



Bail slip

The Revision Petitioner/Accused namely Seranthaiyan S/o.Velayutham was released on bail vide Court order dated 08.08.2016 in CrI MP(MD).6287/2016 in CrI RC(MD).518 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2018

DELIVERED ON : 03.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CrI.R.C(MD)No.518 of 2016

Seranthaiyen : Petitioner/
Accused
Vs.

State represented by
Assistant Commissioner of Police,
Law and Order, Palayamkottai.
[Crime No.10/2005]
[All women Police Station,
Palayamkottai],
Tirunelveli District.

: Respondent/
Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records from the lower Court and set aside the orders passed by the learned Third Additional Sessions Judge, Tirunelveli, Tirunelveli District in C.A.No.84 of 2014, dated 10.06.2016, confirming the conviction of the Additional Mahila Court, Tirunelveli, Tirunelveli District in C.C.No.313 of 2013, dated 28.10.2014, by allowing the revision.

For Petitioner : Mr.R.John Sathyan
for Mr.K.Prabhu

For Respondent : Mr.A.Robinson,
Government Advocate (CrI. Side).

ORDER

The conviction and sentence passed in Calendar Case No.313 of 2013 by the learned Judicial Magistrate, Additional Mahila Court, Tirunelveli, as modified in Criminal Appeal No.84 of 2014 by the



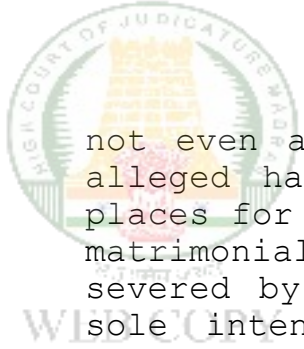
learned Third Additional Sessions Judge, Tirunelveli challenged in the present Criminal Revision Case.

2. The revision petitioner herein is the accused in C.C.No.313 of 2013 on the file of the learned Judicial Magistrate, Additional Mahila Court, Tirunelveli. Based on the complaint given by his wife, Tmt.Valli, First Information Report was registered against him by the respondent police and investigated. Since offence under Section 498-A IPC and Section 4 of Dowry Prohibition Act [hereinafter referred to as 'D.P. Act'] was made out, final report was filed against the revision petitioner/accused. The learned Judicial Magistrate, Additional Mahila Court, Tirunelveli tried the revision petitioner/accused and found him guilty for offences under Section 498-A IPC and Section 4 of D.P. Act. Accused was sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 2 months simple imprisonment under Section 498-A IPC and also sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 2 months simple imprisonment under Section 4 of D.P. Act. The period of sentence was ordered to run concurrently.

3. On appeal, the Third Additional District and Sessions Judge, Tirunelveli, confirmed the conviction, but modified the sentence to the effect that the revision petitioner was sentenced to undergo 6 months rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 2 months simple imprisonment under Section 498-A IPC and also sentenced to undergo 6 months rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 2 months simple imprisonment under Section 4 of D.P. Act. This revision petition is directed against the said Judgment of the Third Additional District and Sessions Judge, Tirunelveli in C.A.No.84 of 2014.

4. The revision petitioner herein would canvass the following points:

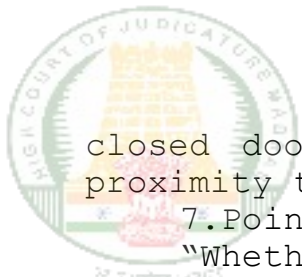
The Courts below have failed to see that for the alleged demand of dowry and harassment, there is no evidence except the statements of P.W.1, P.W.2 and P.W.3, who are wife, father-in-law and mother-in-law of the revision petitioner. All these witnesses are interested witnesses and had animosity against the revision petitioner and to wreck vengeance against him, had deposed falsely. Independent witnesses P.W.5, P.W.6 and P.W.7 have not corroborated the version of P.W.1, P.W.2 and P.W.3. Even the evidence of P.W.1 is not corroborated by her own father (P.W.2) and mother (P.W.3). The embellishment and exaggeration in the depositions of P.W.2 and P.W.3, quite contrary to the evidence of P.W.1, have failed to weight the minds of the Courts below. Though the prosecution contend that during the subsistence of marriage, from 1988 to 2003, there were several demands of dowry,



not even a piece of evidence, is placed before the Court. The alleged harassment of forcing P.W.2 to take up job at various places for want of money, is not proved through any document. The matrimonial bond between the revision petitioner and P.W.1 had severed by decree of dissolution of marriage. Thereafter, with sole intention to spoil the career of the accused, alleging falsity, P.W.1 has filed the complaint and the Courts below have erroneously believed her version and convicted the revision petitioner/ accused. As a consequence, the revision petitioner herein has been removed from service. Pointing out that the prosecution has failed to produce the letter alleged to have been written demanding Rs.2,000/- for buying steel bureau, the medical certificate from Dr.Muthiah, who alleged to have treated P.W.1 for hearing impairment caused by the revision petitioner and several schools in which P.W.1 alleged to have worked at the instance of the revision petitioner.

