



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.08.2018

DELIVERED ON : 11.08.2018

CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

CrI. R.C. (MD) No.307 of 2018

Murugan ... Petitioner / A -1
vs.

Vembu Selvi ... Respondent / Complainant

Prayer:- Criminal Revision Petition filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to set aside the order passed by the learned III Additional District and Sessions Judge, Tirunelveli District in Cr.M.P.No. 177 of 2018 in C.A.No.113 of 2015 vide his order dated 12.02.2018 and consequently direct the aforesaid learned Judge to permit the petitioner to record his settlement towards compounding the offence under Section 498(A) of IPC for allowing the said appeal filed as against the Judgement delivered by the learned Additional Mahila Judge (Magisterial Level), Tirunelveli in C.C.No.225 of 2013 on 29.09.2015.

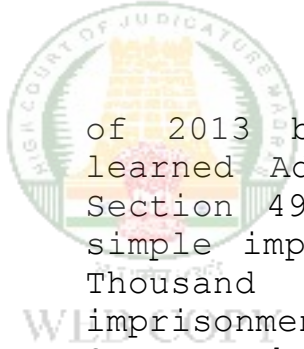
For Petitioner : Mr.R.Anand
For Respondent : Mr.P.Samuel Gunasingh

ORDER

Heard Mr.R.Anand, learned counsel appearing for the petitioner and Mr.P.Samuel Gunasingh, learned counsel appearing for the respondent.

2.This petition is filed to set aside the order passed by the learned III Additional District and Sessions Judge, Tirunelveli District in Cr.M.P.No. 177 of 2018 in C.A.No.113 of 2015 vide his order dated 12.02.2018 and consequently direct the aforesaid learned Judge to permit the petitioner to record his settlement towards compounding the offence under Section 498(A) of IPC.

3.The case of prosecution is that the petitioner is the husband of the defacto complainant and the defacto complainant lodged a complaint against this petitioner on the ground of harassment and a case under Section 498(A) of IPC is registered against the petitioner. The case was taken on file in C.C.No.225



of 2013 before the Additional Mahila Court, Tirunelveli. The learned Additional Mahila Judge convicted the petitioner under Section 498(A) of IPC and sentenced him to undergo three years simple imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo one month simple imprisonment. The co-accused 2 and 3 were acquitted by the trial Court and the petitioner is acquitted under Sections 494 and 406 of IPC. The petitioner filed an appeal against the order of conviction and the appeal is taken on file in C.A.No.113 of 2015. While the appeal is pending, the petitioner has filed a petition in Cr.M.P.No.177 of 2018 under Section 320 of Cr.P.C. As the offence is non compoundable, the learned IIIrd Additional District Judge dismissed the petition.

4.On the side of the petitioner, it is stated that the petitioner and the defacto complainant are husband and wife and due to the efforts of the elders, the dispute between them are settled and they are living together and compromise petition was filed by them and the same was dismissed by the First Appellate Court. It is further stated that the result of appeal in C.A.No.113 of 2015 may disturb their matrimonial life and request that this petition to be allowed. In support, the judgment passed by the Hon'ble Supreme Court reported in 2003(4) SCC 675 and 2013 (2) MLJ (Crl.) 739 (SC) are cited.

5.On the side of the respondent, it is stated that the defacto complainant is living with the petitioner and the respondent has no objection in allowing this petition.

6.The learned counsel appearing for the petitioner relied on the order passed by this Court in the case of N.Shenbagaraj and other v. The Inspector of Police in Crl.O.P.(MD)No.6718 of 2014, which reads as follows:

"At the out set, this Court can hold that such conclusion though technically right but on the principles laid down by the Hon'ble Supreme Court is not correct as a compromise can be effected even in non-compoundable offences in the case of matrimonial disputes.....

To meet the ends of justice, this Court is of the view, the same prayer can be modified into 'to set aside the sentence based on the compromise arrived at between the parties.'

12.In the result, the Criminal Original Petition is allowed and the conviction and sentence passed in Crl.M.P.No.147 of 2013 in Crl.A.No.3 of 2010, dated 21.11.2013 on the file of the learned Additional Sessions Judge, Dindigul, is set aside and the compromise entered between the parties is recorded."



7.The case against the petitioner is not a Police case. The case against the petitioner is only a private complaint lodged by the respondent/ wife.

8.On the side of the petitioner, it is stated that being a private complaint, the respondent is at liberty to withdraw the case at any point of time. A perusal of the records reveals that the case is only a private complaint and not the Police case. Moreover, while the private complaint lodged by the petitioner and the respondent were now living together, after their misunderstanding is settled amicably between them. The citation referred by the petitioner is squarely applicable to this case. The conviction and sentence passed by the trial Court in C.C.No.225 of 2013 is hereby set aside and the order passed in Cr.M.P.No.177 of 2018 is set aside, C.A.No.113 of 2015 is to be closed and the compromise entered between the parties is recorded.

9.Hence, this Criminal Revision Case is allowed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The III Additional District and Sessions Judge,
Tirunelveli.

2.The Additional Mahila Judge (Magisterial Level),
Tirunelveli.

+1cc to Mr.R.ANAND, Advocate, Sr.No.78386.

CrI. R.C. (MD) No.307 of 2018

11.08.2018

KK/SKN/SAR 4/26.10.2018/2P/4C