

Bail Slip

The Petitioners/Accused namely 1.B.Vijayakumar S/O Boopathi 2.Saraswathi, W/O Bhoopathy 3.V.Bhoopathi S/o Veeraragavan were directed to be released on bail as per the order of this Court dated 12.08.2011 in CrI.M.P.No.1 of 2011 in CrI.R.C.No.1035/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2018

PRONOUNCED ON : 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1035 of 2011

1.B.Vijayakumar

2.Saraswathi

3.V.Bhoopathi

.. Petitioners/Appellants/
Accused

-vs-

1. State represented by the
Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai.

.. Respondent/Respondent/
Complainant

2.Devi

.. Defacto complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to call for the records pertaining to the order of dismissal in CrI.A.No.100/2010 dated 17.06.2011 passed by the Additional District cum Sessions Court (Fast Track Court No.III), Chennai, confirming the trial Court conviction and sentence made in C.C.No.6321/2005, dated 03.06.2010 on the file of the learned IV-Metropolitan Magistrate Court, Saidapet, Chennai and set aside the same and allow the Criminal Revision Petition.

For Petitioners : Mr.C.P.Sivamohan

For Respondents : Mr.G.Ramar
Government Advocate (Criminal side)
for R1.
for R2- No appearance.

ORDER

Convicted accused A1, A2 and A3 are the revision petitioners herein. This Criminal Revision Petition has been filed against the judgment made in Crl.A.No.100 of 2010 dated 17.06.2011 passed by the Additional District cum Sessions Court (Fast Track Court No.III), Chennai, confirming the trial Court conviction and sentence made in C.C.No.6321 of 2005, dated 03.06.2010, on the file of the IV-Metropolitan Magistrate Court, Saidapet, Chennai.

2. The respondent police filed final report in Crime No.1 of 2005 before the learned Judicial Magistrate, IV-Metropolitan Magistrate Court for the alleged offence under Sections 498(A) IPC and Section 4 of the Dowry Prohibition Act as against six persons. To prove the charges, prosecution examined the wife of the first accused, namely, Devi-PW.1 and her parents have been examined as PW.2 and PW.3 and one independent witness PW.4 also examined. On consideration of oral and documentary evidence, the learned Judicial Magistrate, IV-Metropolitan Magistrate Court, Chennai, have come to the conclusion that the charge against A4 to A6 are not made out. Accordingly, the trial Court acquitted them. However, convicted A1 to A3 for the offence under Section 498(A) IPC alone and acquitted from the charge under Section 4 of the Dowry Prohibition Act. The trial Court sentenced the first accused to undergo one year rigorous imprisonment and fine of Rs.3,000/-, in default, to undergo six months rigorous imprisonment for the offence under Section 498(A) IPC and sentenced the second and third accused to undergo six months rigorous imprisonment and fine of Rs.2,000/-, in default, to undergo four months rigorous imprisonment for the offence under Section 498(A) IPC. On appeal, before the District and Sessions Judge, Fast Track Court No.III, Chennai in Crl.A.100 of 2010 conviction has been confirmed, however sentence in respect of default in payment of fine alone has been modified and hence this revision.

3. After hearing both the parties and after perusing the documents placed before the trial Court, the point for consideration of the revision petition is whether the conviction under Section 498(A) IPC is sustainable in law? and whether sentence awarded is excessive?

4. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal side) appearing for the State and perused the records.

