

BAIL SLIP

The Petitioner / Accused namely Mr.Muruganantham, S/o.Chinnu aged 38 years was directed to be released on bail by the order of this Court in CrI.M.P.No. 1 to 3 of 2013 in CrI.R.C.No.310 of 2013 order dated 07/03/2013 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.310 of 2013

Muruganantham
S/o Chinnu
Thanthai Periyar Nagar
KVR Nagar East
Tiruppur.

...Petitioner/Accused

Vs.

State represented by
The Inspector of Police
Tiruppur All Women Police Station
Tiruppur.
Cr.No.7 of 2008.

...Respondent/Complainant

Prayer: The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records and set aside the order, confirming the sentence of 3 months rigorous imprisonment and also directed to pay Rs.500/- for the offence under Section 498A, passed by the learned Judicial Magistrate No.1, Tiruppur in C.C.No.239 of 2008 dated 06.06.2012, but it modified the 3 months rigorous imprisonment for the offence under Section 506(i) into one month rigorous imprisonment, by the learned II Additional District Sessions Judge, Tiruppur in CrI.A.No.188 of 2012 dated 30.01.2013 and acquit the petitioner herein.

For Petitioner : Mr.N.Damodaran

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI. Side)

ORDER

The Criminal Revision Case has been filed by the revision petitioner to call for the records and set aside the order passed by the learned Judicial Magistrate No.I, Tiruppur in C.C.No.239 of 2008 dated 06.06.2012, confirming and modifying the Judgment in Crl.A.No.188 of 2012 dated 30.01.2013 passed by the learned II Additional District Sessions Judge, Tiruppur.

2. The accused/revision petitioner and the defacto complainant are husband and wife. Marriage was solemnized between the accused and defacto complainant and they were living together for more than 14 years. But for the past 4 years, the accused threatened the defacto complainant that he will set fire on her and also demanded dowry like cash and jewels. Therefore the defacto complainant preferred a complaint before the respondent police in Crime No.07 of 2008. The same was taken on the file of learned Judicial Magistrate No.I, Tiruppur in C.C.No.239 of 2008.

3. After giving due opportunity to both sides, the learned Judicial Magistrate No.I, Tiruppur in C.C.No.239 of 2008 found the accused guilty for an alleged offence under Sections 498(A) and 506(i) of IPC and directed him to undergo three months rigorous imprisonment for the each offences and also directed to pay fine of Rs.500/- each for the offences, in case of default, directed to undergo one week simple imprisonment for each of the above said offences.

4. Aggrieved against the order of the learned Judicial Magistrate No.I, Tiruppur in C.C.No.239 of 2008 dated 06.06.2012, the accused/revision petitioner preferred the Criminal Appeal before the learned II Additional District Sessions Judge, Tiruppur in C.A.No.188 of 2012.

5. The learned II Additional District Sessions Judge, Tiruppur, was pleased to confirm the sentence of three months rigorous imprisonment for the each offences and also directed to pay fine of Rs.500/- each for the offences, in case of default, directed to undergo one week simple imprisonment for each of the above said offences but the learned II Additional District Sessions Judge, Tiruppur, modified the three months rigorous imprisonment for the offences under Section 506(i) into one month rigorous imprisonment and set aside the fine amount Rs.500/-. It further directed to pay the above said fine amount Rs.500/- to P.W.1 as per Section 357 of Cr.P.C as compensation by his order dated 30.01.2013 passed in C.A.No.188 of 2012.

6. Challenging the order of the learned II Additional District Sessions Judge, Tiruppur, in C.A.No.188 of 2012, dated

30.01.2013, the revision petitioner has preferred the present Criminal Revision Case before this Court.

7. In order to prove the case of the prosecution, as many as 7 witnesses P.W's.1 to 7 were marked, 4 documents Ex's.1 to 4 were marked. On the side of the accused 1 document Ex.D.1 was marked.

8. The learned counsel for the revision petitioner would submit that according to the prosecution, the occurrence took place on 03.02.2008, and the complaint was lodged only on 06.02.2008. There was an inordinate delay in lodging the Ex.P.1, Complaint. Delay in filing the complaint, which itself created the doubt that the complaint is manipulated one. On 03.02.2008, the revision petitioner herein was assaulted by P.W.1 to P.W.3. P.W.1's brother and the revision petitioner were took treatment in Government Hospital, Tiruppur for the injuries sustained during that incident. The same was clearly admitted by P.W.1 to P.W.5, during the cross examination.

