI.R.C.No.171 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.171 of 2011

C.Jayakumar .. Petitioner/Accused No.1

Vs

The State rep. by
Sub Inspector of Police,
All Women Police Station,
Ambur, Vellore District.
(Crime No.9/04)

.. Respondent/Complainant

Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C. praying to set aside the order dated 06.01.2011 passed by the Additional District and Sessions Court (FTC), Tirupattur, Vellore District in CrI.A.No.17 of 2007. and partly Allowing the Judgment in C.C.No.230 of 2005 dated 08.06.2007 on the file of the Additional District Munsif-Cum Judicial Magistrate, Ambur, Vellore District.

For Petitioner : Mr.D.Balachandran

For Respondent : Mr.G.Ramar,
Govt.Advocate (CrI. Side)

O R D E R

This revision petition has been preferred challenging the order dated 06.01.2011 passed by the Additional District and Sessions Court (FTC), Tirupattur, Vellore District in CrI.A.No.17 of 2007.

2.Heard Mr.Balachandran, learned counsel for the revision petitioner and learned Government Advocate (Crl. Side).

3.It is the case of the prosecution that Jayakumar (A1) approached the parents of Jayakanthi (PW1), viz. Ellammal (PW2) and Munusamy (PW4) and sought to marry Jayakanthi (PW1) and they agreed to give Jayakanthi (PW1) in marriage; betrothal was held on 06.05.2004 and the date of marriage was fixed to 31.05.2004; in the interregnum, it is alleged that Jayakumar (A1) seduced Jayakanthi (PW1), on account of which, she became pregnant and delivered a female child; however, Jayakumar (A1) reneged and demanded 15 sovereigns of gold, Rs.10,000/- and a motorcycle as additional dowry; during enquiry, it came to light that Jayakumar (A1) was already married to Jothi (A2). Hence, on the complaint (Ex.P1) given by Jayakanthi (PW1), the Police registered FIR in Crime No.9 of 2004 and after completing the investigation, filed final report in C.C.No.230 of 2005 before the Additional District Munsif-cum-Judicial Magistrate, Ambur against Jayakumar (A1) for the offences under Section 417, 420, 493 IPC and Section 4 of the Dowry Prohibition Act. On the appearance of Jayakumar (A1), the provisions of Section 207 Cr.P.C. were complied with and charges for the aforesaid offences were framed against him. When questioned, he pleaded "not guilty".

4.To prove the charges, the prosecution examined 16 witnesses and marked 5 exhibits.

5.At this juncture, it may be relevant to state here that one Jothi was examined as PW7 before the trial Court. After her examination, she was transposed as A2 by the trial Court under Section 319 Cr.P.C. for abetment under Section 109 IPC.

6.When the accused were questioned about the incriminating circumstances against them under Section 313 Cr.P.C., they denied the same.

7.No witness was examined on behalf of the accused nor any document marked. After considering the evidence on record and hearing either side, the trial Court, convicted and sentenced Jayakumar (A1) for the substantive offence and Jothi (A2) for abetment under Section 109 IPC as follows:

"Under Section 417 IPC 2 years Rigorous Imprisonment fine of Rs.10,000/- in default 3 months Simple Imprisonment; under Section 420 IPC 3 years Rigorous Imprisonment fine of Rs.10,000/- in default 6 months Simple Imprisonment; under Section 493 IPC 3 years Rigorous Imprisonment fine of Rs.10,000/- in default 3 months Simple Imprisonment; under Section 4 of Dowry Prohibition Act 2 years Rigorous Imprisonment fine of Rs.10,000/- in default 3 months Simple

Imprisonment."

8. Challenging the conviction and sentence, Jayakumar (A1) and Jothi (A2) filed appeals in CrI.A.No.17 of 2007 and 59 of 2008 respectively before the Court of Session, Tirupattur. The Court of Session, Tirupattur allowed CrI.A.No.59 of 2008 and set aside the conviction and sentence of Jothi (A2). As regards Jayakumar (A1), the appellate Court acquitted him for the offence under Section 420 and 493 IPC and confirmed the conviction for the offence under Section 417 IPC and Section 4 of Dowry Prohibition Act. However, the sentence was reduced to 6 months Rigorous Imprisonment for both the offences and the fine amount of Rs.10,000/- has been maintained. Challenging the conviction and sentence, Jayakumar (A1) is before this Court.

9. Learned counsel submitted that both the Courts had failed to appreciate the evidence of the witnesses in the right perspective. He contended that no documentary evidence has been filed by the prosecution, in order to establish that betrothal was held on 06.05.2004. He further contended that there was no deception at inception to attract the provisions of cheating as alleged by the prosecution.

10. Per contra, learned Government Advocate (CrI. Side) refuted the contentions.

11. This Court gave its anxious consideration to the rival submissions.

12. The fact remains that the trial Court and the appellate Court have gone into the evidence adduced by the prosecution and has held that the accused came forward to marry Jayakanthi (PW1) and after betrothal on 06.05.2004, he seduced her by representing that he is going to marry her and after she became pregnant, he reneged and started demanding more dowry from the family of Jayakanthi (PW1). While exercising powers under Section 397 Cr.P.C., this Court cannot re-appreciate the evidence, unless it is shown that material evidence have been overlooked by the trial Court and the appellate Court. This Court may profitably refer to the following passage in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659.]

