

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.06.2018	Delivered on 19.06.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**Crl.R.C.No.1124 of 2011****and****M.P.No.1 of 2011**

1.K.Sekar

2.Kasi

3.Govindammal

... Petitioners

(all residing at Silabakkam Village,
Olugarai Post, Uthiramerur Taluk,
Kancheepuram District).

..Vs..

The State of Tamilnadu,
Rep.by
Inspector of Police,
All women Police Station,
Melmaruvathur.

..Respondent

Crime No.19 of 2006

Criminal Revision case filed under Section 401 of Cr.P.C. R/w Section 397 of Cr.P.C. to set aside the judgment dated 05.08.2011 made in Crl.A.No.15 of 2011 on the file of the District Sessions Judge No.II, Kancheepuram, confirming the judgment dated 25.02.2011 in C.C.No.2 of 2007 on the file of the District Munsif cum Judicial Magistrate, Uthiramerur.

For Petitioners : Mr.G.Punniakodi

For Respondent : Ms.S.Thankira
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Petition is filed against the order passed in Crl.A.No.15 of 2011 by the District and Sessions Court No.II, Kancheepuram dated 05.08.2011, which in turn confirmed the order of conviction and sentence passed by the Judicial Magistrate, Uthiramerur in C.C.No.2 of 2007, dated 25.02.2011.

2.The petitioners stood trial for a charge under Section 498 (A) of IPC and Section 4 of the Dowry Prohibition Act and were convicted after being found guilty and were sentenced by the Trial Court to undergo six months Rigorous Imprisonment and to pay a fine of Rs.200/- and in default to undergo one month Simple Imprisonment, for the offence under Section 498 (A) of IPC and were further sentenced to undergo six months Rigorous Imprisonment and pay a fine of Rs.200/- and in default to undergo one month Simple Imprisonment for an offence under Section 4 of the Dowry Prohibition Act and the sentence was directed to run concurrently. On Appeal the Appellate Court confirmed the order of conviction passed by the Trial Court but however modified the sentence insofar as the 2nd and 3rd petitioners to the extent that the sentence of Rigorous Imprisonment was set aside and the sentence of payment of fine imposed on the 2nd and 3rd petitioners was confirmed.

Aggrieved by the same, the petitioners have filed this Criminal Revision

before this Court.

3.The 1st petitioner is the husband, the 2nd petitioner is the father-in-law and the 3rd petitioner is the mother-in-law of the de-facto complainant-wife. This Court by an order dated 17.08.2011 made in M.P.No.1 of 2011 was pleased to suspend the sentence of imprisonment alone by imposing some conditions.

4.When this Criminal Revision came up for hearing on 19.04.2018, the learned counsel appearing for the revision petitioners submitted that the dispute between the de-facto complainant-wife and the revision petitioners has been settled. Recording the said submissions, this Court directed the parties to be present before the Court on 27.04.2018. When the matter was taken up for hearing on 27.04.2018, the parties were not present before the Court and therefore the matter was adjourned to 08.06.2018.

5.When the matter came up for hearing before this Court on 08.06.2018, the 1st petitioner husband and the de-facto complainant-wife were present before the Court and they through their counsel jointly filed a Memorandum of Compromise. This Court personally

enquired the husband and wife as to the present status of their relationship and both of them informed this Court that on the intervention of the elders of the family and considering the welfare of both the families, both of them decided to bury the hatchet and are living in a peaceful and happy life from the year 2012 onwards. It was informed to the Court that from the year 2012 till date they have been living as husband and wife happily without any complaints. The same stand was reiterated by them in the Memorandum of Compromise that was filed before the Court and it was argued by the learned counsel for the petitioners that since the parties have settled the matter amicably outside the Court, the revision may be allowed by setting aside the order of conviction and sentence passed by the Courts below.

6.The case of the prosecution is that the 1st petitioner and the de-facto complainant-wife got married on 11.09.2002 as per the Hindu Marriage and Custom and that during the marriage the de-facto complainant-wife was given 15 sovereign of gold jewellery and the 1st petitioner was given 2 sovereign of gold jewellery and that after two years of marriage, the petitioners started demanding a sum of Rs.25,000/- [Rupees Twenty Five Thousand Only] in lieu of a two wheeler that was promised to be given to the 1st petitioner at the time

of marriage and the de-facto complainant-wife was subjected to cruelty by forcing her to bring the said amount from her parents. It is based on these facts, a Final Report was filed by the police along with the statement of the witnesses based on which the Trial Court framed charges for an offences under Section 498 (A) of IPC and Section 4 of Dowry Prohibition Act.

