

Bail Slip

The Petitioner/Accused namely, Murugesan, S/o.Muthuvel, Male, aged about 50 (Sole Accused was directed to be released on bail vide Court order dated 31.01.2014 made in MP(MD).No.1 of 2014 in Crl.RC (MD).No.63 of 2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.07.2019
Date of Judgment	08.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.63 of 2014

Murugesan : Revision Petitioner/
Appellant/Accused

Vs.

State thro'
The Sub Inspector of Police,
All Women Police Station,
Manaparai. : Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, against the judgment of the I Additional District Judge, (PCR), Tiruchirapalli, passed in Crl.A.No.13 of 2013, dated 29.08.2013, modifying the judgment of the Judicial Magistrate, Manaparai, in C.C.No.70 of 2011, dated 23.04.2013.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : Mr.APG Omh Chairma Prabhu
Government Advocate (Criminal side)

J U D G M E N T

This Criminal Revision is directed against the judgment of the I Additional District Judge, (PCR), Tiruchirappalli, passed in Crl.A.No.13 of 2013, dated 29.08.2013, modifying the judgment of the Judicial Magistrate, Manaparai, in C.C.No.70 of 2011, dated 23.04.2013.



2. According to the prosecution, the marriage between A1 and the de-facto complainant took place on 09.04.2009 and A4 is the mother-in-law of the de-facto complainant and A2 and A3 are her brother-in-laws and due to matrimonial tiff, on 13.11.2010, A1 consumed poison and due to which, he along with A3 and A4 tried to stabbed the de-facto complainant with Kuthuvilakku and A2 tried to kill her by strangulation and A3 tried to kill her with aruval and A2 to A4 attempted to took the child from her forcibly. The Inspect of Police attached to Manaparai Police Station has filed a final report against the accused examining the witnesses.

3. The trial court, on proper appreciation of the evidence, both oral and documentary acquitted A2 to A4 and convicted A1 and sentenced him to undergo one year rigorous imprisonment and imposed a fine of Rs.1,000/-, in default to undergo two months simple imprisonment for the offence under section 498(A) IPC and sentenced him to undergo rigorous imprisonment for one year for the offence under section 4 of Prohibition of Harassment of Women Act along with a fine of Rs.10,000/-, in default to undergo two months simple imprisonment. Aggrieved by the judgment of the trial court, A1 preferred appeal before the I Additional District Judge (PCR), Tiruchirappali. The learned Appellate Judge confirmed the order of conviction and sentence imposed on the petitioner/A1 for the offence under section 498(A) IPC and set aside the order of conviction and sentence imposed on the petitioner/A1 for the offence under section 4 of the Tamil Nadu Prohibition (Harassment of Women) Act, 1998. Aggrieved by the judgment of the first appellate court, the revision petitioner/A1 is before this court with this criminal revision.

4. Heard both sides and perused the materials available on record.

5. It is admitted on both sides that the marriage took place between A1 and PW1 and a son was born through the above wedlock. PW1 is the victim and she gave Ex.P1 complaint to the police.

6. The learned counsel appearing for the revision petitioner/A1 argued that it is admitted on the side of the prosecution that A1 married PW1 without any dowry either by way of cash or jewels and hence, the alleged subsequent demand by the accused is highly improbable and it is not true and while PW1 admits that they lead a happy marital life, the alleged damage of dowry is highly improbable and the presence of the Advocate along with the de-facto complainant, while lodging the complaint created reasonable doubt regarding the veracity of the complaint and the complaint was lodged by PW1 after the revision petitioner/A1 consumed poison due to the torture given by PW1 to the revision petitioner/A1 and hence only in order to avoid the legal liability or wrath of the family members of the revision petitioner/accused and also to take revenge against them, a false case is lodged by PW1 and the alleged



separately and hence the complaint lodged by PW1 with the respondent police is legally not sustainable and all the occurrence witnesses were close relatives of PW1 and there are contradictions in the evidence of the occurrence witnesses and there was no act of cruelty on the part of A1 and A1 consumed poison only due to the adamant attitude of PW1 and the same cannot be treated as willful act causing injury to the de-facto complainant and there was no demand of dowry and hence, the entire prosecution case is not legally sustainable and prays that the revision petitioner/A1 is entitled to acquittal.