5. After going through the prosecution witnesses, it is seen that it is a definite case of the prosecution that the marriage between the first accused and PW1-Devi was solemnized at Adhilakshmi Thirumana Mandapam at Saidapet on 09.02.2004 and thereafter she went to her matrimonial home. On 19.02.2004, the first accused husband left PW1-wife to her mother's house and later he had called her under the pretext of taking her to cinema, but to meet A6-Samiyar, wherein she has subjected to demand of dowry of Rs.5 lakhs and the first accused threatened her that unless she pay Rs.5 lakhs, she cannot lead the matrimonial life. Now A6-Samiyar was acquitted by the trial Court, who gave the magical lemon and directed PW.1 to consume the lemon. However, she has swallowed the same. During April 2004, when the parents of PW1 had come to the house of A1 to A4 for retying the Thali (mangala sutra) function, A2 to A4 in a stimulated condition told that Pws.2 and 3 should be allowed to sit in their house only, if they pay Rs.5 lakhs. Later on, after complaint to the police, A2 to A5 became soft.

6. In order to buttress the charges, the wife (defacto complainant) was examined as PW.1 and the parents of PW1 were examined as PW2 and PW3. PW4 is one of the hearsay witness, while PW5 to PW7 are the police witnesses, who deposed regarding the receipt of Ex.P1- complaint dated 07.02.2005 and Ex.P.6-A1's statement. They also marked Ex.P4-complaint dated 21.06.2004. After going through the evidence and also the legal notice issued by the first accused under Ex.P9 and the reply notice issued by the wife, it is seen that the date of marriage between the first accused and PW1-defacto complainant was 09.02.2004 and they have started the matrimonial life on 11.02.2004. According to PW1, on 19.02.2004, under the pretext of taking PW1-wife to the cinema A1 to A3 took her to one Samiyar (Saint) at Tindivanam, who gave the magical lemon and asked her to consume, however, she swallowed it. At that time, they demanded Rs.5 lakhs. During the retying of mangala sutra, the parents of PW.1 namely, PW.2 and P.W.3 were insulted by the accused and they were not allowed to sit inside the house for nonpayment of Rs.5 lakhs and hence, they lodged Ex.P1-complaint. Based upon which the enquiry appears to have been conducted at the All Women Police Station, Mylapore, Chennai, wherein PW1 said to have been given a statement, which is marked as Ex.P5 and the statement of A1 is marked as Ex.P6. After going through the cross examination of PW1-wife, PW.2-father and PW.3-mother, it appears that the submissions are bristle with inconsistencies and improved

version. On a combined reading of cross-examination of PWs.1,2 and 3 and the private prosecution witness, this Court finds the difficulty to reconcile the inconsistency and improvement in the version of PW.1 with the averment made in Ex.P4 with that of the Ex.P1 and her evidence in the witnesses box.

7. The learned counsel for the petitioners drawn the attention of this Court that PW.1 has categorically stated that she gave a handwritten complaint-Ex.P1 and based on the same, the case has been registered and the accused has been arrested. PW.3 also has reiterated that PW.1 has given complaint in writing and not a typed on. On the other hand, Ex.P1-complaint dated 07.02.2005 is a typed complaint and not a handwritten complaint. The learned counsel for the petitioners contended that the trial Court has failed to note that, Ex.P1 is the genesis of the case and if Ex.P1 goes, the entire case of the prosecution goes. They have lodged a complaint with the respondent police requesting them to make the first accused to join PW.1 and at that point of time PW.1 was interested in living with the first accused. But Ex.P1 is totally contra. Hence, the original complaint given by PW1 in writing was seems to be suppressed and Ex.P1 was introduced only for the purpose of the case. Furthermore PW.1 has deposed that she gave the complaint in the year 2006, after she received the legal notice given by the first appellant in November, 2005, but Ex.P1 is dated 07.02.2005, which goes to the root of the case.

8. On 21.06.2004, PW.1 had lodged a complaint with Mylapore All Women Police, in which there was no whisper about the accused taking her to a Samiyar in Thindivanam (A6- now acquitted by the trial Court) under the guise of taking her to a cinema and later dropping her at her house at late night. The said Ex.P4 is the earliest complaint and nothing is stated about the alleged trip to Thindivanam, but it has been stated later only. Hence, it seems that later on only for the purpose of this case, they have improved the version and accordingly, it is held that the version of private prosecution witness suffers from embellishment on material particulars is a material contradiction.

