

BAIL SLIP

The Petitioner/Accused I namely P.Velkondasamy, S/o.Palanisamy Gounder was directed to be released on bail vide order dated 09/08/2011 made in MP.1/2011 in CrI.Rc.No.1024/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.Rc.No.1024 of 2011

P.Velkondasamy Petitioner/1st Accused
S/o.Palanisamy Gounder

vs.

1.The State,
Rep by the Sub-Inspector of Police,
All Women Police Station,
Negamam Police Station,
Palladam.
[Crime No.308 of 2007]

.... 1st Respondent/Complainant

2.Kanagaselvi2nd Respondent
(2nd respondent impleaded vide order
dated 03.04.2017 made in CrI.M.P.No.4471/2017]

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC against the judgment passed in C.A.No.89 of 2011 on the file of the Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore dated 13.06.2011, confirming the judgment passed in C.C.No.553 of 2007 on the file of the Judicial Magistrate No.II, Pollachi dated 07.04.2011.

For Petitioner : M/s.S.Gunalan

For Respondent : M/s.Krithika Kamal,
Govt. Advocate (CrI. Side) for R1
Mr.N.Ponraj for R2

ORDER

Facts leading to the filing of this Criminal Revision Petition briefly narrated are as follows:

1.1. Velkondasamy/A1 got married to the defacto complainant, namely Kanagaselvi on 11.11.2002 and through their

wedlock, they had a son. Their marital life ran into rough weather resulting in her getting estranged. On the complaint of dowry harassment lodged by the Kanagaselvi/defacto complainant, the Sub-Inspector of Police, Palladam Police Station registered a case in Crime No.308 of 2007 for the offences under Sections 498(A), 323 and 506(ii) I.P.C. on 06.09.2007 against Velkondasamy/A1, Chinammal/A2, Kaladevi/A3 and Dharmalingam/A4. A1 was arrested by the police on 06.09.2007 and remanded to custody.

1.2. After completing the investigation, the police filed a final report in C.C.No.553 of 2007 before the Judicial Magistrate No.II, Pollachi on 12.11.2007. During the course of trial, A2/Chinammal died.

1.3. The Trial Court framed charges under Sections 498 (A), 323 and 506(ii) I.P.C. and Section 4 of the Dowry Prohibition Act against the accused. When questioned, the accused pleaded not guilty.

1.4. The prosecution, in order to sustain its case, examined 9 witnesses and marked 6 exhibits. When the accused were questioned under Section 313 CrPC about the incriminating evidence against them, they denied the same. Neither any witness was examined on behalf of the accused nor any document was marked.

1.5. After hearing either side and considering the evidence on record, the Trial Court, vide judgment dated 07.04.2011 in C.C.No.553 of 2007, acquitted A4/Dharmalingam, but convicted and sentenced Velkondasamy/A1 and Kaladevi/A3 as follows:

Name and Rank of the Accused	Conviction for the offence under Section	Sentence awarded by the Trial Court
Velkondasamy/A1	498 (A) I.P.C.	6 months Rigorous Imprisonment with a fine of Rs.500/- in default to 3 months Rigorous Imprisonment.
	323 I.P.C.	Fine of Rs.500/- in default to undergo 1 month Rigorous Imprisonment.
	506(ii) I.P.C	6 months Rigorous Imprisonment
	4 of Dowry Prohibition Act	6 months Rigorous Imprisonment with a fine of Rs.500/- in default to undergo 3 months Rigorous Imprisonment

Kaladevi/A3	498(A) I.P.C.	6 months Rigorous Imprisonment with a fine of Rs.500/- in default to undergo 3 months Rigorous Imprisonment.
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The sentenced were ordered to run concurrently. The Trial Court granted set off to A1 under Section 428 CrPC.

1.6. Challenging the conviction and sentence, Velkondasamy/A1 and Kaladevi/A3 filed C.A.No.89 of 2011 on the file of the Sessions Court, Coimbatore. The learned Additional District and Sessions Court, F.T.C. No.1, Coimbatore, vide judgment dated 13.06.2011 in C.A.No.89 of 2011, acquitted Kaladevi/A2, but confirmed the conviction and sentence as against Velkondasamy/A1. Challenging the conviction and sentence, Velkondasamy/A1 is before this Court.

2. Mr.S.Gunalan, learned counsel for the petitioner/A1 took this Court through the evidence of the prosecution witnesses and submitted that there are no materials to sustain the conviction against A1.

3. Per contra, Ms.Krithika Kamal, learned Government Advocate (Crl. Side) and Mr.Ponraj, learned counsel for the defacto complainant/Kanagaselvi/PW1 refuted the contentions.