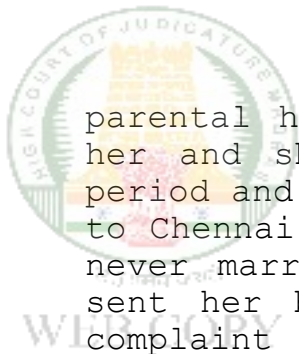
7.The main contention raised on the side of the revision petitioner/A1 is that the occurrence took place in Chennai, but PW1 gave the complaint in Manaparai Police Station and hence, this court has no jurisdiction to try the case and the revision petitioner/A1 is entitled to acquittal.

8.PW1 gave the complaint in respect of the occurrence. PW1 in her complaint and evidence stated after the marriage, she lived with her husband in Chennai, but all the accused demanded dowry and subjected to cruelty and due to the cruelty, she came to her native place and in this regard, a panchayat was conducted, but A1 refused to obey the decision taken by the elders of the village and then she gave the complaint in Manaparai Police Station and the police called her husband for enquiry and A1 took her to Chennai and then her husband consumed poison and he was admitted in the Hospital and she only look after her husband and afterwards the parents and brothers of A1 assaulted her by saying that only due to her, A1 consumed poison and her husband went to Chennai and he never maintained her and her child.

9.On careful perusal of the evidence of PW1, it clearly shows that the occurrence took place in Chennai and it continues in Trichy also since A1 consumed poison on 13.11.2010 at Viramalaipatti in his parental home and in the next day, all other accused assaulted PW1 in Viramalaipatti and hence, a part of the occurrence took place in Manaparai and PW1 is entitled to give complaint either in Chennai or Trichy. Hence, it is held that the lower court has jurisdiction to try the case.

10.The next contention raised on the side of the revision petitioner/A1 is that PW1 to PW4 are close relatives and they are interested witnesses and further, there are contradictions in the evidence of PW1 to PW4 and their evidence is not cogent and trustworthy and hence, on the basis of the evidence of PW1 to PW4, A1 cannot be convicted.

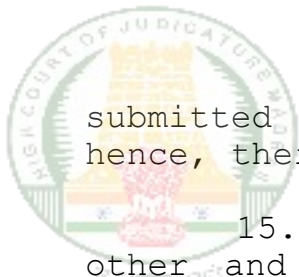
11.PW1 in her complaint and evidence stated that she lived only with A1 to A4 in a joint family and afterwards, PW1 along with A1 went to Chennai and lived together and in Chennai, A1 frequently by saying that she has not brought anything from her



parental home and shouted her as dog and also demanded money from her and she was frequently assaulted by A1 during her pregnancy period and A1 left her parental home and never came back to take her to Chennai and A1 allowed her and stayed back in the company and he never married her and the owner of the house gave some money and sent her back to home and return from Chennai and she lodged a complaint before the police and the police called her husband for enquiry and A1 agreed to take her to Chennai and after sometime, he came back to his village and told that he dislike her and consumed poison and she went to see her husband to the hospital, but A2 to A4 restrained her to see A1 and assaulted her and then she gave the complaint to the police.

12.PW2 and PW3 are the parents of PW1. PW2 and PW3 deposed that at the time of marriage, no sreedhana was given to A1 and after marriage, their daughter lived with A1 to A4 in a joint family and after few days, A1 took their daughter to Chennai and lived together and their daughter lived in Chennai, A1 frequently ill-treated PW1 by saying you are shouted her as dog and A1 also demanded jewels and money from PW1 and A1 frequently assaulted their daughter during her pregnancy period, A1 left PW1 in their house and never came back and PW1 went to Chennai to see her husband, but A1 avoided her and stayed back in the company and the owner of the house only gave money and sent their daughter back to home and after returning from Chennai, she gave a complaint to Manaparai Police and the police called A1 for enquiry and in the enquiry, A1 agreed to take back PW1 with him and afterwards, he ill-treated their daughter and A1 came to his village and told he dislike PW1 and consumed poison and then A1 was admitted in the hospital and A2 to A4 restrained to see A1 and after recovery, A1 to A4 assaulted her and then, she gave Ex.P1 complaint. Hence, the evidence of PW2 and and PW3 corroborated with the evidence of PW1.

