

Bail Slip

The Petitioner/Accused No.1 viz., T.R.Manikandan, S/o.Ramasamy be and hereby was directed to be released on bail as per order of this Court, dated 14.06.2012 and made in Crl MP No.2 of 2012 in Crl RC No.571 of 2012; and

The Petitioner/Accused No.2 to 4 viz, Ramasay, S/o.Ammasai Gounder, R.Prema W/o.Ramasamy; and Dr.Jeyanthi, W/o.Siva be and hereby were diected to be released on bail as per order of this Court, dated 14.06.2012 and made in Crl MP No.1 of 2012 in Crl RC No.571 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.571 of 2012

1.T.R.Manikandan

2.Ramasamy

3.R.Prema

4.Dr.Jeyanthi

... Petitioners

State represented by
The Inspector of Police,
All Women Police Station,
Namakkal, Namakkal District.
(Crime No.22 of 2005)

- Vs -

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., against the judgment dated 30.04.2012 made in Crl.A.No.24 of 2011 passed by the learned Principal Sessions Judge, Namakkal, confirming the judgment dated 16.09.2011 made in SC.No.129 of 2006 passed by the learned Assistant Sessions Judge (Chief Judicial Magistrate), Namakkal.

For Petitioner : Mr.R.John Sathyan

For respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed to set aside the judgment dated 30.04.2012 in CrI.A.No.24 of 2011 passed by the learned Principal Sessions Judge, Namakkal, confirmed the judgment dated 16.09.2011 in SC.No.129 of 2006 passed by the learned Assistant Sessions Judge (Chief Judicial Magistrate), Namakkal.

2. The respondent police registered a case in Crime No.22 of 2005 for the offence punishable under Sections 3 and 4 of Dowry Prohibition Act, 1961 and 498A r/w 34 and 307 of IPC as against the first petitioner/A1 and Sections 3 and 4 of Dowry Prohibition Act, 1961 and 498A r/w 34 and 307 r/w 109 of IPC as against the petitioners 2 to 4/A2 to A4 and after completing investigation, laid a charge sheet before the learned Judicial Magistrate No.1, Namakkal. Since the offence is triable by the Court of Sessions, the learned Magistrate, Namakkal, committed the case to the learned Principal Sessions Judge, Namakkal. After taking the case on file in SC.No.129 of 2006, the learned Principal Sessions Judge made over the same to the learned Assistant Sessions Judge (Chief Judicial Magistrate), Namakkal for disposal. The learned Assistant Sessions Judge (Chief Judicial Magistrate) after receiving the case and completing the formalities, framed the charges against the revision petitioners herein. After completing trial, the learned Assistant Sessions Judge found that the revision petitioners/accused have not committed the offence under Section 3 of Dowry Prohibition Act, however, the revision petitioners are found guilty for the offence under Section 4 of Dowry Prohibition Act and 498A r/w 34 of IPC and convicted them by judgment dated 16.09.2011 and sentenced them as follows:-

Accused	Offence	Sentence
A1	Section 4 of Dowry Prohibition Act	6 months Simple Imprisonment and fine of Rs.5,000/- in default, 2 months Simple Imprisonment
	498A r/w 34 of IPC	One year Simple Imprisonment and fine of Rs.5,000/- in default, 3 months Simple Imprisonment
	307 of IPC	7 years Rigorous Imprisonment and fine of Rs.5,000/- in default, 6 months Simple Imprisonment

Accused	Offence	Sentence
A2 to A4	Section 4 of Dowry Prohibition Act	6 months Simple Imprisonment and fine of Rs.5,000/- in default, 2 months Simple Imprisonment
	498A r/w 34 of IPC	One year Simple Imprisonment and fine of Rs.5,000/- in default, 3 months Simple Imprisonment

The Trial Court directed the sentences to run concurrently. Challenging the said judgment of the trial Court, the accused preferred an appeal in CrI.A.No.24 of 2011 before the learned Principal Sessions Judge, Namakkal. After hearing the arguments advanced on either side and perused the entire materials and judgment of the trial Court, the learned Principal Sessions Judge found that the appellants therein/accused have committed the offence as stated by the trial Court and dismissed the appeal preferred by the appellants therein/accused on 30.04.2012 and confirmed the judgment of the trial Court. There against, the accused filed the present revision before this Court.