5.Per contra, the learned counsel appearing for the revision petitioner would submit that on facts the Courts below have holistically considered the evidence of P.W.1 to P.W.8 and Ex.P.1 to Ex.P.4. After appreciating the evidence, the Courts below have arrived at a right conclusion that ever since the marriage tookplace between the revision petitioner and P.W.1 on 26.06.1998, there was frequent demand of dowry from the revision petitioner. At the time of marriage, the parents of P.W.1 have given 50 sovereigns of gold jewels and Rs.1,50,000/- cash, as dowry. For setting up separate marital home at Chennai, they have paid Rs.10,000/- on demand of the revision petitioner. Thereafter, he has forced P.W.1 to take up job as teacher and to take tuition to augur income. The entire income of P.W.1 has been taken away by the revision petitioner. In the year 1998, during the month of July, the revision petitioner has demanded another sum of Rs.20,000/- as additional dowry. To treat P.W.1 for her infertilisation, he has received Rs.50,000/- in the year 2002. Besides he has assaulted P.W.1 on her ear, causing bleeding injury for which she was treated by Dr.Muthiah. These facts are spoken by P.W.1 herself in the witness box and corroborated by her parents.

6.The documents pertaining to these events, according to the witnesses, were handed over to the police during investigation. Therefore, the deposition of P.W.1 being substantially corroborated by P.W.2 and P.W.3, though there are some embellishment, will not wash away the entire prosecution case. The ingredients of harassment for demand of dowry and acceptance of dowry are substantially proved through the evidence of P.W.1 to P.W.3. Though, P.W.4, P.W.5 and P.W.6 have turned hostile, the evidence of P.W.1 to P.W.3, who are the victims of dowry harassment, is sufficient to convict the revision petitioner/accused, since the allegations have takenplace in



closed door and only P.W.1, P.W.2 and P.W.3 would have direct proximity to the events.

7. Point for consideration:

"Whether the Judgments of the Courts below require interference of this Court under its revisional jurisdiction?"

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8. P.W.7, Mariyaronickam, has deposed that on 11.04.2005, he received the complaint of Valli from the Magistrate and registered the case in Crime No.10 of 2005 for offence under Section 498-A IPC and Section 4 of Dowry Prohibition Act, recorded the statement of Valli (P.W.1), Ponnaiya Pillai (P.W.2), Shanthi (P.W.5) and Sulochana (P.W.6) and thereafter, submitted the case diary to the Assistant Commissioner of Police, Palayamkottai for further investigation, who has completed the investigation and filed the final report on 19.11.2015. Through this witness, the First Information Report registered by him, is marked as Ex.P.2.

9. P.W.8, who has completed investigation and filed the final report, has corroborated the evidence of P.W.7. In the cross-examination, he has admitted that based on the complaint given by P.W.1 on 25.11.2003, Receipt No.487/2003, marked as Ex.P.4, was issued, in which on enquiry, Ramaiah (P.W.2) has stated that the accused and his family members harassed his daughter and later compromise entered between them. He admits in the cross-examination that he has not secured any documents to show P.W.1 was worked at various schools at Chennai. From this evidence, it is clear that *prima facie* case to try the accused has been made out during the investigation, which has led to the trial of the revision petitioner/accused. The independent witnesses have turned hostile. More particularly, P.W.4, Ramaiah has not spoken about the mediation took place between the petitioner and P.W.1.

10. The incriminating evidence against the revision petitioner is the evidence of P.W.1, P.W.2 and P.W.3. P.W.1 Valli, is the directly affected party whereas P.W.2 and P.W.3, Ponnaiya Pillai and Paripooranam are her father and mother respectively. The matrimonial relationship commenced in the year 1998, has seen many ups and downs. Finally broke on 23.11.2003, when P.W.1 was driven out from the matrimonial home. Thereafter, P.W.1 has filed divorce petition before the Sub Court, Tuticorin in H.M.O.P.No.150 of 2003. When her divorce petition was pending, it is alleged that on 23.06.2004, the revision petitioner and his mother Velammal came to her house, threatened her with dire consequences, if she does not withdraw her divorce petition. Thereafter, she has approached the learned Judicial Magistrate and filed a complaint, marked as Ex.P.1, which has been forwarded to the police for investigation. As deposed by P.W.7 that the complaint forwarded by the learned Judicial Magistrate, has been registered, investigated and final report has been filed by P.W.8. In the course of chief examination of P.W.1, she has taken adjournment on

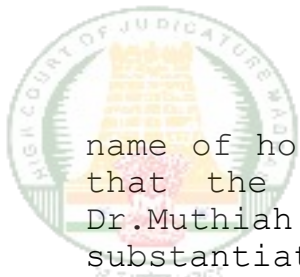


20.06.2007 to file certain documents in her favour. Recording it, the matter was adjourned for further examination. Thereafter, P.W.1 has been cross-examined only on 14.12.2002. Except Ex.P.1, the complaint, no other document has been marked through her.