7. Before going into the merits of the case, in order to appreciate the findings of the courts below which have convicted and sentenced the petitioners for the above said offences, this Court has been requested by the learned counsel for the petitioners to record the compromise arrived at by the parties concerned and set aside conviction and sentence based on the compromise. It is therefore necessary for this Court to consider as to whether after conviction and sentence of an accused person, this Court exercising its jurisdiction under Section 397 and 401 and Section 482 of Criminal Procedure Code can compound the offence and set aside the conviction and sentence more particularly where the offence involved is non compoundable in nature.

8. The Hon'ble Apex Court in the recent judgment in ***Parbatbhai***

Aahir @ Parbatbhai Bhimsinghbhai Karmur and Others .vs.

State of Gujarat and Another, reported in ***[2017 (6) CTC 2013]***

after considering all the earlier judgments, summarised the principles that need to be kept in mind by the High Court's while considering a plea for quashing an FIR/Criminal Proceedings under Section 482 of the Code of Criminal Procedure on the ground of settlement between the parties, issued certain guidelines. These guidelines clearly reiterates the inherent power of the High Court under Section 482 of the Cr.P.C. to prevent an abuse of the process of any Court or to secure the ends of justice and also reiterates that the power to quash under Section 482 Cr.P.C. is attracted even if the offence is non compoundable and that this inherent jurisdiction is distinct and different from the power given to a Criminal Court for compounding the offences under Section 320 of the Code.

9.A careful reading of the judgment quoted supra and the earlier judgments that have even considered, clearly point out to the fact that the stage at which the power is to be exercised is the stage of an F.I.R. or Final Report or pending Criminal Proceedings. There is no indication from this judgment or the earlier judgments relied upon in this judgment as to whether the power of compounding a non

compoundable offence can be done even in cases where the criminal case has come to an end and an order of conviction and sentence has already been passed.

10. An offence which involves under Section 498 (A) IPC and Section 4 of the Dowry Prohibition Act, arises out of a matrimonial dispute. These offences were brought into force by the Parliament taking into consideration the phenomenal rise in crime against women and to ensure protection to women guaranteed by the Constitution of India. These provisions reflect the anxiety to extend protection of the weaker spouse. Therefore on the one hand the Court has to keep in mind the reasons behind these enactments and at the same time the Courts must also be sensitive to preserve the marital relationship between the parties. Therefore, the Court must strike a fine balance in cases involving matrimonial disputes.

11. A settlement or a compromise arrived at between the wife and husband and in-laws at the stage of FIR or Final Report or during the pendency of the Criminal Proceedings, can be straight away taken into consideration by this Court and this Court in exercise of its inherent jurisdiction under Section 482 Cr.PC can quash the FIR or Final Report

or pending Criminal Proceedings, in the interest of justice and in order to preserve the matrimonial relationship even though the offence concerned is non compoundable in nature.

12. However, can this Court exercise the very same inherent jurisdiction where the settlement between the parties happens after a conviction has been recorded and in a case where the same has been confirmed by the Appellate Court also? The term Criminal Proceedings will also include the appeal and the revision since they are only continuation of the original proceedings. As a general rule, this Court will be more cautious and circumspect in exercising its inherent jurisdiction under Section 482 to quash the Criminal Proceedings after a conviction and sentence has been imposed. The reason being that if this Court starts exercising the inherent jurisdiction to quash proceedings where a person has already been convicted and sentenced, for a mere asking, the same is capable of being misused and any person just to escape from undergoing the punishment, will enter into compromise with the de-facto complainant/victim and set at nought the entire Criminal Proceedings. It is also possible that after entering into the compromise and getting the Criminal Proceedings quashed, the accused person can always go back to his original ways thereby

hoodwink the entire criminal justice system. It therefore becomes very important for this Court to understand the scope of interfering with an order of conviction and sentence only on the ground that the parties have compromised between themselves. Even though a matrimonial dispute is more in the nature of person dispute between the husband, wife, in-laws etc., the background in which provisions like 498 (A), 304 (B) IPC or the Dowry Prohibition Act was brought into force must be kept in mind in order to ensure that the husband or the in-laws do not get an impression that even after a conviction for the said offences, they can enter into the compromise with the victim and get away from the clutches of law.