3. The learned counsel appearing for the revision petitioners would submit that the offence alleged to have been committed by the first petitioner is a distinct and different offence and said to have been taken place at Chidambaram and it is not in furtherance of the one and the same act and it is not in the course of the same transaction and it is against the provision of Section 218 of the Code of Criminal Procedure and it is a misjoinder of charges. So upholding the conviction against the first petitioner/A1 by the Appellate Court for the offence under Section 307 of IPC is not sustainable. Ex.P3, the certificate issued by PW-9 would prove that PW-1 herself has consumed the tablets of 10 mg in the morning in the empty stomach. The evidence of PW-1 reveals that the tablets were forcibly put into her mouth by the first petitioner in contra to her statement recorded under Section 161 of Cr.P.C. Therefore, the first petitioner/A1 found guilty for the offence under Section 307 of IPC, is not sustainable, when there are material contradictions between the statement of PW-1 recorded under Section 161 Cr.P.C and the evidence given by PW-9 before the Court. Further, the Doctor has clearly stated that it is highly impossible and improbable for the first petitioner/A1 to administer tablets to PW-1 as alleged by her. Both the Courts below failed to consider the fact that one person cannot forcibly administer 20 tablets against her will when she forcibly resisted the same. The opinion of the Doctor also would prove that PW-1 foisted a false case against the first

petitioner regarding the allegation of administered 20 tablets forcibly against her will. There is absolutely no evidence to prove that the petitioners/accused demanded dowry in connection or in consideration of the marriage as defined under Section 2 of Dowry Prohibition Act. Both the Courts below have failed to consider the legal as well as factual position. There are material contradictions in the prosecution witnesses regarding the time, place and the manner of the demand, acceptance and giving gold, cash dowry, car and other valuable articles. Both the Courts below have failed to consider the fact that the bride will not constitute as a Dowry and no offence is said to have been committed by any of the petitioners in demanding Dowry at the time of marriage. The mandatory provisions of the Dowry Prohibition Rules are not followed and there is no document produced by the prosecution as per Rule 6 of the Dowry Prohibition Rule to maintain the list of the articles given at the time of the marriage and it has to be signed by both parties. This case against the revision petitioners/accused was fabricated by PW-1 after filing the petition for divorce by the first petitioner herein against PW-1. The complaint was fabricated with the consultation and deliberation after reading the petition for divorce filed by the first petitioner. Further, both the Courts have failed to consider the fact that PW-1 filed the petition for restitution of conjugal rights in HMOP.No.22 of 2005 and the same itself shows that the averments made in the petition to prove the intention of PW-1 to wreck vengeance against the revision petitioners/accused. The first petitioner is the husband of PW-1 and the first petitioner is working as a Lecturer at Chidambaram Annamalai University and after marriage, they were living at Chidambaram. The petitioners 2 and 3 are the parents of the first petitioner/A1 and the fourth petitioner is the only sister of the first petitioner, who was already married with one Siva, who is a Scientist and she is living separately in her matrimonial home. The allegations against the petitioners 2 to 4 are not correct and the prosecution failed to establish the allegations against the petitioners 2 to 4 and both the Courts below failed to consider the law laid down by the Hon'ble Apex Court and this Court that the in-laws cannot be prosecuted for the offence under Section 498A of IPC when there is no evidence to show that they caused cruelty. Since the petitioners 2 to 4 are living separately, the offence under Section 498A r/w 34 of IPC would not attract. Both the Courts have failed to consider the legal and factual position and wrongly convicted the revision petitioners for the offence under Section 498A r/w 34 of IPC. There is no material evidence to prove the demand and acceptance of dowry in consideration of marriage and therefore, Section 8A of Dowry Prohibition Act is not attracted. Both the Courts below failed to consider the oral and documentary evidence and the petition for divorce filed by the first petitioner in

