

Bail Slip

The Appellant/Accused namely Elumalai S/o Srinivasan was related on bail dated 01/03/2012 in MP No.1 of 2012 in CrI.R.C.No.279 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.279 of 2012

Ezhumalai Petitioner/Accused

Vs.

1. State represented by S.H.O.,
All Women Police Station,
Panruti,
Cuddalore District. 1st Respondent/
Complainant

2. Sudha @ Egavalli 2nd Respondent
(R2-Impleaded as per order made in CrI.M.P.No.8723 of 2019 in
CrI.RC No.279/2012 dated 22/7/2019)

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the judgment and order dated 31.03.2010 passed in
C.C.No.553 of 2009 on the file of the Judicial Magistrate Court
No.II, Panruti, confirmed by the judgment and order dated
18.07.2011 passed in C.A.No.44 of 2011 on the file of the
Principal Sessions Court, Cuddalore.

For Petitioner : Mr.G.Rajesh
for Dr.G.Krishnamoorthy

For R1 : Mrs.P.Kritika Kamal
Govt. Advocate (CrI.Side)

O R D E R

This criminal revision has been filed seeking to set aside
the judgment and order dated 31.03.2010 passed in C.C.No.553 of
2009 on the file of the Judicial Magistrate Court No.II,
Panruti, confirmed by the judgment and order dated 18.07.2011
passed in C.A.No.44 of 2011 on the file of the Principal
Sessions Court, Cuddalore.

2. For the sake of convenience, the parties will be referred to by their name.

3. The facts of the case in a nutshell are as under:

3.1 Ezhumalai got married to Sudha @ Egavalli (PW1) in the year 1994 and they have three children through their wedlock. Alleging that Ezhumalai was beating her frequently, Sudha (PW1) lodged a complaint, based on which, a case in Crime No.2 of 2006 was registered. Ezhumalai was arrested and remanded to custody.

3.2 After completing the investigation, the first respondent/police filed a final report in C.C.No.526 of 2007 before the Judicial Magistrate Court No.I, Panruti and the same was transferred to the Judicial Magistrate Court No.II, Panruti and re-numbered as C.C.No.553 of 2009.

3.3 The Trial Court framed charges for the offences under Section 498-A IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 (for brevity "the TNPHW Act"). When questioned, Ezhumalai pleaded "not guilty".

3.4 To prove the case, the prosecution examined seven witnesses and marked three exhibits.

3.5 When Ezhumalai was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. On behalf of Ezhumalai, no witness was examined nor any document marked.

3.6 After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 31.03.2010 in C.C.No.553 of 2009, has acquitted Ezhumalai of the offence under Section 4 of the TNPHW Act, but, convicted him under Section 498-A IPC and sentenced him to undergo two years rigorous imprisonment and pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment.

3.7 The appeal in C.A.No.44 of 2011 filed by Ezhumalai was dismissed by the Principal Sessions Court, Cuddalore, on 18.07.2011.

3.8 Challenging the concurrent findings of fact by the Courts below, Ezhumalai has filed the present revision under Section 397 r/w 401 Cr.P.C.

4. Heard Mr.G.Rajesh, learned counsel representing Dr.G.Krishnamoorthy, learned counsel on record for Ezhumalai and

Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the first respondent/State.

5. A three Judge Bench of the Supreme Court, in Girish Kumar Suneja Vs. CBI¹, has held that revisional jurisdiction is a discretionary one and that the same can be exercised only if the High Court finds that there is an error apparent on the face of the record. The relevant portion of the said judgment is as follows:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C."