13. The Hon'ble Supreme Court in the judgment in ***Manohar Sing .Vs. State of Madhya Pradesh and Another*** reported in ***2014 [13 SCC] 75*** specifically considered the issue as to whether a conviction can be quashed on the ground that the parties have compromised the matter in exercise of the inherent jurisdiction under Section 482 Cr.PC. In this case the offence involved was under Section 498 (A) of IPC and Section 4 of the Dowry Probation Act. The Hon'ble Supreme Court in para 6,7 and 8 has held as follows:

of the Dowry Act is also non-compoundable. It is not necessary to state that non-compoundable offences cannot be compounded by a court. While considering the request for compounding of offences that court has to strictly follow the mandate of Section 320 of the Code. It is, therefore, not possible to permit compounding of offences under Section 498-A IPC and Section 4 of the Dowry Act. However, if there is a genuine compromise between husband and wife, criminal complaints arising out of matrimonial discord can be quashed, even if the offences alleged therein are non-compoundable, because such offences are personal in nature and do not have repercussions on the society unlike heinous offences like murder, rape, etc.(see **Gian Singh .v. State of Punjab**). If the High Courts forms an opinion that it is necessary to quash the proceedings to prevent abuse of the process of any court or to secure ends of justice, the High Court can do so. The inherent power of the High Court under Section 482 of the Code is not inhibited by Section 320 of the Code. Needless to say that this Court can also follow such a course.

7. In Narinder Singh v. State of Punjab this Court was dealing with a situation where the accused was charged for the offence punishable under Section 307 IPC, which is a non-compoundable offence. The parties arrived at a compromise at the stage of recording of evidence. A petition was filed under Section 482 of the Code for quashing of the proceedings in view of the compromise. The High Court refused to quash the proceedings. This Court set aside the High Court's order and quashed the proceedings in view of the compromise. While doing so, this Court laid down certain guidelines. In Guideline (VII), this Court considered a situation where a conviction is recorded by the trial court for the offence punishable under Section 307 IPC and the matter is at appellate stage. This Court observed that in such cases, a mere compromise between the parties would not be a ground to accept the same

resulting in acquittal of the offender who has already been convicted by the trial court. This Court observed that in such cases where charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime, there was no question of sparing a convict found guilty of such a crime. The observation of this Court must be read obviously in the context of a non-compoundable offence under Section 307 IPC. It is trite that a non-compoundable offence cannot be compounded at any stage (see **Gian Singh v. State of Punjab**). However, a compoundable offence can be compounded in view of a compromise, if the court finds it proper to do so even after conviction if the appeal is pending.

8. In the instant case, the appellant is convicted under Section 498-A IPC and sentenced to undergo six months imprisonment. He is convicted under Section 4 of the Dowry Act and sentenced to undergo six months imprisonment. Substantive sentences are to run concurrently. Even though the appellant and Respondent 2 wife have arrived at a compromise, the order of conviction cannot be quashed on that ground because the offences involved are non-compoundable. However, in such a situation if the court feels that the parties have a real desire to bury the hatchet in the interest of peace, it can reduce the sentence of the accused to the sentence already undergone. Section 498-A IPC does not prescribe any minimum punishment. Section 4 of the Dowry Act prescribes minimum punishment of six months but proviso thereto states that the court may, for adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may be less than six months. Therefore, sentence of the appellant can be reduced to sentence already undergone by him.”