11.A comparative reading of the deposition of P.W.1 and the depositions of P.W.2 and P.W.3, would clearly show that the gradual embellishment in their allegations, but to none of these allegations, there is corroborative evidence or material evidence. The evidence of P.W.2 and P.W.3 are mostly of hearsay in nature, particularly to emphasis torture and harassment, P.W.2, the father of P.W.1 would say that during Kanda Shasti festival, instead of dipping P.W.1, three or four times in the sea, the revision petitioner dipped her fifteen times and on hearing the alarm of P.W.1, he went and rescued her. Whereas P.W.1 has nowhere stated about this, in her complaint or deposition. Likewise, the allegation of throwing match sticks on P.W.1 is spoken for the first time through P.W.2 and P.W.3, but not corroborated by P.W.1. Similarly, when there is a specific allegation against the revision petitioner that he forced P.W.1 to change her employment from one school to another to make more money, at least some documents from those schools could have been produced by the respondent.

12.Both the Courts below had relied upon the evidence of P.W.2 and P.W.3 to convict the accused. The Courts below have miserably failed to test the veracity of these witnesses. P.W.4 to P.W.6, the neighbours and friends of the de facto complainant's family, could have been the best witnesses for the prosecution. They have turned hostile and there is not even iota of corroboration to indicate the matrimonial discord between the revision petitioner and P.W.1 was due to harassment or dowry demand.

13.It is unsafe to convict the revision petitioner solely based on the evidence of P.W.1, P.W.2 and P.W.3, who have already developed animosity against the revision petitioner and severed the bond by obtaining divorce. At least some of the allegations made in the complaint could have been substantiated through documentary evidence. For example, P.W.1 has deposed that on 04.06.2000, she wrote a letter to her father to buy a bureau. Accordingly, her father gave Rs.2,000/-. The said letter has not seen the light of the day. She has deposed that the mother of the revision petitioner instigated the revision petitioner to demand Rs.2,000/- per month from her father. Therefore, the accused has written a letter to her father demanding Rs.2,000/- per month. In her deposition, she has said that this letter was given to Inspector of Police, but which Inspector and when it was given, have not been stated in her evidence. Similarly, she says that Rs.50,000/- was paid by her father for her treatment. No bill or



name of hospital, are mentioned in her evidence. She has deposed that the revision petitioner assaulted her on her left ear. Dr.Muthiah of Tirunelveli treated her. No document is filed to substantiate this allegations. Thus, even minimum document which could have been in the possession of P.W.1 to substantiate the case of P.W.1, has not been produced. In the said circumstances, solely relying upon the evidence of P.W.1, P.W.2 and P.W.3, which are self-contradictory to each other, the conviction of the Trial Court and confirming of the same by the first appellate Court, is totally perverse.

14. Therefore, this Court has no hesitation to set aside the conviction passed by the learned Judicial Magistrate, Additional Mahila Court, Tirunelveli, in C.C.No.313 of 2013 and confirmed by the learned Third Additional District and Sessions Judge, Tirunelveli in C.A.No.84 of 2014.

15. In the result, this Criminal Revision Case is allowed and the conviction and sentence passed in passed in Calendar Case No.313 of 2013 by the learned Judicial Magistrate, Additional Mahila Court, Tirunelveli, modified in Criminal Appeal No.84 of 2014 by the learned Third Additional District and Sessions Judge, Tirunelveli are set aside. The revision petitioner/accused is acquitted. Bail bond if any executed by him, shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS-IV)

To

1. The III Additional District and Sessions Judge,
Tirunelveli, Tirunelveli District.
2. Do Through the Principal Sessions Judge, Tirunelveli.
3. The Judicial Magistrate,
Additional Mahila Court,
Tirunelveli, Tirunelveli District.
4. The Chief Judicial Magistrate, Tirunelveli.



5. The Assistant Commissioner of Police,
Law and Order, Palayamkottai.
[All women Police Station,
Palayamkottai],
Tirunelveli District.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

7. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC To MR.K.PRABHU, Advocate SR. NO. 81868

ORDER MADE IN
Cr1.R.C(MD) No.518 of 2016
03.09.2018

SMN
TR/RP/SAR-IV(27.09.2018) 7P 10C