

BAIL SLIP

The Petitioner in CrI.R.C.No.450 of 2013, namely, Venkatesan, S/o.Chinnappan, (Accused in C.A.No.7 of 2011 on the file of Addl.Sessions Judge, Krishnagiri was released on bail vide order of this Court, dated 05.06.2013 and made in CrI.M.P.No.1/13 in CrI.R.C.No.450 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN
CrI.R.C.No. 450 of 2013
and
M.P.No.1 of 2013

Venkatesan

...Petitioner/Accused

Vs

State rep by,
Inspector of Police,
All Women Police Station,
Krishnagiri.

... Respondent/Complainant

PRAYER: Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code, to set aside the order dated 13.08.2012 passed in C.A.No.7 of 2011 on the file of the Additional Sessions Judge, Krishnagiri and partly conforming the order dated 08.02.2011 passed in C.C.No.75 of 2010 on the file of the Judicial Magistrate No.II, Krishnagiri.

For Petitioner : Mr.G.B.Saravanabhavan

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

O R D E R

The Criminal Revision has been filed to set aside the order dated 13.08.2012 passed in C.A.No.7 of 2011, on the file of the Additional Sessions Judge, Krishnagiri, partly conforming the order dated 08.02.2011 in C.C.No.75 of 2010 on the file of the Judicial Magistrate No.II, Krishnagiri.

2. The case of the prosecution is that P.W.1 is the wife of the first accused. Subsequently, since the first accused wanted to marry A.2., he caused cruelty on P.W.1 and threatened her

that if she does not give consent for marrying A.2, he would kill her. Subsequently, the appellant/1st accused married A.2 on 11.09.2006 in Radha Krishnan Temple. Therefore, P.W.1 lodged a complaint against A.1 and A.2 before the respondent police, who registered a complaint in Crime No.3 of 2006. After investigation, they filed a charge sheet against the petitioner/first accused for offence under Sections 498(A), 506 (ii) and 494 IPC, against the second accused for offence under Section 494 read with Sections 109 and 34 IPC; and against the third accused for offence under Section 494 read with 109 and 34 IPC, before the learned Judicial Magistrate II, Krishnagiri and the same was taken on file in C.C.No.407 of 2006.

3 Before the trial Court, in order to prove the case, prosecution had examined P.W.1 to P.W.13 and marked Ex.P1 to Ex.P4. On the side of the petitioner/accused, Ex.D1 was marked.

4 The learned Judicial Magistrate, Krishnagiri, after full fledged trial, found the petitioner/1st accused guilty of offence under Section 498(A) and 494 IPC. The learned Judicial Magistrate convicted the accused for offence under Section 498 (A) IPC and sentenced him to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of two months and convicted him for offence under Section 494 IPC and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a period of three months and the learned Magistrate acquitted the petitioner/1st accused for offence under Section 506(ii) IPC.

5 As against the said judgment passed by the learned Judicial Magistrate II, Krishnagiri, the petitioner filed appeal in C.A.No.7 of 2011 before the learned Principal Sessions Judge, Krishnagiri. The learned Principal Sessions Judge made over the appeal to the learned I Additional Sessions Judge, Krishnagiri. After hearing both sides, the learned Judge partly allowed the appeal and the judgment of convicting and sentencing the accused under Section 498(A) were set aside and the judgment of convicting and sentencing the accused under Section 494 IPC were confirmed.

6 Aggrieved against the judgment of conviction dated 13.08.2012, the accused has preferred this Criminal Revision before this Court.

7 The learned counsel for the petitioner would submit that though the learned Judicial Magistrate No.II, Krishnagiri has acquitted this petitioner for offence punishable under Section 506(ii) IPC and convicted him under Sections 498(A) and 494 IPC, against the said judgment, the learned Additional

Sessions Judge, Krishnagiri has allowed the appeal in part and acquitted the petitioner under Section 498(A) IPC, while confirming the order of the learned Magistrate under Section 494 IPC. There is no appeal against acquittal filed by the prosecution. The prosecution has not proved as to when the marriage took place between A.1 and A.2 and also P.W.1 has not stated on which date and place the marriage was conducted. They have not produced any documents so as to prove that A1 married A2. Therefore, the judgment of the Courts below convicted him for offence under section 494 IPC, should be set aside.

