

Bail Slip

The Appellant/Accused namely 1. Paramasivam S/o.Chinnusamy, 2. Chinnammal W/O.Chinnusamy, 3. Chinnusamy S/o.Raman, are released on Bail in MP.1 of 2011 in CrI RC.1496 of 2011 vide order dated 15.11.2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
27.06.2018	05.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.R.C.No.1496 of 2011

1.Paramasivam
2.Chinnammal
3.Chinnusamy (deceased)
(By an order dt.27.06.2018,
the death of the petitioner
was recorded)

... Petitioners/Appellants/Accused

..Vs..

1.State by
The Inspector of Police,
All Women Police Station,
Namakkal.

2.Sangeetha

... Respondents/Respondents/Complainant

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to set aside the judgment of C.A.No.16/2010 dated 30.08.2011 on the file of Principal Sessions Judge, Namakkal, confirming the judgment of C.C.No.165/2006 dated 04.01.2010 on the file of Judicial Magistrate No.II, Namakkal.

For Petitioners: Mr.R.Nalliyappan

For Respondents: Ms.S.Thankira, for R-1
Government Advocate
(CrI.Side)

Sangeetha, In person R-2

O R D E R

The Revision Petitioners aggrieved by the order passed by the Principal Sessions Judge in CrI.A.No.16 of 2010, dated 30.08.2011, confirming the order of conviction and sentence passed by the Trial Court in C.C.No.165 of 2006, have filed the present Criminal Revision Petition before this Court.

2.The case of the prosecution is that the first petitioner and the de-facto Complainant got married on 20.10.2001 and after marriage the de-facto Complainant started living with the petitioners as a joint family. Out of the wedlock two children were born and after sometime the de-facto Complainant and the first petitioner started living separately. It is the further case of the prosecution that the second petitioner demanded dowry and she did not allow the de-facto Complainant to live with the first petitioner. The first petitioner started developing illegal intimacy with the another woman, who was originally arrayed as A-4 in the FIR. It is the further case of the prosecution that the first petitioner was abusing and assaulting the de-facto Complainant and after sometime during February 2006, the first petitioner even got married to the lady with whom he had illicit intimacy. The second and third petitioners were also committing cruelty on the de-facto Complainant and were preventing her from living with the first petitioner. Thus, it is the case of the prosecution that all the three petitioners together committed cruelty, physically assaulted with the de-facto Complainant demanded dowry and also threatened her, and therefore, an FIR was registered in Crime No.10 of 2006 for an offence under Section 498(A), 494, 506(ii), 352 and 323 IPC r/w Section 4 of the Dowry Prohibition Act.

3.The case was investigated by the respondent police and a Final Report came to be filed against the petitioners and independent charges were framed against the petitioners.

4.The prosecution examined 11 witnesses and marked Exs.P-1 to P-4.

5.The Trial Court on consideration of the materials placed before the Court, was pleased to pass an order dated 04.01.2010, convicting the petitioners for an offence under Section 498(A), 457 and Section 4 of the Dowry Prohibition Act, and sentenced them to undergo six months Simple Imprisonment and a fine of Rs.1000/- [Rupees One Thousand Only] and also convicted the petitioners and A-4 under Section 426 IPC and imposed a sentence of three months Simple Imprisonment and fine of Rs.250/- each [Rupees Two Fifty Only]. The said sentences were directed to run concurrently. It is seen from the records that in the mean

time A-4 has expired.

6.The petitioners aggrieved by the said order filed an appeal in Crl.A.No.16 of 2010 and the Appellate Court by an order dated 30.08.2011 was pleased to confirm the order of the Trial Court.

7.When the matter came up for hearing before this Court on 27.06.2018, 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 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 along with the children. 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.

8.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.

9.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.

10.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.

11.An offence which involves 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.

12.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.P.C. 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.

13.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.

14. 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:

"6. Section 498-A IPC is non-compoundable. Section 4 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."

15. 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."

16. 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.

17. The learned counsel for the petitioners would submit that there was no proof for demand of dowry from the de-facto Complainant and the alleged cruelty was also not substantiated by the prosecution. The learned counsel for the petitioner further submits that at any rate the subsequent event namely viz., the de-facto Complainant and the first petitioner join together and are living happily from the year 2012, has to be taken into consideration at least while considering the sentence to be imposed on the petitioners.

18.The learned Government Advocate (Crl.Side) submitted that the prosecution has proved the case beyond reasonable doubts and there is no ground to interfere with the order of conviction concurrently passed by both the Courts below. Insofar as the sentence is concerned, the learned counsel would submit that this Court can take into consideration, the subsequent compromise between the parties and pass appropriate orders. The learned counsel also brought to the notice of the Court about the fact that the third petitioner died during the pendency of the proceedings on 01.02.2012 and this was recorded by this Court, and an order was passed on 27.06.2018, to the effect that the proceedings have abated insofar as the third petitioner is concerned.

19.The evidence of PW-1, PW-2, PW-3, PW-4 and PW-5 would clearly show that the first petitioner was in fact having an illegal intimacy with A-4 and the de-facto Complainant was subjected to cruelty. It is also proved beyond reasonable doubt that the Panchayat was held in the presence of PW-6 and PW-7 in which A-4 had demanded a sum of Rs.35,000/- [Rupees Thirty Five Thousand Only] in order to stop having contacts with the first petitioner.

20.The evidence of the witnesses also goes to show that there was demand towards dowry from the de-facto Complainant and her family and on that score also she was subjected to cruelty.

21.Both the Courts below have assessed the oral evidence of the witnesses and have come to the conclusion that there was cruelty committed against the de-facto Complainant both by conduct and by demand of dowry. This Court sitting in revisional jurisdiction cannot reassess the evidence unless it is shown that the findings are perverse. Therefore, this Court does not find any ground to interfere with the order of conviction as confirmed in the appeal.

22.Insofar as the sentence is concerned, in view of the subsequent development wherein the first petitioner and the de-facto Complainant have started living together with their children from the year 2012 onwards, the sentence imposed by the Courts below is modified. The sentence of imprisonment is modified from six months to the period already undergone by the first and 2nd petitioners.

23.The Criminal Revision Petition is partly allowed by modifying the sentence to the extent indicated above.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Kp

To

- 1.The Principal Sessions Judge,
Sessions Court, Namakkal
- 2.The Judicial Magistrate-II,
Judicial Magistrate Court,
Namakkal.
- 3.The Inspector of Police,
All Women Police Station,
Namakkal.
- 4.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.R.NALLIYAPPAN, Advocate, S.R.No.43901

Pre-Delivery Order
in
Crl.R.C.No.1496 of 2011

PVS (CO)
TR(17/07/2018)

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