

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2019

PRONOUNCED ON : 25.01.2019

CORAM :

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

Crl.R.C.No.1082 of 2011

P.Elayaraja ... Petitioner / 1st Accused

... Vs ...

State by

The Inspector of Police,
All Women Police Station,
Sirkali.

(Crl. No.8 of 2004)

... Respondent / Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 17.06.2011 passed in C.A. No.87 of 2007 by the District Sessions Judge, Nagapattinam, confirming the conviction imposed in the judgment dated 31.10.2007 made in C.C.No.141 of 2005 by the Judicial Magistrate, Sirkali, sentencing the petitioner to undergo simple imprisonment for one year and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for three months for the offence under Section 417 IPC and sentencing to undergo simple imprisonment for one year and to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for three months for the offence under Section 4 of the Dowry Prohibition Act.

For Petitioner : Mr. R.Maruthachalamoorthy
For Respondent : Mr.G.Ramar,
Govt. Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment dated 17.06.2011 passed by the learned District and Sessions Judge, Nagapattinam, in C.A.No.87 of 2007, confirming the judgment dated 31.10.2007 passed by the learned Judicial Magistrate, Sirkali, in C.C.No.141 of 2005.

2. The facts in brief, leading to the filing of this criminal revision case, are as under:

2.1. On the complaint [Ex.P.1] lodged by Sulochana [P.W.1], Lakshmi Prabha [P.W.10], Sub-Inspector of Police registered a case in Crime No.8 of 2004 for the offences under Sections 417 and 506(ii) IPC and Section 4 of the Dowry Prohibition Act and prepared the printed FIR [Ex.P.7]. Investigation of the case was taken over by Jeyalakshmi [P.W.11], Inspector of Police, who examined the witnesses and filed a final report in C.C.No.141/2005 before the learned Judicial Magistrate, Sirkali, against Elayaraja [A.1], Panjanathan [A.2], Melliymammal [A.3], Elangovan [A.4], Nilavazhagan [A.5] and Selvam [A.6] for the offences under Sections 417 and 506(ii) IPC and Section 4 of the Dowry Prohibition Act.

2.2. It is the case of Sulochana [P.W.1] that Elayaraja [A.1] promised to marry her and deflowered her and later reneged. It is her further case that Elayaraja [A.1] and his family members demanded 15 sovereigns of gold jewels, cash of Rs.20,000/- and one Hero Hondo Motorcycle for marrying her, which, her parents were not able to provide. Hence, the complaint and the final report. Charges for the said offences were framed against the accused and when they were questioned, they pleaded not guilty.

2.3. When questioned, the accused denied the charges. To prove the case, the prosecution examined 11 witnesses and marked 9 exhibits. When the accused were questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against them, they denied the same. On the side of the accused, one witness was examined and three exhibits were marked.

2.4. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 31.10.2007, acquitted Panjanathan [A.2], Melliymammal [A.3], Elangovan [A.4], Nilavazhagan [A.5] and Selvam [A.6] of all the charges, but, convicted Elayaraja [A.1] under Section 417 IPC and Section 4 of the Dowry Prohibition Act and sentenced him as follows:-

Rank of Accused	Conviction	Sentence
Elayaraja [A.1]	417 IPC	To undergo simple imprisonment for one year and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for three months

Elayaraja [A.1]	Section 4 of the Dowry Prohibition Act	To undergo simple imprisonment for one year and to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for three months
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The aforesaid sentences were ordered to run concurrently.

2.5. Challenging the said conviction and sentence, Elayaraja [A.1] filed CrI.A.No.87/2007 before the District and Sessions Court, Nagapattinam, and the District and Sessions Judge, acquitted Elayaraja [A.1] of the charge under Section 4 of the Dowry Prohibition Act, but, confirmed the conviction and sentence under Section 417 IPC, challenging which, Elayaraja [A.1] is before this Court.

3. Heard Mr.R.Maruthachalamoorthy, learned counsel appearing for the petitioner and Mr.G.Ramar, learned Government Advocate (CrI.Side) appearing for the respondent-State.