4. This Court carefully read the evidence of PW1. PW1 has stated that she got married to the accused/Velkondasamy on 11.11.2002 and at the time of marriage, she was given 25 sovereign gold jewels and Rs.20,000/- cash ; that after marriage, they were in joint family set-up ; a male child was born to her on 21.08.2003 ; after the child was born, her mother-in-law and sister-in-law instigated her husband to demand more money as dowry from her father ; they started beating her, as she refused to heed to their demands ; on 24.03.2005, she developed severe heart pain and admitted in the hospital ; on 10.01.2005, her husband took her to his fields and kicked her on her chest ; on 08.04.2005, she was taken to Puttaparthi Saibaba Hospital, Andhra Pradesh; on 08.11.2005, her husband abused her and asked her to get more money from her parents ; on 01.03.2006, A1 locked her in the house and physically assaulted her ; on 01.09.2007 at 5.00 p.m. when she went to see her husband in the fields, he abused her for not bringing enough money as dowry and unable to withdraw the physical assault, intimidation and illegal demand of dowry, she lodged a complaint to the police on 06.09.2007.

5. PW1 was examined in chief on 25.05.2009 and was cross-examined only on 21.10.2009. The defence was not able to make

any serious dent in the cross examination in the testimony of this witness. The evidence of PW1 was corroborated by the evidence of PW2/Balasubramaniam and PW3/Thangavel. PW3 has stated about the injury sustained by PW1 and medical treatment given to her. The prosecution has also examined the Doctor - PW8/Dr.Arunadevi and marked Ex.P3/Medical Certificate to show the injuries sustained by PW1 on 01.09.2007.

6. The Trial Court and the Lower Appellate Court have appreciated the evidence in right perspective and there is no infirmity in the findings of the Courts below warranting interference by this Court under Section 397 CrPC.

7. Hence, the conviction awarded by the learned Additional District and Sessions Court, F.T.C. No.1, Coimbatore, vide judgment dated 13.06.2011 in C.A.No.89 of 2011 stands confirmed.

8. However, as regards sentence, the learned counsel for the petitioner/A1 submitted that the petitioner has been maintaining his wife/PW1 and son for the last 5 years and that his wife is suffering from kidney failure and that if he has to undergo imprisonment, he may not be able to take care of his wife, who is at a very critical state.

9. In order to verify the veracity of the said submission, this Court had video conference with PW1/Kanagaselvi on 23.01.2019. PW1 told this Court that the accused/A1/husband is taking care of her now and that they have also reconciled their differences. A1/Velkondasamy was also present before this Court on 23.01.2019 and also filed an affidavit dated 23.01.2019, wherein in paragraph Nos.4 and 5, he has stated as follows:

''4. I submit that I give solemn undertaking that I would clear the arrears of the past maintenance of Rs.1,83,000/- within a period of 4 weeks from today. I, further, undertake that I would not commit default in payment of monthly arrears to the 2nd respondent herein and our son Master, Vidhya Bharathi. I also assure this Hon'ble Court that I shall pay for the academic pursuit of my son Master.Vidhya Bharathi in future. I am ready paying for his school fees and other necessities since his seventh standard for the past six years and I shall continue to do so. I am maintaining cordial relation with my son. I am also meeting the medical expenses for the 2nd respondent who is undergoing treatment for chronic kidney disease. I shall continue to meet out her medical expenses.

5. I humbly pray that this my solemn undertaking may be taken on record and pass suitable direction and thus render justice."

10. Today, learned counsel for the petitioner/A1 and the learned counsel for Kanagaselvi/PW1 have submitted that A1 has paid Rs.1,83,000/-, being arrears of maintenance to PW1 and the original receipt issued by her was produced. A1 also agreed that he would continue to pay the maintenance amount of Rs.5,200/- p.m. and also the enhanced maintenance amount, if any ordered by the concerned Court, will be paid by him.

11. In view of this development, this Court is of the view that in the interest of justice, the sentence of imprisonment imposed on A1 is reduced to the period already undergone by him as under trial prisoner.

12. With the above modification of sentence, this Criminal Revision Petition is partly allowed. However, A1/Velkondasamy shall comply with the undertaking given by him, failing which appropriate action can be initiated against him by PW1.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jvm

To

- 1.The Sub-Inspector of Police,
All Women Police Station,
Negamam Police Station,
Palladam. (Crime No.308/2007)
- 2.The Additional District and Sessions Court,
F.T.C.-I, Coimbatore.
- 3.The Judicial Magistrate No.II,
Pollachi.
- 4.The Public Prosecutor,
High Court, Madras.

5.(Free copy to Kanagaselvi to be send through)
Inspector of Police, AWPS,
Negamam P.S. Cr.No.308/2007,
Palladam.

6.The Chief Judicial Magistrate,
Coimbatore.

7. The Public Sessions Judge,
Coimbatore.

+1cc to Mr.S.Gunalan, Advocate, S.R.No. 45990
+1cc to Mr.N.Ponraj, Advocate, S.R.No. 45948

CrI.Rc.No.1024 of 2011

RSI (CO)
GN(26/07/2019)



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