HMOP.No.176 of 2005 and the petition for restitution of conjugal rights filed by PW-1 against the first petitioner in HMOP No.22 of 2005 which clearly shows that all the allegations levelled in the complaint are subsequent improvement and in order to get the petition for divorce be dismissed, PW-1 foisted a false case against the revision petitioners/accused. If at all they demanded dowry and caused mental cruelty and also the first petitioner/A1 committed the offence under Section 307 of IPC, PW-1 ought not to have filed the petition for restitution of conjugal rights in HMOP.No.22 of 2005, which clearly shows that there is no dowry demand, cruelty and there was no attempt to murder. Both the Courts below failed to consider these facts and wrongly convicted the revision petitioners/accused for the offence under Section 498A r/w 34 IPC. Though the trial Court acquitted the petitioners 2 to 4 for the offence under Section 307 of IPC and Section 3 of Dowry Prohibition Act, it ought to have acquitted them for the offence under Section 4 of Dowry Prohibition Act and also 498A r/w 34 of IPC. There are material contradictions between the prosecution witnesses specifically between PW-1 and PW-9 and also there is an improvement from stage to stage even PWs-1 and 2 and the Doctor's evidence also clearly show that it is impossible for administering the tablets forcibly against the will. The First Appellate Court also failed to appreciate the evidence independently and only followed the judgment of the trial Court, which warrants interference. The learned counsel placed reliance on the judgment of Hon'ble Apex Court in the case of B.S.Joshi Vs. State of Haryana reported in [2003 (3) SCC 227] in support of his contention. At last, the learned Counsel would submit that since it is a family dispute, the parties are ready to compound the offence.

4. The learned Government Advocate (Crl. Side) appearing for the respondents/State would submit that the marriage between the first petitioner and PW-1 was solemnised on 21.02.2005 at Puttaparthi Saibaba Temple. Thereafter, the reception was held on 27.02.2005 at Namakkal Kongu Vellalar Marriage Hall. After completion of the ceremonies, both the first petitioner and PW-1 started to live in the house belongs to one Ganesan Chettiar at VNS Nagar, Chidambaram. Before marriage, the revision petitioners demanded one kilogram gold, Rs.10 lakhs and one new Tata Safari Car as dowry in connection with the said marriage of A1 with PW-1 and the parents of PW-1 also accepted for the same since PW-1 is the only daughter of her parents. The Court also accepted that at the time of marriage, the parents of PW-1 provided one kilogram gold, a sum of Rs.10,00,000/-, one Tata Safari car and also other household goods worth about Rs.2,00,000/- without any demand and also spent a sum of Rs.3,00,000/- towards marriage expenses. Therefore, the offence under Section 3 of Dowry Prohibition Act is not attracted.

Subsequent to the marriage, the fourth petitioner along with petitioners 2 and 3 illegally demanded PW-1 to part with her father's monthly income and also persistently demanded money and jewels from PW-1. On one occasion, while PW-1 was alone in the house, the petitioners 3 and 4 dashed the head of PW-1 against the wall of the house, due to which, PW-1 sustained headache. On 18.06.2005, the petitioners 2 to 4/A2 to A4 intentionally threatened PW-1 and coerced her at the connivance of the first petitioner to settle all her properties in the name of the first petitioner/A1, when PW-1 refused for the same, the fourth petitioner/A4 gave 10 volume tablets and said as if the properties not transferred, die herself by consuming the sleeping tablets. One of the allegations against the petitioners is that while PW-1 came to the house of the second petitioner with the first petitioner during Aadi 2005, near Namakkal Anjenayar temple, the petitioners 2 to 4 persistently demanded jewels and cash of Rs.1 lakh and also to transfer her father's income in their favour. Further, the charge against the revision petitioners is that while PW-1 lived at matrimonial house with the first petitioner at Chidambaram, during August 2005, the second petitioner intentionally abetted A1 to transfer the car, TN 28 P 6161 worth about Rs.10.5 lakhs in the name of the fourth petitioner herein and on such illegal demand of transfer, the first petitioner took PW-1 to Namakkal in the Safari Car, near Srinivasa Store at Mohanur Road, the second petitioner joined with them in a car and illegally threatened to transfer the car in the name of the fourth petitioner, when PW-1 refused for the same, she was ill-treated and humiliated and the first petitioner drove the car to the parental house of PW-1 and stopped the car in front of the house of PW-1 and came back. Furthermore, the charges against the petitioners are that PW-1 and the first petitioner lived as husband and wife and on 19.09.2005 at about 8.30.am the first petitioner/A1 forcibly administered 20 volume tablets to PW-1 on the instigation of the petitioners 2 to 4 by saying that if you are alive, there would be a problem and if you die, all the properties will come to us. Therefore, the first petitioner forcibly holding her and also put 20 volume sleeping tablets in her mouth and poured the water and made her to swallow the same. Therefore, the first petitioner has committed the offence under Section 307 of IPC and the petitioners 2 to 4 have abetted to kill PW-1 and fortunately, PW-1 recovered after the treatment. The trial Court convicted the first petitioner/A1 for the offence under Section 4 of Dowry Prohibition Act and Sections 498-A r/w 34 & 307 of IPC and also convicted the petitioners 2 to 4/A2 to A4 for the offence under Section 4 of Dowry Prohibition Act and Section 498-A r/w 34 of IPC. Therefore, the accused preferred an appeal in CrI.A.No.24 of 2011 before the learned Principal Sessions Judge, Namakkal. The Appellate Court has rightly re-appreciated the entire evidence and dismissed the appeal on

