

Bail Slip

The Petitioners/Accused Nos.1 to 3 (in C.C.No.212 of 2008 on the file of the Judicial Magistrate No.I, Vellore) viz.,
1) Parthiban, S/o.Mannan, 2) Mannan, S/o.Chinnadurai,
3) BhoopathiAmmal, W/o.Mannan, were directed to be released on bail as per order of this Court dated 30/04/2013 and made in MP.Nos.1 and 3 in CrI.R.C.No.619 of 2013, pending on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.11.2019

PRONOUNCED ON : 19.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.619 of 2013

1. Parthiban

2. Mannan

3. Bhoopathiammal

..Petitioners/Appellants/
Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Vellore.

.. Respondent/ Respondent/
Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 07.12.2011 passed in C.C.No.212 of 2008 on the file of the Judicial Magistrate Court No.I, Vellore, confirmed by the judgment and order dated 12.02.2013 passed in C.A.No.3 of 2012 on the file of the District and Sessions Court, Vellore.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mrs.P.Kritika Kamal

Govt. Advocate (CrI.Side)

ORDER

This criminal revision has been filed seeking to set aside the judgment and order dated 07.12.2011 passed in C.C.No.212 of 2008 on the file of the Judicial Magistrate Court No.I, Vellore, confirmed by the judgment and order dated 12.02.2013 passed in C.A.No.3 of 2012 on the file of the District and Sessions Court, Vellore.

2. The facts of the case distilled from the records run thus:

2.1 Jayanthi (PW1), daughter of Pandurangan (PW2) and Mani (PW3), married Parthiban (A1) on 01.05.2006 and the marriage was an arranged one. At the time of marriage, her (PW1's) parents gave her twenty sovereigns of gold, a Hero Honda motorbike for the groom (A1) and other household articles. After marriage, Jayanthi (PW1) lived in joint family with her parents-in-law viz., Mannan (A2) and Boopathiammal (A3) in Allivaram village, which is away from Arani, her (PW1's) natal village. In her (PW1) matrimonial home, she (PW1) was pestered for more dowry and when she was not able to meet the demand, her husband Parthiban (A1) brought her to her natal home for the maiden Diwali, left her there and did not take her back saying that she (PW1) will find a place in his (A1's) house only if she (PW1) brings a sum of Rs.2,00,000/- and five sovereigns of gold. However, she had conceived by then. Efforts were made by her (PW1's) parents to amicably settle the dispute, but, the same did not bear fruition and so, Jayanthi (PW1) lodged a complaint at the local police station. During enquiry, her (PW1) husband (A1) told her that he will take her back after the confinement.

2.2 In the mean time, Parthiban (A1) sent a lawyer's notice dated 16.12.2006 (Ex-D3) calling upon Jayanthi (PW1) [wrongly stated in the list of exhibits column of the trial Court judgment as if Jayanthi (PW1) had sent lawyer's notice to the accused] to join him. Jayanthi (PW1) issued a reply notice dated 20.03.2007 (Ex-D4) [wrongly stated in the list of exhibits column of the trial Court judgment as if the accused had sent reply notice] alleging that she has been sent out for not acceding to the additional demand of five sovereigns of gold made by her father-in-law (A2).

2.3 Immediately thereafter, Parthiban (A1) filed a petition in H.M.O.P.No.34 of 2007 (Ex-D1) before the Subordinate Court, Vellore, on 29.01.2009, for restitution of conjugal rights. The family of Jayanthi (PW1) did not immediately respond to that litigation, but, instead, they were exploring all possibilities to save the marriage through mediation.

2.4 On 11.02.2008, Jayanthi (PW1), accompanied by her parents Pandurangan (PW2) and Mani (PW3) and Nedunchezian (PW4), an elderly person from the village, went to the house of the accused, where, all the accused abused them, assaulted Jayanthi (PW1) and her father (PW2).

2.5 Therefore, Jayanthi (PW1) lodged a complaint (Ex-P1), based on which, A.Roselin Malini (PW5), Sub-Inspector of Police,

registered a case in Crime No.12 of 2008, for the offences under Sections 294 (b), 498-A and 506 (I) IPC and Section 4 of the Dowry Prohibition Act, 1961 (for brevity "the DP Act"), against the accused.

2.6 After examining witnesses, the respondent/police completed the investigation and filed a final report in C.C.No.212 of 2008 before the Judicial Magistrate Court No.I, Vellore, for the offences under Sections 294 (b), 498-A and 506 (I) IPC and Section 4 the DV Act, against Parthiban (A1), Mannan (A2) and Boopathiammal (A3).

2.7 On appearance of the accused, the trial Court framed charges for the offences under Sections 498-A and 506 (I) IPC and Section 4 of the DV Act against Parthiban (A1) and Sections 294 (b), 498-A and 506 (I) IPC and Section 4 of the DV Act against Mannan (A2) and Boothiammal (A3). When questioned, the accused pleaded "not guilty".

2.8 To prove the case, the prosecution examined five witnesses and marked two exhibits.

2.9 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, no witness was examined, however, four exhibits were marked.