14. This Court also had an opportunity to consider this question in

Narendiran and 2 Others .Vs. The State [2016 SCC online Mad

11978] and in para 10 it was held as follows:

*"10. Though, parties have arrived at a compromise, yet, this Court cannot quash the entire prosecution in view of the judgment of the Supreme Court in **Manohar Singh .V. State of Madhya Pradesh [(2014) 13 SCC 75]**. Therefore, this Court proceeded to analyse the evidence on record."*

15. In view of the law as it stands by virtue of the judgment of the Hon'ble Supreme Court followed by this Court, this Court is not in a position to straight away quash the conviction and sentence already ordered by this Trial Court and confirmed by the Appellate Court. Therefore, this Court proceeds to deal with this revision on merits and scrutinise the correctness, legality or propriety of the finding, conviction and sentence passed by the Courts below. This Court will also take into consideration the factum of the compromise arrived at by the parties for the purpose of reducing the sentence if in case this Court upholds the order of conviction.

16. The learned counsel for the petitioners would submit that even on merits the petitioners have got a good case and the prosecution has not proved the case beyond reasonable doubts against the petitioners.

17. The learned counsel for the petitioners brought to the notice

<http://www.judis.nic.in> of the Court the evidence of PW-1 to PW-5 and contended that both the

Courts below erred in not taking into consideration the matrimonial proceedings between the parties which will clearly shows that the stand taken by the de-facto complainant in the criminal case is entirely different from the stand taken in the matrimonial proceedings. The learned counsel would further contend that at one place the quantum of dowry demanded is stated to be Rs.50,000/- [Rupees Fifty Thousand Only] but, in another place the same is stated as Rs.25,000/- [Rupees Twenty Five Thousand Only] and the very allegation on demand of dowry has not been proved and the Courts below have recorded conviction and sentence on conjectures and surmises. Finally, the learned counsel would contend that none of the ingredients of Section 498 (A) IPC and Section 4 of the Dowry Prohibition Act have been made out from the available evidence on record, and therefore, the petitioners will have to be acquitted of all charges.

18.Per contra, the learned Government Advocate (Criminal Side) would contend that there is sufficient evidence for demand of Dowry by the petitioners and both the Courts below have properly appreciated the evidence available on record and there is absolutely no ground to interfere with the order of conviction and sentence passed by the Courts below.

19. This Court has considered the arguments put forth by the learned counsel appearing on either side and also has gone through the materials available on record. Ex.P-1 complaint has been given on 12.11.2006. Even before giving this complaint there was a dispute between the de-facto complainant and A-1 which resulted in both of them living separately. A petition for maintenance also came to be filed by the de-facto complainant and a petition for restitution of conjugal rights was filed by A-1 against the de-facto complainant in H.M.O.P.No.37 of 2005. Both these cases got compromised and were withdrawn. There was no allegation of demand of dowry till that point of time. It is only in the year 2006, the de-facto complainant comes up with a complaint that dowry was demanded. Ex.D-2 shows that a sum of Rs.50,000/- [Rupees Fifty Thousand Only] was demanded as dowry and there is no reference to any demand of vehicle. However, in the complaint and FIR marked as Exs.P-1 & P-2 a new case is projected as if a demand of Rs.25,000/- [Rupees Twenty Five Thousand Only] was made by the petitioners towards dowry and that the Thali Chain was snatched away. That apart, PW-1 during the course of trial has given a list of items that was given to her at the time of marriage and states about the demand of Rs.25,000/- [Rupees Twenty Five Thousand Only]

or a vehicle for A-1. PW-2 in her evidence has stated that her sister PW-1 used to take Rs.1,000/- [Rupees One Thousand Only] and sometimes Rs.2,000/- [Rupees Two Thousand Only] from their father and it was given it to A-1 and Rs.25,000/- [Rupees Twenty Five Thousand Only] was demanded ultimately by the petitioners from her sister. The evidence of PW-3 and PW-4 almost reiterates the same facts. PW-5 has spoken about the dispute between PW-1 and A-1 and the attempt made by the Panchayatdars to settle the dispute amicably.

20.The stand taken by the de-facto complainant varies in different places. The amounts stated by her as dowry also varies from place to place. It is curious to note that PW-1 on the one hand says that she withdrew the maintenance case on 28.10.2006 on the ground that the parties have settled the dispute but on the other hand she also says that it was on the very same day her Thali Chain was snatched and dowry was demanded by the petitioners. This evidence of PW-1 throws a lot of doubt about the veracity of the statement made by PW-1 and the very complaint about the demand of dowry.