4. Before advertng to the rival submissions, it may be necessary to state that while dealing with a revision petition under Section 397 Cr.P.C., this Court is required to find out if there is any illegality or impropriety in the findings of the Trial Court and the Appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, we can profitably allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra, etc. Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. [2004 (7) SCC 659]:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

5. Mr.R.Maruthachalamoorthy, learned counsel appearing for the petitioner submitted that Elayaraja [A.1] is the brother of the de facto complainant's step mother Kannaki [P.W.3]. He also contended that the police had not subjected the de facto complainant to medical examination to establish that she had physical affair with Elayaraja [A.1]. Sulochana [P.W.1] in her evidence has stated that her natural mother died five years back and her father Anbazhagan [P.W.2] married Kannaki [P.W.3] thereafter; she will call Elayaraja [A.1] as 'Mama' and they both were in love; on 02.08.2004 around 5.00 p.m., when she was working in the farm, Elayaraja [A.1] approached her and pleaded her for physical intimacy; when she resisted, he told her that after all he is going to marry her and saying so, he seduced her; thereafter, he told her that she need not tell her parents; he came to her house when she was alone and applied Thilak on her forehead saying that she is his wife and had sex with her;

he assured that he will not abandon her and marry someone else; one day while they were intimately talking to each other, they were seen by her uncle and she was asked not to move with him and she was reprimanded; on 08.11.2004, she came to know that the family members of Elayaraja [A.1] are making arrangements for his marriage with another girl and so, when she went and asked him, he told her that he is not interested in marrying her; she confessed everything to her parents and when her parents approached the parents of Elayaraja [A.1], he did not agree for the marriage; the village elders were informed and a panchayat was held on 14.11.2004 and 15.11.2004, in which, it was decided that Elayaraja [A.1] should marry her; his family reluctantly agreed to have the betrothal on 09.12.2004 but on 08.12.2004, when her parents went to the house of Elayaraja [A.1], his parents demanded 20 sovereigns of gold jewels, which her parents were not able to provide.

6. In the cross-examination, she admitted that she lodged a complaint earlier in Mayiladuthurai Police Station, in which, she has not stated anything about the demand of dowry by Elayaraja's [A.1] family. It is not in dispute that even in that complaint, Sulochana [P.W.1] had stated that she was seduced by Elayaraja [A.1] on the promise of marriage and she sought police intervention to make Elayaraja [A.1] marry her.

7. The trial Court and the Appellate Court have acquitted the family members of all the charges. The Appellate Court has acquitted Elayaraja [A.1] of the charge under Section 4 of the Dowry Prohibition Act. Against the said acquittal, the State has not filed any appeal. Hence, it may not be necessary to discuss the demand of dowry either by Elayaraja [A.1] or by his family members as that is not germane to decide whether Sulochana [P.W.1] was seduced by Elayaraja [A.1] on the promise of marriage. The prosecution has examined the parents of Sulochana [P.W.1] and the panchayators, who have all stated about the complaint given by Sulochana [P.W.1] in the panchayat held in the village. Obviously, apart from the evidence of Sulochana [P.W.1], there is no other evidence to show that Elayaraja [A.1] was having physical relationship with Sulochana [P.W.1] for over a period of time.

8. The contention of Mr.Maruthachalamoorthy that the failure of the police to subject Sulochana [P.W.1] to medical examination is fatal to the case of the prosecution cannot be countenanced, because the charge against Elayaraja [A.1] was not under Section 376 IPC, but under Section 417 IPC. In other words, Sulochana [P.W.1] was 22 years old when she fell in love with Elayaraja [A.1]. A reading of the evidence shows that

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Elayaraja [A.1] pretended as if he was in love with Sulochana [P.W.1] for some time and on 02.08.2004, Elayaraja [A.1] courted her in the fields while she was working, promised to marry her and seduced her. Thereafter, the fornication was in her house, whenever she was alone. After their affair was found out by her uncle, she was not permitted to meet him. Only on 08.11.2004, when she came to know that the family members were arranging the marriage of Elayaraja [A.1] with another girl, she approached him and got snubbed. Thereafter, a panchayat was held on 14.11.2004 and 15.11.2004, in which, the elders of the village told Elayaraj [A.1] that he should marry Sulochana [P.W.1] and the parents of Elayaraja [A.1] agreed to have the betrothal on 09.12.2004 and on 08.12.2004, when her parents went to the house of Elayaraja [A.1], his parents demanded 20 sovereigns of gold jewels. The complaint was given only on 22.12.2004 and the FIR was registered on the same day. Hence, no useful purpose would have been served by subjecting Sulochana [P.W.1] to medical examination.

9. In the result, this Criminal Revision Case is dismissed as being devoid of merits. The Trial Court is directed to secure the presence of the accused and commit him to prison so that he can undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge,
Nagapattinam.
2. The Judicial Magistrate,
Sirkali.
3. The Inspector of Police,
All Women Police Station,
Sirkali.
4. The Public Prosecutor,
High Court,
Madras.

5. Deputy Registrar,
Criminal Section,
High Court, Madras.

Crl.R.C. No.1082 of 2011

VSN II (CO)
GN(13/02/2019)



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