



Bail Slip

The Appellant/Sole Accused namely A.Sagayarajalbert, aged 42 years, S/o.Arulsampillai, was directed to be released on bail as per the order of this Court dated 14/02/2014 in MP(MD)No.2/2014 in Crl RC(MD)No.110/2014 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.110 of 2014

A.Sagayarajalbert ... Petitioner/Appellant/ Accused No.1

Vs.

State through
The Inspector of Police,
All Women Police Station,
Thiruchirapalli.
in Crime No.24 of 2007 ... Respondent/Respondent/Complainant

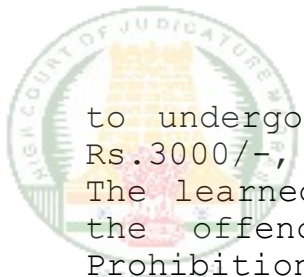
PRAYER: Criminal Revision Case is filed under Section 397 and 401 Cr.P.C., to call for the records pertaining to the judgment in C.C.No.159 of 2007 on the file of the learned Judicial Magistrate, No.V, Thiruchirapalli District, by convicting the petitioner by an order dated 31.07.2013 and the same was confirmed by the learned Principal Sessions Judge, Thiruchirapalli, in C.A.No.32 of 2013 dated 01.10.2013 and set aside the same by acquitting the Petitioner/Appellant/Accused No.1.

For Petitioner : Mr.A.Thiruvadi Kumar
For Respondent : Mrs.S.Bharathi,
Government Advocate (Crl.side)

JUDGMENT

This Revision Petition is filed against the concurrent findings against the petitioner in C.C.No.159 of 2007 and in Criminal Appeal No.32 of 2013. The petitioner is accused No.1 in Crime No.24 of 2007 in and by which, a case was registered at the instance of one Prejitta (wife of the petitioner) as against the petitioner and five others for the offences under Sections 498 (A), 406 IPC and Section 4 of Dowry Prohibition Act.

2.After completing the trial, the learned Judicial Magistrate, No.V, Trichy, by an order dated 31.07.2013, acquitted the accused Nos.2 to 6 from all the charges and the petitioner / A1 alone was convicted under Section 498 (A) IPC and he was sentenced



to undergo two years Rigorous Imprisonment and to pay a fine of Rs.3000/-, in default to undergo three months Simple Imprisonment. The learned Judicial Magistrate acquitted the petitioner / A1 from the offences under Section 406 IPC and Section 4 of Dowry Prohibition Act.

WEB COPY

3. As against the conviction and sentence imposed on the petitioner for the offence under Section 498 (A) IPC, the petitioner preferred an appeal before the learned Principal Sessions Judge, Tiruchirappalli, in C.A.No.32 of 2013. The Appellate Court by an order dated 01.10.2013, dismissed the appeal in a cryptic manner. Aggrieved over the order passed by the Trial Court as well as the Appellate Court, the petitioner preferred this present Criminal Revision Case.

4. The facts of the prosecution case are as follows:-

The petitioner married one Prejitta / *de facto* complainant on 23.05.2005 as per the Christian Rituals and Customs at Trichy. At the time of marriage, 17 sovereigns gold jewels, Rs.20,000/- as cash and other household articles worth about Rs.50,000/- as Sridhana, have been given and the petitioner/A1 was also gifted with 1 sovereign gold ring. The petitioner was running a printing press and he demanded a further sum of Rs.1,00,000/- from his wife / P.W.1 for expanding his business. On account of the same, she was subjected to cruelty and the other accused / in-laws also caused cruelty. P.W.1 gave birth to a child on 04.10.2006. Thereafter, there was a strained relationship between the husband and wife / P.W.1 and the wife / P.W.1 was driven out of the matrimonial home on 12.02.2006. For which, she also lodged a complaint before the respondent police. Based on the compromise arrived at the police station, a nuclear family was set up by A1. The accused has demanded Rs.1,00,000/- as dowry from the wife / P.W.1 and refused to perform Baptism of his child /daughter and therefore, again there was a strained relationship between the husband and wife / P.W.1. Again the wife / P.W.1 has left the matrimonial home on 13.04.2007. On the same day, she lodged a complaint before the respondent police and based on the complaint, the Inspector of Police, All Women Police Station, Trichirappalli, registered a case in Crime No.24 of 2007 as against the petitioner and his family members for the offence under Sections 498 (A), 406 and Section 4 of Dowry Prohibition Act. After completing the investigation, the respondent police filed a charge sheet before the learned Judicial Magistrate, No.V, Trichy in C.C.No.159/2007. The learned Judicial Magistrate, No.V, Trichy, acquitted the family members of the petitioner and convicted the petitioner on 31.07.2013. Aggrieved against the same, the petitioner filed an appeal before the learned Sessions Judge of Tiruchirappalli Division, Tiruchirappalli, and the same was dismissed on 01.10.2013. Hence, the petitioner has come forward with this Criminal Revision Case.



