

Bail Slip

The Appellant herein/Accused,namely Dass in CC . NO.460/09 on the file of the Judicial Magistrate I,Tindivanam released on bail as per the order of this Court dated 22.01.2016 made in CRL MP.NO.684/16 pending in CRL RC.NO.97/2016 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.97/2016

Dass .. Petitioner /

Appellant / Accused-1

Vs

State of Tamil Nadu
Rep. by the Sub Inspector of Police,
All Women Police Station,Tindivanam

.. Respondent

/ Complainant

Prayer: Petition filed under section 397 r/w 401 of Cr.P.C, praying to call for the records in C.A.No.26/2011 on the file of the II Additional District and Sessions Judge, Tindivanam and to set aside the order passed in C.A.No.26/2011 dated 20.11.2015, confirming the conviction and sentence imposed in CC.No.460/2009 on the file of the learned Judicial Magistrate No.I, Tindivanam dated 03.05.2011 and acquit the petitioner/accused -1 of the charges framed against him.

For Petitioner : Mr..S.Karthikeyan

For Respondent : M.Mohamed Riyaz, APP

ORDER

- 1.This criminal revision petition has been filed by the petitioner/appellant/A-1, seeking to set aside the judgment in C.A.No.26/2011 on the file of the II Additional District and Sessions Judge, Tindivanam, dated 20.11.2015 confirming the conviction and sentence imposed

in CC.No.460/2009 on the file of the learned Judicial Magistrate No.I, Tindivanam dated 03.05.2011 and against the petitioner/A-1 of the charges framed against him.

2. The learned counsel for the petitioner would submit that the petitioner along with other accused was charged and tried for offence under Section 498 A of IPC and under Sections 4 & 6 of the Dowry Prohibition Act. The trial Court acquitted the 3rd and 4th accused from all the charges and convicted the 1st and 2nd accused for the offence while acquitting the 1st and 2nd accused for the charges under Sections 4 & 6 of the Dowry Prohibition Act, found the 1st and 2nd accused guilty for the offence under Section 498-A of IPC and sentenced the petitioner/A1 to undergo 6 months simple imprisonment and to pay a fine of Rs.1000/- with a default sentence of 2 months simple imprisonment and sentenced A2/the mother of the petitioner to undergo 3 months simple imprisonment for the offence u/s.498A IPC.
3. During the pendency of the appeal, A2/the mother of the petitioner passed away and the charges against her got abated. The Appellate court had dismissed the appeal and confirmed the conviction and sentence passed by the Trial Court, against which the present revision has been filed.
4. The learned counsel for the petitioner/A-1 would submit that even assuming the entire evidence to be true, the same does not constitute the ingredients under Section 498 A of IPC, against the petitioner. He would submit that even as per evidence of PW.1, the allegations are made only against the mother, father and sister of the petitioner for having demanded 10 sovereigns of jewels and there is no specific allegation that the petitioner had demanded dowry from PW1. Further, there is no evidence that PW1 had been subjected to cruelty at the hands of the petitioner/A-1 falling within the explanation to Section 498 A of IPC. The trial Court having acquitted A-3 and A-4 for the offences under Section 4 and 6 of the Dowry Prohibition Act, ought not to have held the petitioner guilty for offence under Section 498 A of IPC and the trial Court, having disbelieved that there was demand of dowry, had erred in convicting the petitioner/A-1 for offence under Section 498 A of IPC on the same set of facts and evidence. He would submit that admittedly, the marriage is a love marriage and that the marriage took place on 27.08.2004 and the complaint was registered on 09.07.2009. He would also submit that the brother of PW1 who was examined as PW.5, has not supported the case of the prosecution. Further no evidence had been let in by the prosecution as if the petitioner committed acts of cruelty within the meaning of explanation to cruelty under Section 498-A of

IPC.

5. The learned Additional Public Prosecutor would submit that PW1 had stated that the other accused have demanded 10 sovereigns of jewellery from PW1 and she had informed to her husband, the petitioner herein who had asked PW1 to comply with the demand made by the other accused. However, he would submit that the other accused, viz., A-3 and A-4, are being the father and sister, had been acquitted by the trial Court and all the accused have been not found guilty for offence under Section 4 and 6 of the Dowry Prohibition Act.
6. This Court heard learned counsel on either side.
7. Now the question that arises for consideration is whether the evidence against the petitioner constitutes for offence under Section 498 A of IPC.
8. It is apposite to refer to Section 498 A is extracted hereunder:

" 498A. Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation -For the purpose of this section, "cruelty" means- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

9. I have carefully and consciously gone through the evidence.
10. On perusal of evidence reveals that the demand was made by A-2 to A-4 and not by the petitioner/A1 and that the evidence of PW2 Senkeni, PW3 Kalaivani, PW4 Anbhazagan, PW5 Manogaran do not inspire confidence of this Court and they are in the nature of hearsay evidence and further, taking into consideration the evidence of PW-2 there is no whisper of any allegations of demand of dowry or cruelty made by the petitioner against PW.1 as meant and required under the explanation to Section 498-A of IPC.

11. In view of the same, the criminal revision is allowed and the order passed in C.A.No.26/2011, by the II Additional District and Sessions Judge, Tindivanam, dated 20.11.2015, confirming the conviction and sentence imposed in CC.No.460/2009 on the file of the learned Judicial Magistrate No.I, Tindivanam dated 03.05.2011, is set aside. The fine amount if any paid by the petitioner/appellant/accused-1, shall be returned to the petitioner.

Sd/-
Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

jrs
To

1. The II Additional District and Sessions Judge, Tindivanam
2. Do thro the Principal and sessions Judge, Villupuram
3. The Judicial Magistrate No.I, Tindivanam
4. Do thro the Chief Judicial Magistrate, Villupuram (For information)
5. The superintendent, Central Prison, Cuddalore
6. The Sub Inspector of Police, All Women Police Station, Tindivanam
7. The Public Prosecutor, High Court, Madras.

Cr1.RC.No.97/2016

vba
A.SK(21/11/2019)