

**BAIL SLIP**

M.Ayyadurai @ M.A.Durai aged about 32 years Accused No.1 was released on Bail vide order of this Court dated 14.02.2013 in MP(MD)No.1 of 2013 in Cr1.R.C(MD)110 of 2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **18.09.2018**DELIVERED ON : **27.09.2018**

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN****Cr1.R.C(MD)No.110 of 2013**

1.M.Ayyadurai @ M.A.Durai
2.Manthira Moorthy
3.Maya Saraswathy @ Saroja
4.Malathi

: Petitioners/Appellants/
Accused 1 to 4

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Tirunelveli Town.
(Crime No.1 of 2007)

: Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, against the Judgment passed by the learned Fourth Additional Sessions Judge, Tirunelveli, Tirunelveli District in C.A.No.73 of 2012, dated 17.01.2013, confirming the Judgment passed by the learned Judicial Magistrate No.V, Tirunelveli, Tirunelveli District in C.C.No.92 of 2007, dated 21.09.2012.

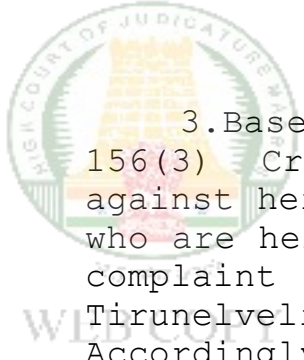
For Petitioners
For Respondent

: Mr.R.Anand
: Mr.A.Robinson,
Government Advocate (Cr1. Side).

ORDER

The Judgment of conviction and sentence dated 21.09.2012 passed in C.C.No.92 of 2007 by the learned Judicial Magistrate No.V, Tirunelveli as confirmed in C.A.No.73 of 2012 by the learned Fourth Additional Sessions Judge, Tirunelveli is being challenged in the present Criminal Revision Case.

2.The revision petitioners herein are accused 1 to 4 in C.C.No.92 of 2017 on the file of the learned Judicial Magistrate No.V, Tirunelveli.



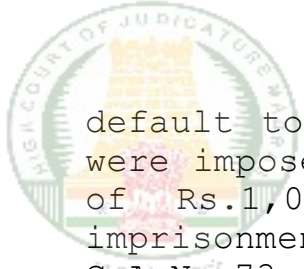
3. Based on the complaint preferred by Tmt. Usha under Section 156(3) Cr.P.C., alleging dowry harassment and ill-treatment against her husband M. Ayyadurai @ M.A. Durai (A.1) and four others, who are her in-laws, the learned Judicial Magistrate forwarded the complaint to the Inspector of Police, All Women Police Station, Tirunelveli Town and directed to investigate and submit report. Accordingly, a case was registered in All Women Police Station, Tirunelveli Town in Crime No.1 of 2007 under Sections 498-A, 506 (i) IPC and Section 4 of Dowry Prohibition Act. On completion of the investigation, final report was filed against M. Ayyadurai @ M.A. Durai (A.1), husband of the de facto complainant, Manthiramoorthy (A.2), father of A.1, Mayasaraswathy @ Saroja (A.3) mother of A.1, Malathi (A.4) sister of A.1 and Mohan (A.5) brother of A.1.

4. The substance of the final report on completion of investigation would reveal that on 16.09.2004, the de facto complainant and A.1 got married, 35 sovereigns of gold jewels and cash of Rs.40,000/- with sridhana articles worth Rs.1 lakh was given to the bridal couple and marriage was celebrated at the cost of Rs.50,000/- by the de facto complainant's family. The de facto complainant is a physically handicapped person with limping leg. Initially they were living in the joint family. After some time, there was demand of two wheeler, jewel and money. Pursuant to the said dowry demand, the de facto complainant was subjected to cruelty both mentally and physically. On 04.09.2005, a female child was born to the de facto complainant. The accused 1 to 5 did not receive her and also refused to take back to the matrimonial home unless additional dowry of Rs.50,000/- is given. On 21.05.2006, the de facto complainant along with the baby went to the house of A.1 and she was not treated well in the house. On 22.05.2006, the accused 1 to 5 physically assaulted her, put her in room and locked. On 14.06.2006 again she was ill-treated by words and she was deprived of food.