5. The learned counsel for the revision petitioner in support of his case, has formulated the following points:-

(i) The Trial Court has disbelieved the evidence with regard to the offence under Section 498(A) IPC. Insofar as the offence under Section 406 IPC and Section 4 of Dowry Prohibition Act are concerned, the Trial Court has rightly acquitted the petitioner and also acquitted the other accused from the offences under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act. However, relying upon the very same evidence, the Trial Court found the petitioner guilty.

(ii) Even before the complaint, the wife/P.W.1 has lodged a complaint before the respondent police on 12.02.2006, in which, there is no allegation about the demand of dowry and the accused demanded Rs.1,00,000/- for the purpose of developing the printing press and the said complaint dated 12.02.2006 was also marked as Ex.P.3. But the learned Judicial Magistrate without verifying the earlier complaint, convicted the petitioner mechanically with the evidence of P.W.1.

(iii) The second complaint lodged by the wife/P.W.1, on 13.04.2007, was drafted by an Advocate. The wife/P.W.1 admitted during her cross-examination that the complaint was prepared by an Advocate and the complaint was manipulated with deliberation, which has not been taken into account by the Trial Court.

(iv) The averment mentioned in the complaint are all petty quarrel arose between the husband and wife, which cannot be termed as that of cruelty attack for the offence under Section 498(A) IPC. Apart from the allegation of this demand of Rs.1,00,000/-, there is no other allegation of demand of dowry by the petitioner at any point of time. Even according to P.W.1/defacto complainant, the accused/petitioner has caused cruelty by refusing to perform Baptism by demanding money. But, the wife/P.W.1 as well as the other witnesses during their cross-examination would admit that during the lent days, Baptism is not permitted as per the customs. But, without any discussion with regard to the evidence, the Trial Court as well as the Appellate Court convicted the petitioner.

(v) P.W.8/Investigation Officer in his evidence has clearly stated that the grievance of the complainant is also the setting up of the nuclear family.

6. The learned counsel for the revision petitioner by referring the order of the Appellate Court, further contended that the Appellate Court has passed an order in a cryptic manner without any discussion with regard to the evidence. He has also relied upon

<https://hcservices.hcourtsonline.in/hcservices/> Hon'ble Supreme Court in **Rama and Others Vs. State**



of Rajasthan reported in **(2002) 4 SCC 571**, wherein it has been held as follows:

"It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial Court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

Since the lower Appellate Court has failed to apprise the evidence, the learned counsel contended that the Revisional Court, in such circumstances, can look into the evidence and can also apprise the evidence.

7.The learned counsel for the revision petitioner contended that the Hon'ble Supreme Court has laid down the principles and scope of Section 498(A) IPC in the following Judgments:

(i)Arun Kumar Sharma Vs. State of Bihar reported in **(2010) 1 SCC 108**;

(ii)Rama and other Vs. State of Rajasthan reported in **(2002) 4 SCC 571**;

(iii)Devi Singh and others Vs. State of M.P reported in **2003 SCC (Cri) 1492**;

(iv)Iqbal Abdul Samiya Malek Vs. State of Gujarat reported in **(2013) 1 SCC (Cri) 636**;

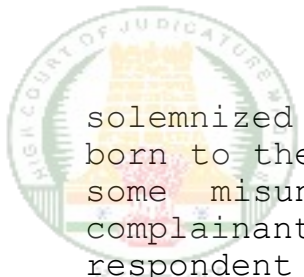
(v)Henno @ Anwarali Amir Maleq and others Vs. State of Gujarat reported in **(2012) 11 SCC 312**; and

(vi)Bakshish Ram and Another Vs. State of Punjab reported in **(2013) 2 SCC (Cri) 328**.