9. The evidence of PW.1 that A3 had cut her hair to the extent of ½ feet and she was not allowed to wear bangles etc., without any supporting evidence particularly, regarding her hair, the prosecution has not produced any photographs to show that she had a long hair and later, her hair was cut by the accused. Without any supporting evidence, the trial Court, taking the oral evidence of PW1 as gospel truth and appears to have convicted the appellant and erroneously held that it amount to cruelty.

10. In the evidence of PWs.1,2 and 3, they have not whispered regarding the alleged fact that the accused have demanded any jewel at the time of marriage. PWs.1,2 and 3 have deposed that they don't know the date on which the complaint was lodged and when they were examined, and PW.2 deposed that he has not given any statement to the respondent police and on cumulative analysis of the version of these witness goes to exhibit the fact that the entire case is fabricated one.

11. Thus on a close scanning and scrutinizing of the evidence PWs.1, 2 and 3, this Court finds that the parents having demanded jewels at the time of marriage as spoken to by the private prosecution witness in the witness box, the very fact that these private prosecution witnesses, namely, PWs.1,2 and 3 have deposed that they do not know the date on which the complaint was lodged coupled with the version of PW.2 that he has not given any statement to the respondent police. Admittedly, Ex.P.4-complaint based upon which the charge sheet has been filed in this case came into existence only after the legal notice issued by the first accused under Ex.P9 assumes significance. Yet another point is that Ex.P.4 is the first complaint said to have been given on 21.06.2004 does not disclose the averments made in the Ex.P.1- complaint, based upon which, this case has been prosecuted against these accused also assumes significance. Considering the fact that the legal notice issued by the husband under Ex.P9 was received by the lady PW.1 assumes that Ex.P1 is an ante-dated document to suit the case, especially in view of the specific admission given by the father of PW.1, namely, PW.2. In view of the material contradiction with regard to the alleged factum of the complaint and alleged receipt of the legal notice issued by the husband under Ex.P.9 and also the subsequent complaint under Ex.P1 run into material contradiction with the evidence of PWs.1, 2 and 3 and other material particulars regarding the alleged incident and thus, this Court finds that the averments and allegations levelled against the accused under Ex.P.1 has not been spoken to by her in Ex.P.4-earlier complaint and also coming into the existence of Ex.P.1 is found to be suspicious and doubtful and improbable and hence, this Court is of the considered view that the existence of Ex.P1 and Ex.P.10 creates a cloud of suspicion over the prosecution case and charges are levying belatedly after more number of years and there was no independent evidence of the alleged incident amounting to material contradiction as extracted supra and hence this Court finds that the version of the PW1, PW2 and PW3 do not pass a test of credibility and the prosecution theory was surrounded by sea of suspicion and the alleged incident found to be doubtful.

12. Accordingly A1, A2 and A3 are entitled for the benefit of doubt as the prosecution has failed to prove the

charges beyond reasonable doubt. In this view of the matter, the conviction and sentence passed by the Courts below are hereby set aside and the offence under Section 498-A IPC against A1 to A3 are not proved in the manner known to law beyond reasonable doubt. Hence, by giving benefit of doubt, the accused/petitioners herein are hereby acquitted from all the charges.

13. Accordingly, this Criminal Revision Case is allowed. The conviction and sentence awarded in C.A.No.100 of 2010 confirming the sentence passed in C.C.No.6321 of 2005 is hereby set aside. Fine amount, if any paid by these accused shall be refunded. Bail bond, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track Court No.III,
Chennai.

2. The IV-Metropolitan Magistrate,
Saidapet,
Chennai.

3. The Chief Metropolitan Magistrate,
Egmore, Chennai.

4.The Inspector of Police,
W-23, All Women Police Station,
Rayapettah, Chennai.

5.The Public Prosecutor,
High Court, Madras.

CRL.R.C.No.1035 of 2011

br[co]
srg 13/03/2019