5. With these allegations, the Trial Court tried the accused persons for offence under Sections 498-A, 406, 506(i) and 294(b) IPC and Section 4 of Dowry Prohibition Act [hereinafter referred to as 'D.P. Act']. On behalf of the prosecution, 9 witnesses were examined and 6 exhibits were marked in support of the prosecution. On the side of the defence, Manthiramoorthy (A.2) was examined as D.W.1 and 5 exhibits were marked in support of the defence.

6. The Trial Court after appreciating the evidence let in by both sides, had acquitted A.5 of all charges. A.1 to A.4 were found guilty for offence under Section 498-A IPC whereas for the other offences under Sections 406, 506(i), 294(b) IPC and Section 4 of D.P. Act, the Trial Court acquitted A.1 to A.4. In the

<https://hcservices.courts.gov.in/hcservices/> A.4 were found guilty for offence under Section 498-A IPC alone. While A.1 husband was sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in

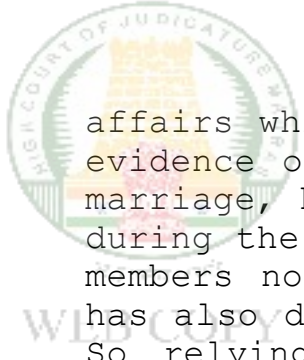


default to undergo 1 month simple imprisonment, A.2, A.3 and A.4 were imposed imprisonment till rising of the Court and to pay fine of Rs.1,000/- each in default to undergo 1 month simple imprisonment. Aggrieved by that, A.1 to A.4 preferred appeal in C.A.No.73 of 2012 before the learned Fourth Additional Sessions Judge, Tirunelveli. The lower appellate Court on re-appreciation of the evidence has confirmed the conviction and sentence of the Trial Court.

7.The revision petitioners, who are A.1 to A.4, aggrieved by the Judgment passed by the Courts below, had preferred this revision petition on the ground that the allegation regarding dowry demand has been rightly rejected by the Courts below and acquitted the revision petitioners for the offence under Section 4 of D.P. Act. Regarding the cruelty, though there is no evidence in support of cruelty, the Courts below have erroneously held these revision petitioners guilty. Admittedly, the wife is paid maintenance of Rs.3,500/- per month as per the order passed by the learned Judicial Magistrate in the petition filed under Section 125 Cr.P.C. The Courts below have relied upon the testimony of the de facto complainant and her close relatives to infer cruelty. The diary writings of the de facto complainant and the elders of the de facto complainant, which were marked as Ex.D.1 and Ex.D.2 were not properly considered by the Courts below. The normal happenings in the family has been exaggerated by the de facto complainant and the same has been accepted by the Courts below to convict A.1 to A.4 without proper appreciation of the nature of the complaint and exaggeration.

8.The learned counsel appearing for the revision petitioners would also submit that pursuant to the conviction, A.1 had lost his Government job and the family members of the accused are put to grave hardship. Hence, the conviction and sentence imposed on the revision petitioners are liable to be set aside for the illegality and error in non-appreciation of evidence.

9.Per contra, the learned Government Advocate (Criminal side) would submit that the de facto complainant was given in marriage to A.1 with all marriage sridhana articles and jewels as demanded by his family. The demand of further property like two wheeler and gold chain were made by A.1 and his parents. P.W.4, brother of de facto complainant, had deposed in detail the unlawful demand made by the revision petitioner and how he met their demand by raising bank loan. The fact that a two wheeler was purchased by P.W.4 and given to A.1, is admitted by the accused. Later on instruction of A.2, the vehicle was transferred as in the name of A.2. The reason for purchasing vehicle and transferring it to the name of A.2 has been spoken in detail by P.W.4 in his deposition, which is corroborated by P.W.1 and P.W.3 in their evidence. <https://hcservices.hcraj.org.in/hcservices> According other demand of property and harassment made by the accused has been spoken by the victim, P.W.1, P.W.2, P.W.3 and P.W.4. They are more competent persons to speak about the



affairs which has taken place at the house of P.W.1. Besides the evidence of P.W.5, who was one of the mediators and arranged the marriage, has also spoken about the sridhana articles given to A.1 during the marriage and indifferent attitude of A.1 and his family members not visiting P.W.1 after delivery of a female child. He has also deposed about the attempt to conciliate and its failure. So relying upon these evidence, the Courts below have rightly found A.1 to A.4 are guilty of offence under Section 498-A IPC which defines cruelty and punishment for cruelty and hence, there is no merit in the revision petition to interfere the concurrent findings of the Courts below.