8.Per contra, the learned Government Advocate (Criminal side) would submit that P.W.1 in her evidence, categorically stated about the cruelty, caused to her in the matrimonial home. Apart from P.W.1, P.W.2 to P.W.6 have also corroborated the evidence of P.W.1. However, the Trial Court has not taken into account the evidence P.W.2 to P.W.6 and taken only the evidence of P.W.1. In her evidence, P.W.1 has stated about the cruelty faced by her at the hands of the petitioner. Therefore, the prosecution established its case beyond any reasonable doubt and therefore, there is no necessity to interfere with the orders of the Courts below.

9. Heard the counsel on either side and perused the materials placed on record.

10. In the complaint, it has been stated that the marriage between the petitioner and P.W.1 / defacto complainant was



solemnized on 23.05.2005. Out of the said marriage, a child was also born to them on 04.01.2006. Even before the child's birth, there was some misunderstanding between the petitioner and P.W.1/defacto complainant. Hence, the complaint was lodged by P.W.1 before the respondent police.

WEB COPY

11. A reading of the conclusion of the enquiry and the statements made in Ex.P.3, discloses that the purpose, for which the complaint was lodged on 12.02.2006, is only for setting up a nuclear family. There was no averment with regard to any demand of dowry either at the time of marriage or subsequent to that. But, all of a sudden, in the complaint, dated 30.04.2007, the de facto complainant has come with an averment that the petitioner has demanded a sum of Rs.1,00,000/- from her for the purpose of developing his business. This averment was not found place in the complaint dated 12.02.2006 and moreover, this complaint was also drafted by an Advocate. The Trial Court has appreciated the evidence and acquitted the petitioner from the other offences under Sections 406 IPC and Section 4 of Dowry Prohibition Act and the Trial Court also acquitted the other accused persons from the offence under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act as rightly pointed out by the learned counsel for the revision petitioner.

12. It would be relevant to extract section 498 (A) IPC, hereunder:-

"498 (A) Husband or relative of husband of a woman subjecting her to cruelty

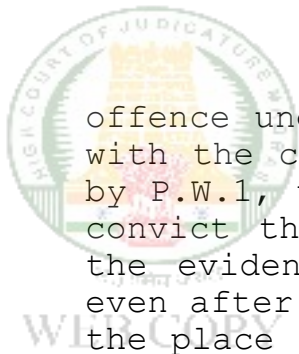
-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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."

13. When the Trial Court disbelieved the evidence of the prosecution for the offence under Section 4 of Dowry Prohibition Act, it ought not to have convicted the revision petitioner for the



offence under Section 498 IPC and in comparing the complaint Ex.P-3 with the complaint Ex.P-1, there are some manipulation, pointed out by P.W.1, which was also drafted by an Advocate. It is not safe to convict the revision petitioner based on the complaint as well as the evidence of P.W.1. The evidence of P.W.1 would disclose that even after setting up the nuclear family, she was not satisfied with the place of living and she made several complaints in this regard. Subsequently, she left the matrimonial home on 17.04.2004 and lodged a complaint before the respondent police on 13.04.2004. Even according to P.W.1, in her cross-examination she would admit that there was no incident on 07.04.2004 and admittedly, no incident was pointed out in her complaint / Ex.P.1. The demand of Rs.1,00,000/-, which was only mentioned in the subsequent complaint on 13.04.2006 and not mentioned in the earlier complaint on 12.02.2006 and it would not be safe to sustain the conviction based on the evidence of P.W.1 alone when her evidence is contradictory to her complaint.

14.In view of the same, the Criminal Revision Case is allowed and the conviction and sentenced imposed by the learned Judicial Magistrate, No.V, Trichirappalli in C.C.No.159 of 2007 and confirmed by the learned Principal Sessions Judge, Thiruchirapalli in C.A.No.32 of 2013 dated 01.10.2013, are hereby set aside and the revision petitioner / first accused is acquitted. The bail bond, if any, executed by the petitioner/ first accused stands cancelled. Fine amount if any paid by him shall be refunded.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

dss

To

- 1.The Judicial Magistrate, No.V,
Thiruchirapalli District
2. The Chief Judicial Magistrate,
Trichy
- 3.The Principal Sessions Judge,
Thiruchirapalli District.
- 4.The Inspector of Police,
All Women Police Station,
Thiruchirapalli.

<https://hcservices.ecourts.gov.in/hcservices/>



5.The Government Advocate (Crl. Side),
Madurai Bench of Madras High Court,
Madurai.

6.The Record Keeper,
Criminal Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate (SR-86961[F] dated
17/09/2019)

Crl.R.C(MD)No.110 of 2014
16.09.2019

MK (25.11.2019) 7P 9C