

BAIL SLIP

The Petitioner/Accused Viz Azhagu Nathan was released on bail as per the Order of this court dated 08-06-2012 in Crl.M.P.No.1 of 2012 in Crl.RC.No.565/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.565 of 2012

Azhagu Nathan

...Petitioner

-Vs-

State Rep. By its
Station House Officer,
All Women Police Station,
Panruti,
Crime No.5 of 2007.

...Respondent

This Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment passed by the learned Principal District Sessions Judge, Cuddalore in C.A.No.114 of 2010, dated 30.04.2012 confirming the conviction and sentence imposed by the Judicial Magistrate-II, Panruti in C.C.No.494/2009 dated 14.09.2010.

For Petitioner : Mr.Azhagu Nathan (Party in person)
No appearance

For Respondent : Mr.T.Shanmugarajeswaran
Govt. Advocate (Crl. side)

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O R D E R

This revision has been filed to set aside the judgment passed by the learned Principal District Sessions Judge, Cuddalore in C.A.No.114 of 2010, dated 30.04.2012, by confirming the order passed by the Judicial Magistrate-II, Panruti in C.C.No.494/2009 dated 14.09.2010.

2. The respondent police registered a case against the revision petitioner for the offences under Section 498-A, 347 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 (hereinafter referred to as 'TNPHW Act'). After investigation, the respondent police laid charge sheet before the learned Judicial Magistrate-II, Panruti. The learned Judicial Magistrate has taken the charge sheet on file in C.C.No.494 of 2009. After framing of charges and completing the legal formalities, on the side of the prosecution, in order to prove the case of the prosecution, eight witnesses were examined viz., P.W.1 to P.W.8 and two documents were marked as Ex.P1 and Ex.P2 and no material evidence was produced by the petitioner herein.

3. After completion of petitioner side evidence, when the incriminating materials culled out and put before the petitioner, he denied the same as false. On the side of the defence, no oral and documentary evidence was produced. After trial, the learned Judicial Magistrate found the accused guilty for the offence under Section 498-A IPC and not found guilty for the offence under Section 4 of TNPHW Act. The petitioner was sentenced to undergo rigorous imprisonment for two years and also to pay a fine of Rs.1000/- in default, to undergo simple imprisonment for three months for the offence under Section 498-A IPC.

4. Challenging the said order dated 14.09.2010 in C.C.No.494 of 2009 on the file of the learned Judicial Magistrate-II, Panruti, the petitioner has filed appeal before the learned Principal District and Sessions Judge, Cuddalore. After hearing argument on either side, the learned Sessions Judge, dismissed the appeal in C.A.No.114 of 2002 and confirmed the order of the trial Court. Aggrieved against the judgment dated 30.04.2012, the petitioner has preferred the present revision before this Court.

5. When the revision was taken up for hearing on 18.06.2019, at request of the learned counsel for the petitioner, the revision was posted to 08.07.2019. On 08.07.2019, since the learned counsel for the revision petitioner reported no instructions, this Court directed the Registry, to print the name of the revision petitioner in the cause list. Today when the revision came up for hearing, there is no representation on behalf of the petitioner. Since the revision is pending from 2012 and despite giving sufficient opportunities, the petitioner has not come forward before this Court, to argue the matter, Hence, the revision is disposed of on merits.

6. Heard the learned Government Advocate (Crl. side) appearing for the respondent and perused the materials available on record.

7. The learned Government Advocate has submitted that the defacto complainant is the wife of the revision petitioner. Based on her complaint, the respondent police registered a case against the revision petitioner for the offence under Sections 498-A, 347 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. The defacto complainant was examined as P.W.1 and she has clearly narrated the occurrence. Though the respondent police established its case beyond reasonable doubt, the Magistrate found that the petitioner has not committed the offence under Section 4 of TNPHW Act. Neither the defacto complainant nor the respondent police have filed any appeal against the petitioner herein before the learned Sessions Judge. The learned Sessions Judge has rightly re-appreciated the evidence and dismissed the appeal filed by the petitioner.

8. Though the case was initially registered against the petitioner for the offence under Section 498(A) and 347 IPC, the charges were framed against the petitioner under Section 498 (A) IPC and Section 4 of TNPHW Act 2002. Before the trial Court, on the side of the prosecution, as many as 8 witnesses were examined and two documents were marked by the respondent police.

9. It is the case of the prosecution that on 20.09.2004, the revision petitioner married P.W.1/defacto complainant and out of their wedlock, one male child was born. From the date of the marriage, she was treated cruelly by the revision petitioner with false allegation and doubting her fidelity and also forced her to sign in the white paper for permitting him to marry another women.

10. After registering the case, charge sheet was filed for the offences under Section 498(A), 394 of IPC and Section 4 of TNPHW Act. P.W.1/Defacto complainant was examined before the trial Court, on the side of the prosecution as P.W.1. She has narrated the events. The appellate Court is the final Court of fact finding re-appreciated entire evidence has held that the prosecution has not proved its case for the offence under Section 4 of TNPHW Act, whereas found guilty of the revision petitioner for the offence under Section 498(A) IPC.