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of

revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”.

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

13.Dhanraj (PW3) in his evidence has stated that he is the Headmaster of local Government School and that, Jayakumar (A1) is his nephew and was unmarried; Jayakumar requested him to look out for a bride since, he found difficulty in bachelorhood; hence, PW3 introduced Ellammal (PW2), who was working as a noon meal organizer in the school; later he came to know that betrothal was conducted and he also heard that Jayakanthi (PW1) became pregnant. The accused has not denied these aspects.

14.Ellammal (PW2) and Munusamy (PW4), parents of Jayakanthi (PW1) in their evidence stated that Jayakumar (A1) was introduced by Dhanraj (PW3) as a suitable groom for their daughter Jayakanthi (PW1). Since they did not know that Jayakumar (A1) was married earlier, they agreed to give their daughter in marriage. They conducted the betrothal on 06.05.2004 and the marriage between Jayakumar (A1) and Jayakanthi (PW1) was fixed to 31.05.2004.

15.Jayakanthi (PW1) in her evidence has spoken about the betrothal and she has further stated that after betrothal, Jayakumar (A1) came to her house, when her parents were not there and had physical relationship on the promise that he is going to be her husband. After she became pregnant, she informed this to Jayakumar (A1) and he changed track. He started demanding 15 sovereigns of gold, Rs.10,000/- as dowry and a motorcycle. This part of the evidence has been corroborated by Ellammal (PW2) and Munusamy (PW4).

16.Arulmozhi (PW6) the local Panchayat President has stated that the accused Jayakumar is his relative and the betrothal

ceremony was done in the house of Jayakanthi (PW1).

17.Sekar (PW8) the brother of the accused Jayakumar has also supported the prosecution case by deposing that he attended the betrothal.

18.Thus, there are overwhelming materials to show that Jayakumar (A1) came forward to marry Jayakanthi (PW1) and betrothal was held on 06.05.2004. In the countryside, such functions are held by informing the relatives and kinsmen and a formal invitation card would not be printed. All the witnesses have stated that after the betrothal and before the marriage, Jayakanthi (PW1) delivered a female child.

19.The Investigating Officer made an application before the Additional District Munsif-cum-Judicial Magistrate, Tirupattur to send the accused Jayakumar, Jayakanthi (PW1) and the child for DNA profiling. On the directions of the learned Magistrate, DNA profiling was done and the DNA report dated 04.04.2005 submitted to the Court by the Forensic Sciences Department, marked as Ex.P5, shows that the accused Jayakumar is the biological father and Jayakanthi (PW1) is the biological mother of the child.

20.There are also sufficient materials to show that the marriage did not go through because, the accused Jayakumar had already got married to Jothi on 10.11.1999, which fact he concealed even to his close relatives, viz. Dhanraj (PW3), Arulmozhi (PW6) and Sekar (PW8).

21.The prosecution have examined Jayammal (PW11), the Sub Registrar to prove that the marriage between Jayakumar (A1) and Jothi (A2) was registered on 24.05.2004 and the registration certificate has been marked as Ex.P2. Hence, it cannot be stated that the accused did not have the intention to cheat Jayakanthi (PW1) at the inception.

22.Learned counsel for the petitioner submitted that now Jayakanthi (PW1) has initiated proceedings in M.C.No.10 of 2014 under Section 125 Cr.P.C. before the Family Court, Vellore against the accused Jayakumar and has also obtained order of maintenance.

23.In the opinion of this Court, this subsequent development is in the year 2014 and that cannot in any way absolve the accused of the liability for the offence that was committed in the year 2005. In fact, this only shows that the accused has failed and neglected to maintain the child born to him. This Court is of the view that the appellate Court ought not to have reduced the sentence to six months Rigorous Imprisonment in a

case of this nature.

24. In the result, this revision petition stands dismissed and the sentence of six months imprisonment for the offence under Section 417 IPC should be undergone by the accused Jayakumar and thereafter, he shall undergo the sentence of six months imprisonment for the offence under Section 4 of the Dowry Prohibition Act. In other words, the sentences are directed to run consecutively and not concurrently. The bail bonds are cancelled and the trial Court is directed to take the accused Jayakumar into custody for undergoing the sentence.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Additional District and Sessions Court (FTC),
Tirupattur,
Vellore District.
2. The Sub Inspector of Police,
All Women Police Station,
Ambur, Vellore District.
3. The Additional District Munsif-cum-Judicial Magistrate,
Ambur, Vellore District.
4. The Chief Judicial Magistrate, Vellore.
5. The Superintendent,
Central Prison, Vellore.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Balachandran, Advocate, S.R.No.81843

CRL.R.C.No.171 of 2011

RV(CO)
CS/18/01/2019