2.10 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 07.12.2011 in C.C.No.212 of 2008, convicted and sentenced the accused as follows:

Accused	Provision under which convicted	Sentence
Parthiban (A1)	Section 498-A IPC	Two years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo two months simple imprisonment.
	Section 4 of the DP Act	Two years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo two months simple imprisonment.

Accused	Provision under which convicted	Sentence
Mannan (A2)	Section 294 (b) IPC	Fine of Rs.250/-, in default to undergo two weeks simple imprisonment.
	Section 498-A IPC	Two years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo two months simple imprisonment.
	Section 4 of the DP Act	Two years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo two months simple imprisonment.
Boopathiammal (A3)	Section 294 (b) IPC	Fine of Rs.250/-, in default to undergo two weeks simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.11 The appeal in C.A.No.3 of 2012 filed by the accused was dismissed by the District and Sessions Court, Vellore, on 12.12.2013.

2.12 Challenging the concurrent findings of fact arrived at by the Courts below, the accused have preferred the present revision under Section 397 r/w 401 Cr.P.C.

3. Heard Mr.T.R.Ravi, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. Before advertng to the rival submissions, it is necessary to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹ Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [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

¹ (2004) 7 SCC 659

² (2019) 4 SCC 197

will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. " (emphasis supplied)

5. Mr.T.R.Ravi, learned counsel for the accused submitted that there is no sufficient evidence to show that the accused had demanded a sum of Rs.2,00,000/- from Jayanthi (PW1). He took this Court through the reply notice dated 20.03.2007 (Ex-D4), the counter filed by Jayanthi (PW1) in H.M.O.P. proceedings (Ex-D2) and submitted that there is no mention of the sum of Rs.2,00,000/- therein. He also submitted that the complaint (Ex-P1) was lodged as a counterblast for the restitution of conjugal rights proceedings that was filed by Parthiban (A1).

6. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the accused.

7. This Court perused the evidence of Jayanthi (PW1), who has stated that, at the time of marriage, she was given twenty sovereigns of gold, her husband (A1) was given a motorbike and other household articles worth about Rs.3,50,000/-; after marriage, her (PW1's) husband (A1) and parents-in-law (A2 and A3) started demanding five sovereigns of gold and cash of Rs.2,00,000/- as additional dowry; her (PW1's) husband (A1) brought her for the maiden Diwali, left her in her natal home and did not take her back even after the child was delivered.

8. This evidence of Jayanthi (A1) is amply corroborated by Pandurangan (PW2), Mani (PW3) and Nedunchezian (PW4), who have spoken to about the demand of five sovereigns of gold and cash of Rs.2,00,000/-.

9. With regard to the submissions of Mr.Ravi, learned counsel for the accused, about the averments in the reply notice (Ex-D4) and counter (Ex-D2), these documents are not substantive evidence and they are only previous statements, which should have been confronted to Jayanthi (PW1) as provided under Section 145 of the Evidence Act, 1872, in the cross-examination, which was not done in this case.

10. Jayanthi (PW1), in her evidence, has further stated that even after the receipt of the notice, her parents (PWs.2 and 3) wanted rapprochement and that is why, they all went to the village of the accused for reconciliation on 11.02.2008; when they all went there, her husband (A1) and father-in-law (A2) did not permit them to enter the house; her father-in-law held her tresses and pushed her out of the house; her mother-in-law (A2)

abused her in filthy language by calling her a whore; Parthiban (A1) also joined them and assaulted her; even during the quarrel, they were referring to the five sovereigns of gold and Rs.2,00,000/- cash, which they demanded from her family; when neighbours intervened, her husband (A1) created scene there, on account of which, they also withdrew.

11. This evidence of Jayanthi (PW1) has been adequately corroborated not only by her parents, but also by the independent witness, Nedunchezian (PW4). The defence was not able to make any serious dent in the testimony of Nedunchezian (PW4).

12. In such perspective of the matter, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

13. Mr.T.R.Ravi, learned counsel for the accused pleaded for leniency in the sentence. Accepting his submission, the substantive sentence of two years rigorous imprisonment imposed on Parthiban (A1) and Mannan (A2), for the offences under Sections 498-A IPC and Section 4 of the DP Act is reduced to one year rigorous imprisonment. and the said sentences of imprisonment shall run concurrently. However, the sentence of fine and the default sentence shall remain the same.

In fine, this criminal revision is partly allowed. The trial Court is directed to secure the accused and commit them to prison to serve out the sentence.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Vellore.
2. The Chief Judicial Magistrate, Vellore.
3. The District and Sessions Judge, Vellore.
4. The Inspector of Police,
All Women Police Station, Vellore.
5. The Public Prosecutor, High Court of Madras.

Copy to : The Deputy Registrar(Crl.Section,
High Court of Madras.
(with a direction to return the original
records to the Courts below concerned)

+1 cc to M/s.T.R.Ravi,Advocate Sr.No. 96123

AKM/18.12.19/6P-8C /

order in
Crl.R.C.No.619 of 2013