8 The learned Government Advocate (Crl. Side) would submit that PW1 is the victim, who is wife of the petitioner/1st accused and she has clearly stated that she was harassed by the petitioner to give consent to marry A.2. Since, she has not given consent to the petitioner, he threatened her. Subsequently, the petitioner married A.2., while the earlier marriage between the petitioner and the defacto complainant/P.W.1 was subsisting. Therefore, it attracts Section 494 IPC. P.W.2 and P.W.3 are parents of the victim/P.W.1. They also have clearly spoken about the attitude of the petitioner. Though there is no independent evidence regarding the cruelty and harassment made by the petitioner against the P.W.1 under section 498(A) IPC and also threatened her under section 506(ii) IPC, the learned Judicial Magistrate No.II, Kirishnagiri found the petitioner guilty and the learned Appellate Court has acquitted the petitioner under Section 498 (A) IPC. From the evidence of P.W.8, P.W.9 and P.W.10, the prosecution proved that the petitioner married A.2 as his second wife, when the marriage between the petitioner and PW1 was subsisting. Therefore, the prosecution proved the case and there is no merit in the appeal.

9 Heard the learned counsel for the petitioner and the learned Government Advocate(Crl. Side) and perused the records available on record.

10 The case of the prosecution is that P.W.1 is wife of the petitioner/first accused. Since the first accused wanted to marry A.2, he caused cruelty on P.W.1 and threatened her, subsequently, the petitioner/1st accused married A.2 on 11.09.2006 in Radha Krishnan Temple. From the evidence of P.W.1, P.W.2, and P.W.3, It is clear that the petitioner wanted to marry A2 and that he pestered P.W.1 for the same.

11 P.W.8, who has present at the time of the marriage in the temple, has clearly spoken about the marriage that took place in Radhakrishnan Temple between the petitioner/1st accused and A.2. The petitioner tied thali in the neck of A.2. P.W.2 is Electrician, who was present in the Radhakrishnan Temple where the marriage took place between A.1 and A.2 and he has

spoken that on 11.09.2006, he has seen both the petitioner and A.2 with garland around their neck.

12 P.W.10, Archagar of RadhaKrishnan Temple, has stated that on 11.09.2006, the petitioner and A.2 came to the temple and he had performed marriage to them. The petitioner tied Mangalyam around the neck of the A.2. Subsequently, the Police enquired him and he has spoken about the performance of the marriage between the petitioner and A.2. Therefore, the evidence P.W.1, P.W.8, P.W.9 and P.W.10 clearly establish that the petitioner married A.2. The Court below acquitted A.2 and A.3 from all the charges and the petitioner was acquitted from the charges under Section 498(A) and 506(ii) IPC. He was convicted for offence under Section 494 IPC. Though the learned Appellate Court found that there is no independent evidence to show the harassment of the petitioner and also threatening, since, there is no appeal by P.W.1, exercising the revisionary jurisdiction, this Court need not re-visit the entire evidence. The Court has to see whether there is any perversity in the order passed by the Court below. From the evidence of P.W.1, P.W.8, P.W.9 and P.W.10, this Court has found that the first accused married the second accused and the prosecution has proved that when the first marriage was in subsistence with PW1, then, without legally divorcing the P.W.1, he married A.2. Therefore, once the prosecution has proved the second marriage between the petitioner and A.2 took place while first marriage is subsisting, then, the petitioner/1st accused has to prove two things viz., there is no subsistence of marriage between the petitioner and P.W.1. at the time of the marriage between the petitioner and A.2 or otherwise there was no second marriage between the petitioner and A.2. In this case the petitioner has not proved that there is no subsistence of marriage between him and P.W.1. The prosecution has proved that marriage between the petitioner and A.2. The offence under section 494 IPC is made out against the petitioner. The prosecution has proved its case beyond reasonable doubt for the offence under Section 494 IPC against the petitioner. Therefore, this Court does not find any perversity in the judgement of the conviction and sentence passed by the Courts below against the petitioner and there is no merit in the revision.

13 With the above observation, the revision is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Additional Sessions Judge, Krishnagiri.

2. -Do- Thro; The Principal Sessions Judge,
Krishnagiri.

3.The Judicial Magistrate No.II,
Krishnagiri.

4.The Inspector of Police,
AWPS, Krishnagiri.

5.The Chief Judicial Magistrate,
Krishnagiri.

6.The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.G.B.Saravanabhavan, Advocate, SR.No.

CrI.R.C.No. 450 of 2013
and
M.P.No.1 of 2013

Kak(16/07/2019)



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