



Bail Slip

The Revision Petitioner viz., Krishnasamy, s/o Rengasamy, Age 46 years was released on bail vide court order dated 05.12.2013 made in MP(MD)No.1 of 2013 in CRL.R.C(MD)No.706 of 2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.R.C. (MD)No.706 of 2013

Krishnasamy

... Petitioner/ Appellant/
Sole Accused

Vs

State rep. by Inspector of Police,
All Women Police Station,
Lalgudi, Thiruchirapalli District.
In Crime No.07/2005.

... Respondent/ Respondent/
Complainant

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C, praying, to call for the records and set aside the conviction and sentence imposed by the Court of I Additional District Judge, Tiruchirapalli in C.A.No.77/2012, dated 28.03.2013 in confirming the conviction and sentence imposed by the Judicial Magistrate Court No.I, Tiruchirapalli in C.C.No.335 of 2010, dated 07.09.2012 and allow this criminal revision petition.

For Petitioner : Mr.M.Karunanithi
for M/s.K.J.Associates

For Respondent : Mr.A.Robinson
Government Advocate

O R D E R

The revision petitioner was found guilty of the offences under Sections 498(A) of IPC, 406 of IPC and 506(ii) of IPC and sentenced to undergo two years, six months and three months simple imprisonment respectively, vide Judgment dated 07.09.2012 in C.C.No.335 of 2010 on the file of the Judicial Magistrate No.1, Thiruchirappalli. Questioning the same, the revision petitioner filed Criminal Appeal No.77 of 2012 before the First Additional District and Sessions, Fast Track Court, Thiruchirapalli. The



Appellate Court, by Judgment dated 28.03.2013, dismissed the appeal and confirmed the Judgment of the trial Magistrate. Challenging the same, this revision case came to be filed.

2.The prosecution case is that the revision petitioner got married to one Saraladevi on 11.04.2001 and that, he harassed her by demanding dowry. He had also pledged her gold jewelry worth about five sovereign. A girl child Ramani was born in the year 2002. Since the petitioner's wife Saraladevi did not comply with the revision petitioner's demand for bringing additional jewelry, the revision petitioner sent away his wife along with the child on 11.08.2003. In this regard, Saraladevi lodged a complaint before the Judicial Magistrate No.2, Kovilpatti. A direction under Section 156(3) of Cr.P.C., was issued and that is how Crime No.09 of 2003 was registered on the file of the Kovilpatti All Women Police Station for the offences under Sections 498(A) and 406 of IPC. The case was subsequently forwarded to the All Women Police Station, Lalgudi and a new Crime No.07 of 2005 was assigned. Investigation was taken up and final report came to be filed against the revision petitioner for the offences under Sections 498(A), 406 and 506(ii) of IPC. Cognizance of the offence was taken and two charges were framed against the revision petitioner. The revision petitioner denied the same and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P1 to Ex.P13. On the side of the accused, no evidence was adduced. However, when incriminating circumstances were put to him under Section 313 of Cr.P.C., the revision petitioner filed his statement. The learned trial Magistrate, by Judgment dated 07.09.2012 found the revision petitioner guilty of the offences, with which, he was charged and convicted and sentenced him as mentioned above. The Appellate Court confirmed the same. Questioning the same, this revision came to be filed.

3.Heard the learned counsel on either side.

4.The learned counsel appearing for the revision petitioner submitted that the revision petitioner was originally married to one Rajeshwari. A male child Logeshwaran was born in the year 1993. Rajeshwari passed away in the year 1995. The revision petitioner had joined the police department as constable in the year 1986. He became a direct Head Constable in the year 1991. He married second time only for the sake of the child. It is the case of the revision petitioner that Saralsdevi did not treat Logeshwaran properly and that is the basic reason for the marital discord. The revision petitioner was originally sent on special duty to work as a member of the STF in the year 2001. The revision petitioner was sent for a period of three months. It is subsequently extended for a period of further three months. Since the petitioner was newly married, the petitioner did not want to serve in STF. Hence, he was suspended from service. Therefore, to tide over the financial difficulty arising out of suspension, the petitioner pledged the jewelry

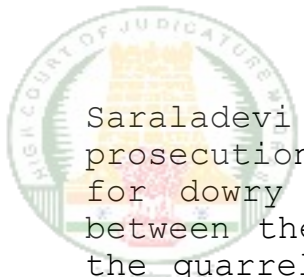


belonging to his wife. However, it is false to state that the petitioner had taken the gold chain from his sister-in-law and pledged the same. The petitioner's counsel would submit that the contents of Ex.P2 are not correct.

5.The prosecution examined 13 witnesses. P.W.1 is the defacto complainant/wife of the revision petitioner. P.W.2 is the mother of P.W.1. P.W.3-Subathra is the sister of P.W.1. P.W.4, P.W.5 and P.W.6 who are the relatives of the defacto complainant, acted as Panchayathars in this case. P.W.9, P.W.10, P.W.11 and P.W.12 are the Head Constable who resided in the Lalgudi Police Quarters. P.W.13 is the Investigating Officer who filed the final report.