10.Point for consideration:

"Whether there is irregularity or illegality in the findings of the Courts below?"

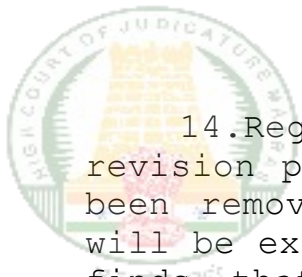
11.The main contention of the revision petitioners is that they have never demanded any dowry, they have never demanded any property or valuable thing from P.W.1 or her family and they have never subjected her cruelly. Quoting the maintenance amount is regularly paid by A.1 and acquittal of the accused for offence under Section 4 of D.P. Act, the revision petitioners emphasized that no offence is made out to convict them under Section 498-A IPC. The said submission does not hold water in the light of the evidence of P.W.4, the brother of P.W.1 and the evidence of P.W.5 and P.W.6, who are independent witnesses.

12.The witnesses for prosecution invariably had deposed that after the child birth to P.W.1, the family of A.1 had started neglecting her. They did not make any attempt to bring her back to the matrimonial home. When P.W.1 herself has gone to her matrimonial home, she had not been accepted by her husband and his family members. It is also pertinent to point out that to her complaint to the All women Police Station, A.1 has given an undertaking that he will join his wife (de facto complainant) and set up a nucleus family and later he has gone back from his word.

13.It is the specific case of the prosecution that A.1 only to get rid of from the police complaint and save his Government job had made a false promise to P.W.1 that he will have a separate house hold. The evidence of P.W.1, P.W.2, P.W.3 and P.W.4 would prove that there was harassment to P.W.1 at the hands of her in-laws, that has culminated in not taking her back into the family fold after P.W.1 gave birth to a female child. In the said circumstances, as explained under Section 498-A IPC, harassment to P.W.1 with a view to coerce her and the family members to meet their unlawful demand, is clearly made out. Therefore, this Court

<https://hcservices.courts.gov.in/hcservices/>

finds no irregularity or illegality in the findings of the orders passed by the Courts below.



14.Regarding sentence, the learned counsel appearing for the revision petitioners would submit that A.1, after conviction, had been removed from service and further imprisonment of two years will be excessive punishment on him. From the records, this Court finds that A.1 was in prison from 13.01.2007 to 25.01.2007. Therefore, the sentence regarding period of punishment in respect of A.1 is modified to the effect that the period of imprisonment already undergone. Fine amount stands unaltered. As far as the revision petitioners 2 to 4/accused 2 to 4 are concerned, the Judgments of the Courts below are confirmed. Accordingly, the Criminal Revision Case is liable to be partly allowed.

15.In the result, this Criminal Revision Case is partly allowed. The conviction dated 21.09.2012 passed in C.C.No.92 of 2007 by the learned Judicial Magistrate No.V, Tirunelveli as confirmed in C.A.No.73 of 2012 by the learned Fourth Additional Sessions Judge, Tirunelveli is confirmed and the sentence imposed on the revision petitioners 2 to 4/accused 2 to 4 is confirmed and the sentence imposed on the first revision petitioner/A.1 is modified as under:

Sl. No.	Accused	Offence	Sentence imposed by the Trial Court as confirmed by the lower appellate Court	Sentence modified by this Court
1.	A.1	498-A I.P.C.	2 years rigorous imprisonment and to pay fine of Rs.5,000/-, in default to undergo 1 month simple imprisonment.	Period of imprisonment already undergone and to pay fine of Rs.5,000/-, in default to undergo 1 month simple imprisonment.

The bail bond, if any, executed by the first revision petitioner/A.1 shall stand cancelled.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Fourth Additional Sessions Judge,
Tirunelveli, Tirunelveli District.

2. The Judicial Magistrate No.V,
Tirunelveli,
Tirunelveli District.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Do Through The Chief Judicial Magistrate,
Tirunelveli.



4. The Inspector of Police,
All Women Police Station,
Tirunelveli Town.

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

6. The Record Keeper, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

SMN

VB/PM/SAR3/20.11.2018/6P/8C

ORDER MADE IN
Cr1.R.C (MD) No.110 of 2013
27.09.2018