

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No. 515 of 2011

Anbalagan

.. Petitioner

Vs.

1.State by

The Inspector of Police,
All Women Police Station,
Ranipet, Vellore District.

2.Ganga

(R2 Impleaded as per the order of this Court dated 16.07.2013 in M.P.No.4 of 2011) .. Respondents
Criminal Revision filed under Sections 397 and 401 Cr.P.C. praying to call for the records pertaining to order dated 10.12.2007 in C.C. No. 197 of 2004 on the file of the learned Judicial Magistrate No.2, Wallajapet, Ranipet, confirming the order of conviction and modify the sentence by the learned Additional Sessions Judge/Fast Track Court No.2, Ranipet, Vellore, dated 24.02.2011 in Crl.Appeal No. 2 of 2009 and set aside the same.

For Petitioner : Mr.P.G.Perumal Pandian

For Respondent : Mrs.T.P.Savitha,
Government Advocate(Crl.Side) - R1

O R D E R

Aggrieved over the judgment passed in C.A. No. 2 of 2009 on the file of the Additional Sessions Judge/Fast Track Court No.2, Ranipet, Vellore, the petitioner herein has filed this Revision to set aside the same.

The case of the prosecution as follows;

2. On 25.10.2001 one Ganga, the defacto complainant/2nd respondent herein got married with the petitioner herein. At the time of the marriage, the petitioner demanded cash of Rs.3,00,000/- and 50 sovereigns of gold jewells as dowry from the parents of the defacto complainant. After solemnisation of the marriage, within a period of six months, the present petitioner had ill treated his wife/2nd respondent and further

demanded 20 sovereigns of gold and a TATA Sumo car, for which she was assaulted by the petitioner. Due to the harassment made by the petitioner, the defacto complainant had left the matrimonial home and lodged a complaint before the the Inspector of police, All Women Police Station, Ranipet, due to which a case has been registered against the petitioner in Crime No. 12 of 2004 for the offences under Section 498 (A) IPC and Sec.4 of Dowry Prohibition Act.

3. After completion of the investigation, final report has been filed before the Judicial Magistrate No.II, Wallajha and the same was taken on file in C.C. No. 197 of 2004. After adopting all procedures laid in the code of Criminal Procedure, the learned Judicial Magistrate No.II, Wallajapet had convicted the petitioner for the offences under Section 498 (A) IPC and Sec.4 of Dowry Prohibition Act and sentenced him to undergo two years rigorous imprisonment and to pay fine of Rs.400/- for each offence.

4. Aggrieved by the said judgment, the petitioner filed a Criminal Appeal in C.A. No. 2 of 2009 before the Additional Sessions Court/Fast Track Court-II, Ranipet, Vellore. After elaborate enquiry, the learned Additional Sessions Court/Fast Track Court-II, Ranipet, Vellore had dismissed the appeal, after modifying the earlier sentence as one year rigorous imprisonment for each offence and also directed the petitioner to pay a sum of Rs.3,00,000/- as compensation to the 2nd respondent on or before 31.05.2011. Now without complying with the order of the lower Appellate Court/ Additional Sessions Court(Fast Track Court-II), Ranipet, Vellore, the petitioner had filed this Revision before this Court to call for the records pertaining to C.A. No. 2 of 2009 and to set aside the sentence confirmed by the Additional Sessions Court/Fast Track Court-II, Ranipet, Vellore.

5. After filing this Revision, Mr.R.Jeyakumar, learned counsel for the petitioner is not regularly appearing before this Court, hence this Court appointed one Mr.P.G.Perumal Pandian to represent the case of the petitioner.

6. Today, this Court heard the arguments of Mr.P.G. Perumal Pandian, learned counsel appearing for the petitioner and Mrs.T.P.Savitha, learned Government Advocate (Crl.Side) appearing for the first respondent.

7. During the course of arguments, Mr.P.G.Perumal Pandian, learned counsel appearing for the petitioner had contended that the present petitioner is not a husband of the victim girl/2nd respondent herein. In the evidence adduced by the 2nd respondent herein as PW1 before the trial Court, she herself admitted that

at the time of solemnisation of the marriage with the present petitioner, the earlier marriage which took place with one Russel was not dissolved, thereby legally we cannot come to the conclusion that the present petitioner is the husband of the victim girl, thereby, the offences for which the present petitioner was convicted is not sustainable.

8. On the other hand, the learned Government Advocate (CrI.Side) would submit that the marriage happened between one Russel and the defacto complainant was dissolved as per the agreement made in the presence of some known persons and only after that the marriage took place with the present petitioner on 25.10.2001. But, the trial Court and the lower Appellate Court came to the conclusion that the present petitioner alone is the husband of the defacto complainant and accordingly convicted him for the offences under Section 498 (A) IPC and Sec.4 of Dowry Prohibition Act.

9. Before going through the rival submissions made by the both counsels, it is necessary to see the definition of Section 498 (A)IPC and Sec.4 of Dowry Prohibition Act which reads as follows;

"i. 498(A) of IPC: Husband or relative of husband of a woman subjecting her to cruelty :

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine

Explanation -

For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

ii. Sec.4 of Dowry Prohibition Act:

4. Penalty for demanding dowry. If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry be shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees;

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for term of less than six months."

As per the definition, if the husband or relative of the husband of a women, subjects a such women to cruelty in order to get more dowry, he shall be punished under the above said provisions of law.

10. Considering the submissions made by the learned counsel for the revision petitioner, that during the cross examination of the defacto complainant, who was examined as PW1, she has specifically stated that prior to the marriage with the present petitioner on 25.05.2000, she married one Russel as per the rights of the Christian marriage and thereafter, she left him within a period of one month. Further, she admitted that till the date on which she gave evidence for this case, the said marriage happened with Russel was not dissolved by the competent Court. So the said evidence apparently shows that the present petitioner is the 2nd husband. Hence, in the eye of law, we can come to the conclusion that the present petitioner is not legally wedded husband of the defacto complainant/2nd respondent herein. Therefore, applying the definition of the offences for which the petitioner was convicted, the present petitioner is not the husband or relative of the husband.

11. Further, our Hon'ble Apex Court in a case of U.Suvetha Vs. State by Inspector of Police & Another reported in (2009) 6 SCC 757 has considered the similar type of situation and observed as follows;

"That being the case, the arguments advanced by the learned counsel for the petitioners would have to be accepted that the provisions of Section 498-A IPC would not be attracted inasmuch as the marriage between Mohit Gupta and Shalini was null and void and Mohit Gupta could not be construed as a 'husband' for the purposes of Section 498-A IPC. Clearly, therefore, the charge under Section 498-A IPC cannot be framed and the Metropolitan Magistrate had correctly declined to frame any charges under Section 4980A IPC"

In view of the above observations of the Hon'ble Apex Court, this Court is of the view that the said aspect was not considered by both the trial Court as well as first appellate Court.

12. Accordingly, for the reasons stated above, this Court comes to the conclusion that the present petitioner being the 2nd husband of the defacto complainant, the allegations levelled against him by considering him as a legally wedded husband of the defacto complainant/2nd respondent herein is not at all valid as per provisions stated supra. Thereby this Revision Petition deserves to be allowed. Accordingly, the judgment in C.A. No. 2 of 2009, dated 24.01.2011 passed by the Additional Sessions Court/Fast Track Court-II, Ranipet is set aside.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
All Women Police Station,
Ranipet, Vellore District.

2.The Additional Sessions Court/FTC II
Ranipet, Vellore.

3.The Judicial Magistrate Court-II,
Wallajapet.

4. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.515 of 2011

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