6.Obviously, P.W.9 to P.W.12 were working as Head Constables. They were residents of the police quarters, Lalgudi. P.W.9 turned hostile. P.W.10 claimed that the revision petitioner would come home drunk and quarrel with his wife. However, in the cross examination, he stated that he was not directly aware that the revision petitioner used to fight with his wife in a drunken condition. In any event, it is not the charge that the revision petitioner used to come home drunk. When towards the end of the cross examination, a suggestion was put that his deposition made in Chief examination was contradictory to the truth, instead of denying the same, P.W.10 merely stated that he does not know. A reading of the answers given by P.W.10 in his cross examination, would indicate that he would not have direct knowledge. Therefore, I am of the view that no reliance can be placed on the testimony of P.W.10. P.W.11 has deposed that during the year 2003-2004, he was residing in the Lalgudi Police Quarters. He has stated that the revision petitioner was quarrelling in front of his house. P.W.11 admits that the revision petitioner was residing in C3 in 'C Block'. As the name itself would indicate 'C3' is in the first floor. Manickkam was a resident of 'A Block'. Therefore, if the revision petitioner wanted to fight with his wife, he would have done it inside his house only. It is improbable in front of the apartment block that the revision petitioner was fighting with his wife. P.W.11 has only made a general statement. The deposition of P.W.11 is vague and bereft of any particulars. One cannot infer therefrom that the petitioner was cruel towards P.W.1.

7.I am of the view that it would not be safe to place any reliance on the testimony of P.W.12 also. P.W.12 is also a retired Head Constable. P.W.12 was residing in 'D Block'. He claims that he had seen quarrel erupting between the revision petitioner and his wife Saraladevi. He had stated that there arose a fight between the two. Saraladevi used to cry and that she was sent away later. However, in the cross examination, he had stated that he was not aware of the family matters of the revision petitioner. Even, according to the revision petitioner, the relationship between him and Saraladevi was under terrible strain. According to the revision



Saraladevi towards his first son namely Logeshwaran. The prosecution case is that the revision petitioner harassed his wife for dowry demand. P.W.13 would state that there arose quarrels between the two. However, P.W.13 is not aware of the reasons for the quarrel. Merely because, he claims to have witnessed, the quarrel between the revision petitioner and his wife, that would not in any way advance the case of the prosecution. The conduct of the wife may be unreasonable giving rise to a quarrel between the spouses. So from the fact that there was a quarrel between the two, one cannot come to the conclusion that the husband is at fault. The cause for the quarrel is more relevant and material. These witnesses do not have any direct knowledge on that.

8.P.W.4 to P.W.9 are the panchayathars. Ex.P2 is the letter written by the accused in the Panchayat. In the said letter, the accused had admitted that he had pledged the jewelry of Subathra-P.W.3 and that, he would remit the same within a period of six months. But then, the stand of the revision petitioner is that the jewelry pledged by him actually belongs only to P.W.1, would not amount to breach of trust. The prosecution had not recovered any pledge-receipt. The marriage between the revision petitioner and Saraladevi took place in the year 2001. The girl child was born in the year 2002. A split between them took place in the year 2003. The revision petitioner filed a divorce petition against Saraladevi only in the year 2009. The reason for filing the divorce original petition is that P.W.1-Saraladevi was sending a petition after petition against the revision petitioner to his superior. I am of the view that the charge of marital cruelty has not been made out. The defence of the revision petitioner is that he was a widower when he married Saraladevi and that purpose of marrying her was the welfare of his son Logeshwaran. This appears to have been the trigger point. Therefore, I find the defence of the revision petitioner to be credible and worthy of acceptance.

9.However in order to satisfy the conscience of this Court, this Court directed the revision petitioner to appear in person. Thiru.Krishnasamy stated that following conviction in this case, he was dismissed from service in the year 2012. If the department graciously reinstates him, he would not claim any backwages. He would be satisfied, if continuity of service and other benefits alone are given to him and that he would not claim any back wages for the period, when he did not work in the Department. He also stated that he is willing to part with 35%(Thirty Five Percent) of his money and service benefits to Saraladevi. He realizes the obligation to maintain Saraladevi and the child Ramani. The revision petitioner states that the maintenance order passed against him was honoured so long as he was in service. He was not able to honour the same only post dismissal. The revision petitioner gives a further undertaking that even if he succeeds in the divorce Original Petition against Saraladevi, he would still pay 35% of his salary towards fulfilling the maintenance obligations of wife and



daughter. The revision petitioner gives this undertaking in person before this Court.

10. In view of the same, the conviction imposed by the Courts below on the revision petitioner stands set aside. The revision petition stands allowed. The petitioner is acquitted. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the revision petitioner shall stand cancelled.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar

To

1. The Inspector of Police,
All Women Police Station,
Lalgudi, Thiruchirapalli District.
2. The I Additional District Judge, Tiruchirapalli.
3. The Judicial Magistrate Court No.I, Tiruchirapalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

The Section Officer, Criminal Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-80101[F] dated 06/08/2019

CRL.R.C. (MD) No.706 of 2013
06.08.2019

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