6. The aforesaid legal principle has also been reiterated very recently by the Supreme Court in Bir Singh Vs. Mukesh Kumar², wherein, the following question of law was formulated:

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

7. The answer of the Supreme Court to the aforesaid question of law is as under :

1(2017) 14 SCC 809

2 (2019) 4 SCC 197

"19.It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [(2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

8. On reading the evidence of Sudha (PW1), it is seen that she has stated the sufferings she had undergone at the hands of Ezhumalai. She has also stated that Ezhumalai got married to another girl Jayapradha and also had a child through her. The defence was not able to make any serious dent in her testimony. Her evidence has been corroborated by the evidence of Pakkirisamy (PW2) and Saravanan (PW3).

9. The learned counsel for Ezhumalai submitted that the parties have arrived at a compromise and also filed a memorandum of compromise to that effect. He further submitted that the parties are living peacefully.

10. This Court does not find any infirmity or perversity in the judgments and orders passed by the Courts below, warranting interference. The conviction passed by the Courts below in respect of the offence under Section 498-A IPC stands confirmed.

11. Coming to the quantum of sentence, this Court is of the view that interests of justice will be served if the substantive sentence of imprisonment in respect of the offence under Section 498-A IPC is reduced to the period of sentence already undergone and it is ordered accordingly.

In the result, this criminal revision is partly allowed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

nsd

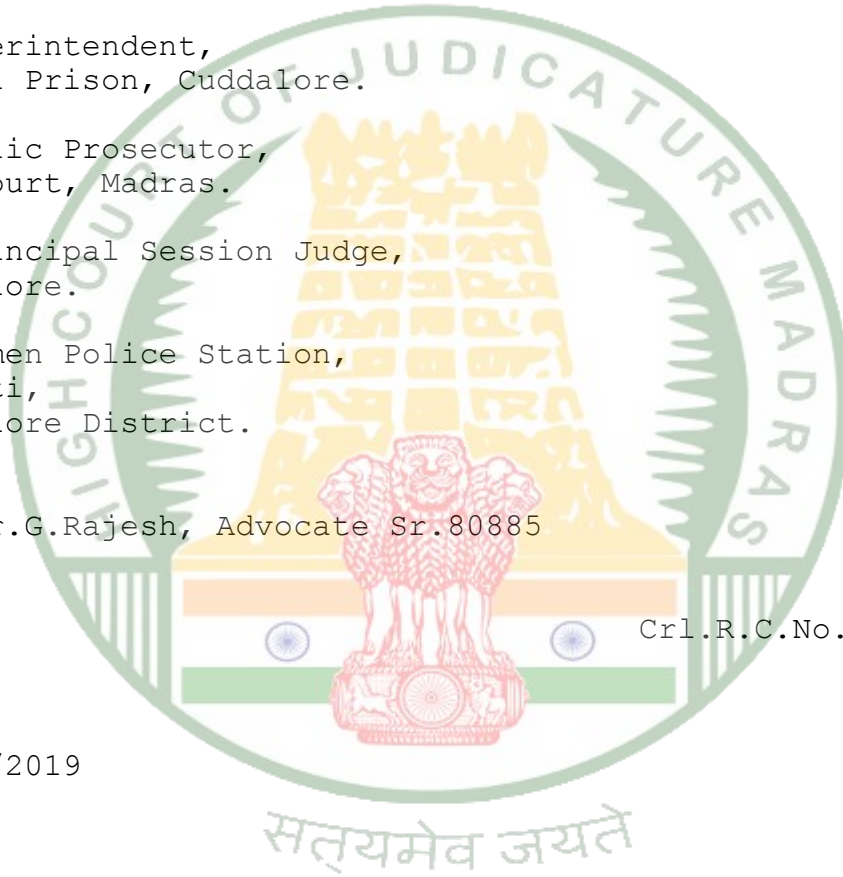
To

1. The Judicial Magistrate No.II,
Panruti.
- 2.The Chief Judicial Magistrate,
Cuddalore.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.
5. The Principal Session Judge,
Cuddalore.
6. All Women Police Station,
Panruti,
Cuddalore District.

+1cc to Mr.G.Rajesh, Advocate Sr.80885

CrI.R.C.No.279 of 2012

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