30.04.2012 and confirmed the judgment of the Trial Court, which warrants no interference.

5. Heard the learned counsel appearing for the revision petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the materials available on record.

6. On reading of the evidence of prosecution witnesses in order to prove the charges levelled against the revision petitioners, the defacto complainant/victim was examined as PW-1, she has clearly narrated the events from the date of engagement to till the date of filing the complaint. Though the learned counsel for the petitioners submitted that there are material contradictions between the statement of PW-1 recorded under Section 161 Cr.P.C and the evidence given before the Court, there are improvements in both the complaint and the statement recorded under Section 161 Cr.P.C. On reading of the entire evidence of PW-1, it is seen that both the Courts have rightly appreciated the evidence and there is no reason to discard the evidence of PW-1. The evidence of PW-2 corroborated the evidence of PW-1/victim. Though at the time of giving complaint, recording the Statement under Section 161 Cr.P.C and investigation, the father of PW-1 was alive, unfortunately, he died before commencement of Trial. Therefore, he could not have been examined before the Court to corroborate the evidence of PW-1 to some extent. The cases like this, the evidence of PW-1/victim alone is sufficient unless there is a specific reason to discard the evidence of the victim and the defence was able to establish the reason for disbelieving the evidence of PW-1. Normally, Court would accept the evidence of PW-1/victim. In this case, there is no compelled circumstances have been established by the defence that the evidence of PW-1/victim is not trustworthiness. Further PW-2/Mother of the victim has clearly spoken about the subsequent events and also the demand of dowry some extent. Even though most of the incidents had taken place in the four walls of the matrimonial home, one cannot expect the independent evidence to corroborate the evidence of the victim. Both the Courts below have pointed out the oral evidence and also the documentary evidence to corroborate the events. At the instance of dashing PW-1's head against the wall by demanding money and also the jewels, she immediately went to the hospital for treatment and she has not revealed the said fact before the Doctor and it does not mean that the evidence of PW-1/victim is false. Unfortunately, in this country, the girls till taking the decision not to live with the husband, whatever happens in the matrimonial home through the in-laws, they won't reveal the same to anyone. If the incident goes beyond their control and extended the extreme stage, they would reveal with the parents or closely related

person or friends. Therefore, the Court cannot expect the corroboration or the documentary proof for each and every events, the Court has to see whether the evidence of PW-1 is trustworthy or not and find out the reason to believe or not to believe. On reading of the entire materials, it is seen that both the Courts below have appreciated the evidence of PWs-1, 2, 4, 7 9, 11 and 12 and found that the prosecution has established its case beyond reasonable doubts. From the evidence of PWs-1, 9 and 12, offence under Section 307 against the first petitioner/A1 is clearly established. Considering the serious nature of the offence and also the offence under Section 307 of IPC is not compoundable, the authorities cited by the learned counsel for the petitioners is not applicable to the present case on hand. This Court, while exercising the revisional jurisdiction, cannot exercise the power of the Appellate Court and it cannot re-appreciate the entire evidence and cannot interfere with the judgement, unless this Court finds any perversity in the appreciation of evidence. This Court finds no perversity in the judgments of the Courts below. There is no merit in the present revision and the same is liable to be dismissed.

