

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2018

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No. 1086 of 2011

Jawahar

... Petitioner/Accused

Vs.

State rep. by its,
The Inspector of Police,
All Women Police Station,
Mayiladuthurai.

... Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C. praying to call for the records pertaining to Crl.Appl. No. 62 of 2005 dated 25.01.2011 on the file of Session Judge, Nagapattinam, modifying the conviction and sentence passed by the Judicial Magistrate No.II, Mayiladuthurai in C.C.No.68 of 2005 dated 29.06.2005.

For Petitioner :Mr.S.P.Hair Krishnan for
M/S. K.M.Vijayan Associates

For Respondent :Ms.T.P.Savitha
Government Advocate (Crl.Side)

O R D E R

Aggrieved over the judgment passed by the Sessions Judge, Nagapattinam in Crl.Appl. No. 62 of 2005 dated 25.01.2011, confirming the conviction and sentence awarded by the learned Judicial Magistrate No.II, Mayiladuthurai in C.C.No.68 of 2005 dated 29.06.2005, the present petitioner who is accused in the said case filed this Criminal Revision to call for records to set aside the said judgments.

2. Initially, the respondent police had registered a case in Crime No. 22 of 2004 against the petitioner for the offences punishable under Sections 498(A) and 506(2) of IPC and 4 of Dowry Prohibition Act. After completion of investigation, a charge sheet has been filed for the said offences before the learned Judicial Magistrate No.I, Mayiladuthurai.

3. The learned Judicial Magistrate No.II, Mayiladuthurai took the case on file in C.C. No. 68 of 2005 and after elaborate trial, convicted the revision petitioner for the offences mentioned supra. Against which, the petitioner had filed a Criminal Appeal before the learned District and Sessions Judge, Nagapattinam, in which he prayed to set aside the sentence passed by the learned Magistrate. But after enquiry, the learned Sessions Judge modified the sentence and thereafter dismissed the appeal. In order to check the correctness of the said judgments, the revision petitioner approached this Court by way of filing this revision petition.

4. Today, when the matter is taken up for hearing, the learned counsel appearing for the revision petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent are present.

5. The learned Government Advocate (Crl.Side) appearing for the respondent made submissions before this Court that the dispute between the de-facto complainant and the petitioner has been settled and they are living together for the past five years. Further, the petitioner and the de-facto complainant are present before this Court today and filed a Joint Memo of Compromise under Section 320 Cr.P.C.

6. Now it is necessary to be noted that the offence punishable under Section 498(A) of IPC is not compoundable in nature. However, on considering the fact that the revision petitioner and the defacto complainant are husband and wife, the dispute between them was also amicably settled, it is necessary for this Court to rely upon the judgment of the Hon'ble Supreme Court made in Unnikrishnan @ Unnikuttan Vs. State of Kerala in Crl.MP. No. 18630 of 2016 dated 01.03.2017 in Crl.MP. No. 18630 of 2016, in which it was held that even in case where the offences are not compoundable in nature, in view of the compromise arrived at between parties, the same can be considered.

The relevant portion of the judgment are as follows;

"11. What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

12. Having regard to the facts of the present case, while taking into account the settlement arrived at between the parties and also considering the affidavits filed before us by each one of the applicants by way of joint application, we allow the

application seeking permission to compound the offences."

7. In view of the above observations of the Hon'ble Supreme Court, I am of the considered opinion that the ends of justice would be met by permitting the revision petitioner to compound the offences in view of the compromise arrived at between parties.

8. Recording the same, the conviction and sentence awarded by the learned Judicial Magistrate No.II, Mayiladuthurai in C.C.No. 68 of 2005 dated 29.06.2005 as modified by the learned Sessions Judge, Nagapattinam in Crl.Appl. No. 62 of 2005 dated 25.01.2011 are set aside. The Criminal Revision Petition is allowed.

The Joint Memo of Compromise dated 27.04.2018 filed by the petitioner and the de-facto complainant shall form part of the order.

* The Xerox copy of
Joint Memo of Compromise enclosed

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Nagapattinam.
2. The Judicial Magistrate,
No.II, Mayiladuthurai.
3. The Inspector of Police,
All Women Police Station,
Mayiladuthurai.
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.M.Vijayan Association, Sr.31916

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srg 29/06/2018