21.When all these grounds were raised before the Appellate Court and also argued by the learned Counsel for the appellant, it is seen that

the Appellate Court does not even discuss about any of these grounds and has mechanically confirmed the order of conviction passed by the Trial Court. Appeal is a continuation of the original proceedings and the jurisdiction of Appellate Court is co-extensive with that of a Trial Court to re-appreciate the entire evidence and to arrive at its own conclusion. An Appellate Court cannot sit and mechanically keep confirming the orders of the Trial Court. By doing so the Appellate Court has miserably failed to exercise its jurisdiction. This by itself is a ground to set aside the order of the Appellate Court on the ground of illegality and impropriety and gross irregularity in not following the procedure which an Appellate Court is suppose to follow while hearing and deciding a Criminal Appeal.

22. Due to the peculiar facts of the case as mentioned above, this Court does not want to remand the matter back to the Appellate Court. That is the reason why this Court independently appreciated the evidence on record. On appreciation of the evidence, it is found that the demand of dowry has not been proved and the prosecution has not proved the case beyond reasonable doubts against the petitioners. Hence, the order of conviction and sentence passed by the Trial Court and confirmed by the Appellate Court is hereby set aside.

23.This Criminal Revision Petition is allowed. The bail bond executed by the first petitioner shall stand cancelled and the fine amount deposited by the petitioners shall be refunded to them. Consequently connected miscellaneous petition is closed.

19.06.2018

Kp

Index: yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

To

1.The District and Sessions Judge-II,
Kancheepuram.

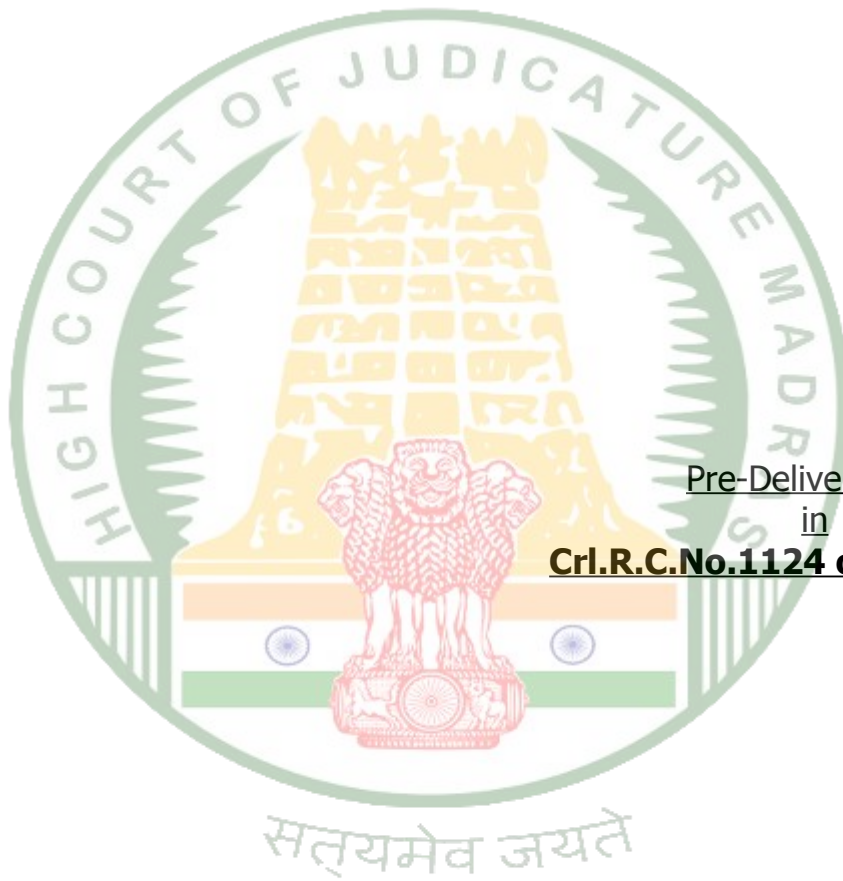
2.The District Munsif cum Judicial Magistrate,
Uthiramerur.

3.The Inspector of Police,
All women Police Station, Melmaruvathur.

4.Public Prosecutor,
High Court, Madras.

N. ANAND VENKATESH,. J

KP



Pre-Delivery Order
in
Crl.R.C.No.1124 of 2011

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