11. On reading of the evidence of P.W.1/defacto complainant and the other independent witnesses, the prosecution has proved that the revision petitioner caused mental cruelty to P.W.1. The

evidence of P.W.3, P.W.4 and P.W.5 have corroborated the evidence of P.W.1. But, they have admitted in the cross examination that they had no direct knowledge of it and it is only hear say from P.W.1. P.W.6 and P.W.7 who were panchayatars, they have admitted that the revision petitioner agreed to take back P.W.1. and subsequently, he refused to take her back. It shows that the prosecution has proved its case beyond reasonable doubt for the offence under Section 498(A) IPC. Both Courts did not accept the prosecution case for the offence under Section 4 of THPHW Act.

12. As stated earlier neither the defacto complainant, nor the prosecution filed any appeal. However, the revision petitioner filed this revision against the conviction and sentence for the offence under Section 498(A) IPC. In cases like this, it is the evidence of the wife, is important and corroboration cannot be expected from the other eyewitness and corroboration can not be expected from direct witnesses. P.W.3 and P.W.5 have stated that P.W.1 has stated about the cruelty and harassment caused by her husband.

13. On a reading of the entire materials, both the Courts have rightly appreciated the evidence of P.W.1 and other prosecution witnesses and convicted the revision petitioner for the offence under Section 498(A) IPC and sentenced him to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs.1000/- in default, to undergo simple imprisonment of three months for the offence under Section 498-A IPC.

14. While exercising the revisional jurisdiction, this Court cannot re-appreciate the entire evidence as like appellate Court. This Court has to see as to whether there is any perversity in appreciation of the evidence by the appellate Court. Since the appellate Court is final Court of fact finding, it can re-appreciate the materials independently.

15. On a perusal of the judgment of the appellate Court, the appellate Court as a fact finding Court rightly re-appreciated the entire evidence and dismissed the appeal and confirmed the judgment of the trial Court. This Court does not find any valid reason or ground to interfere with the judgment of the appellate Court and finds there is no merit in the revision.

16. With the above observations, the revision stands dismissed and the bail already granted by this Court is cancelled and the trial Court is directed to take steps to

secure the custody of the revision petitioner to undergo the remaining period of sentence of imprisonment, if any.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

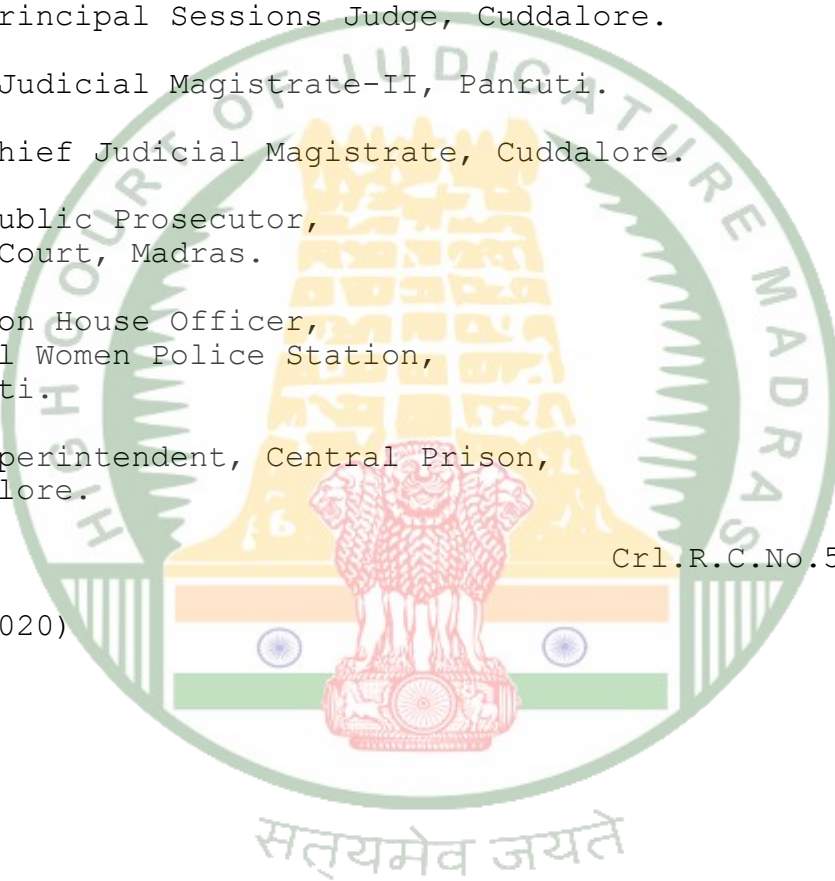
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To

1. The Principal Sessions Judge, Cuddalore.
2. The Judicial Magistrate-II, Panruti.
3. The Chief Judicial Magistrate, Cuddalore.
4. The Public Prosecutor,
High Court, Madras.
5. Station House Officer,
All Women Police Station,
Panruti.
6. The Superintendent, Central Prison,
Cuddalore.

CrI.R.C.No.565 of 2012

RSK (CO)
CB (04/02/2020)



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