9. P.W.1 to P.W.3 admitted the fact that they assaulted the revision petitioner on 03.02.2008, for which he lodged a complaint and on the basis of the said complaint there was a case pending in C.C.No.133 of 2008. As per the admission of P.W.8, the Investigating Officer, there was a correction in Ex.P.1, complaint and the statement of P.W.4 recorded under Section 161 of Cr.P.C., which clearly created the doubt on the entire prosecution case. Even though the P.W.1 to P.W.6 were interested witnesses, there are lot of contradiction between the incident alleged to have been happened during the first week of February 2008 and on the basis of it, the P.W.7, Investigating Officer examined them. Therefore without considering the above aspects properly, the courts below have mechanically convicted the revision petitioner is illegal and against the natural justice, which warrants interference of this Court.

10. The learned Government Advocate (Criminal Side), appearing for the respondent would submit that the defacto complainant is a wife, who gave complaint before the respondent police. P.W.2 and P.W.3 are the father and brother of the defacto complainant, supported and corroborated the evidence of P.W.1. Neighbours of the P.W.1 have also clearly stated about the demand and cruelty caused by the accused/revision petitioner against the defacto complainant. Hence, the prosecution has established its case and proved the guilt of the accused for the offence under Sections 498(A) and 506(i) I.P.C. There is no reason to interfere with the judgment passed by the learned II Additional District Sessions Judge, Tiruppur, in C.A.No.188 of 2012, dated 30.01.2013.

11. Heard the rival submissions made on either side and perused the entire materials available on record.

12. Admittedly, there was a delay in lodging the complaint. Since it is a matrimonial matter, and an offence, so we cannot expect the one to make a complaint immediately after the quarrel or threaten. In such of the quarrels, it will be happened in day today events. It will not be stopped in one day, when the husband goes to the extreme end. Therefore, delay is not fatal to the case of the prosecution. The main contention of the learned counsel for the revision petitioner is that the Investigating Officer, who conducted investigation, has not been acted in accordance with law. In this case, there is no such proof to show that the Investigating Officer acted against the accused/revision petitioner. Therefore, the learned Judicial Magistrate No.1, Tiruppur found the accused guilty for an alleged offence under Sections 498(A) and 506(i) of IPC and directed him to undergo three months rigorous imprisonment for the each offences and also directed to pay fine of Rs.500/- each for the offences, in case of default, directed to undergo one week simple imprisonment for each of the above said offences.

13. Further the learned II Additional District Sessions Judge, Tiruppur, by considering the relationship of the revision petitioner and the defacto complainant, age of the revision petitioner and nature of the offence, modified the three months rigorous imprisonment for the offences under Section 506(i) into one month rigorous imprisonment and set aside the fine amount Rs.500/-.

14. Both the Courts below as fact finding Courts appreciated the evidence and convicted the petitioner. This Court is only revision Court while exercising the revisional jurisdiction cannot exercise the power of Appellate Court and re-appreciate the entire evidence. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court in State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:

".... In its revisional jurisdiction, the High court can call for and examined the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or property of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of Second Appellate Jurisdiction. Ordinarily, therefore, it would

not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already be appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice..."

15. In the present case on hand, this Court does not find any perversity in appreciation of evidence by the lower Appellate Court. There is no merit in the revision. There is no sound reason and ground to interfere with the judgment of the First Appellate Court. The Criminal Revision Case is liable to be set aside.

16. Under these circumstances, the Judgment of the learned II Additional District Sessions Judge, Tiruppur, in C.A.No.188 of 2012 dated 30.01.2013 is confirmed and the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1) II Additional District Sessions Judge, Tiruppur.
- 2) The Judicial Magistrate No.I, Tiruppur.
- 3) The Public Prosecutor, High Court of Madras.
- 4) The Inspector of Police,
Tiruppur All Women Police Station
Tiruppur.

copy to: The Section Officer,
Criminal Section, High Court, Madras.

Cr1.R.C.No.310 of 2013

SJ(CO)
SSM(13/09/2019).