7. While considering the compromise, this Court has to see the key issue that whether offence in question is more in the nature of a crime against society, or more a personal wrong. Seriousness of crime and its social impact should be a key consideration. In this case, offence under Section 307 IPC fall in category of heinous and serious offence and therefore, it has to be treated as crime against society and not against individual. Therefore, this Court is not inclined to accept the contention of the learned counsel for the petitioners that parties are ready to compound the offences since the first petitioner has already filed petition for divorce.

8. In the result, this Criminal Revision Case is dismissed. The judgment dated 30.04.2012 in CrI.A.No.24 of 2011 passed by the learned Principal Sessions Judge, Namakkal is hereby confirmed. The Trial Court is directed to secure the petitioners to undergo remaining period of sentence forthwith.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

KMI

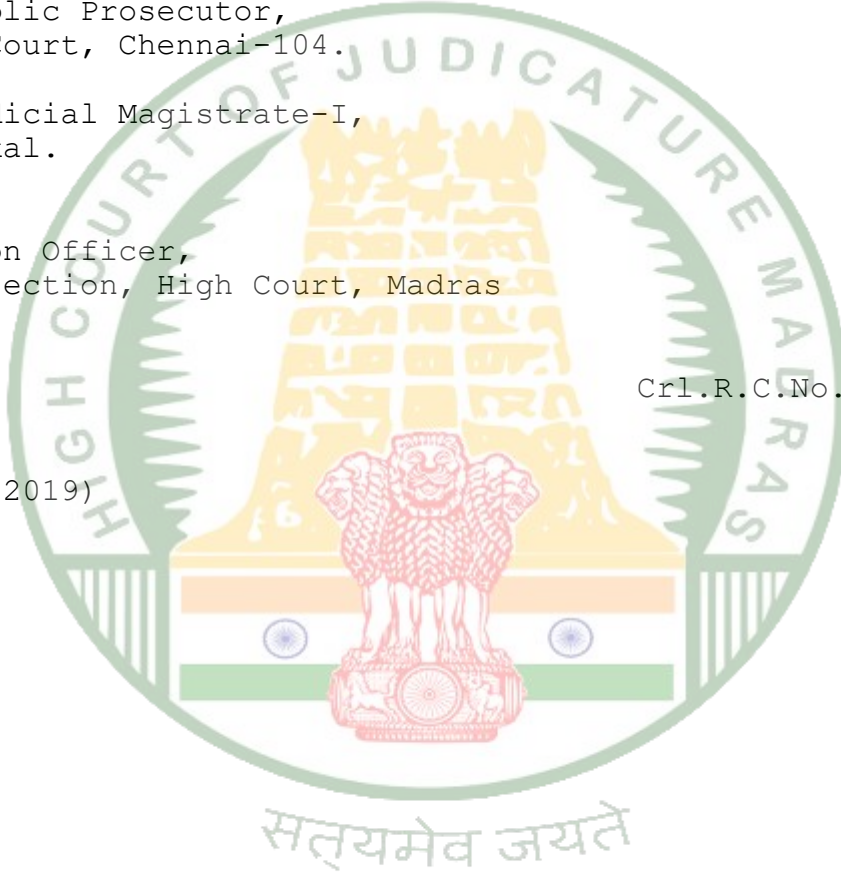
To

1. The Principal Sessions Judge,
Namakkal.
2. The Assistant Sessions Judge (Chief Judicial Magistrate),
Namakkal.
3. The Inspector of Police,
All Women Police Station,
Namakkal, Namakkal District.
4. The Public Prosecutor,
High Court, Chennai-104.
5. The Judicial Magistrate-I,
Namakkal.

Copy To :
The Section Officer,
Criminal Section, High Court, Madras

Cr1.R.C.No.571 of 2012

PA (CO)
GMY (11/10/2019)



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