13.PW6 is cited as eye witness. PW6 is the owner of the house in which A1 and PW1 resided. PW6 deposed that after the marriage, A1 and PW1 lived together in her house and frequently quarrel arose between A1 and PW1 and when she enquired PW1, for that PW1 stated that her husband has not come to the house regularly and he never maintained her and always A1 shouted her and PW1 became pregnant and at that time also, frequent quarrel arose between PW1 and A1 and PW1's father came to Chennai and took PW1 to her parental home and after the birth of the child, PW1 again came to Chennai to her matrimonial home and she came to understand that A1 has not maintained PW1 and her child and PW1 went to her matrimonial home. PW1 also deposed that the occurrence was known to PW6. PW6 further deposed that when A1 and PW1 was in their house, frequently quarrel arose between A1 and PW1 and A1 has not maintained PW1 and her child. Hence, the evidence of PW6 is corroborated with the evidence of PW1.



submitted that PW1 to PW4 are closely related to each other and hence, their evidence cannot be relied upon.

15.It is seen that PW1 to PW4 are closely related to each other and when their evidence is cogent and trustworthy, their evidence can be relied upon. In this case, on careful perusal of the evidence of PW1 to PW4, it reveals that their evidence is cogent and trustworthy and hence, it is held that their evidence can be relied upon.

16.The learned counsel appearing for the petitioner/A1 argued that A1 always maintaining his wife, but only due to her adamant, A1 consumed poison and he never ill-treated his wife and further, he filed HMOP for restitution of conjugal rights and it shows that PW1 voluntarily deserted A1 and in order to take revenge, she falsely gave the complaint to the police and prays that the petitioner/A1 is entitled to acquittal.

17.In this case, PW1 stated that when her husband ill-treated her and she left her parental home and she again went to Chennai, but her husband stayed back in the company and he has not come to the house and maintained her and then she came to her native place, then only she gave the complaint to the police. On 08.10.2010, the police called her husband for enquiry and then A1 took her to Chennai and A1 again came to his native place and told that he dislike PW1 and consumed poison and in order to escape from the clutches of law, A1 consumed poison and he has not filed petition for restitution of conjugal rights and A1 filed petition for divorce and A1 only subjected to cruelty. When there is sufficient evidence to show that the de-facto complainant was treated with cruelty, then the accused is found guilty under section 498(A) IPC. The learned counsel appearing for the petitioner/accused submitted a ruling reported in **AIR 2013 SUPREME COURT 3055 (Kantilal Martaji Pandor Vs. State of Gujarat)**, wherein it has been held in para 9 to 11 as follows:-

"9.Section 498A, IPC, under which the appellant's conviction has been maintained by the High Court is extracted herein below:

"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 purposes 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

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(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."

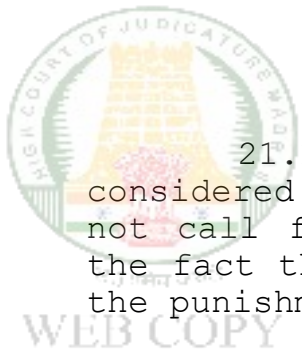
10.It will be clear from the language of Section 498A, IPC, that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The Explanation under Section 498A defines "cruelty" for the purpose of Section 498A to mean any of the acts mentioned in clause (a) or clause (b). In this case, clause (b) is not attracted as there was no harassment by the husband with a view to coercing her to meet any unlawful demand for any property or valuable security or on account of failure by her to meet such demand.

11.The first limb of clause (a) of the Explanation of Section 498A, IPC, states that "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide."

18.In this case also, PW1 categorically stated that after marriage, all the accused harassed her when she was in the joint family and when A1 took her to Chennai, her husband ill-treated her and failed to maintain her and her child and only due to it, she gave the complaint. The evidence of PW1 is supported by the eye witness of PW6.

19.The learned counsel appearing for the petitioner/A1 while cross examining put a question that A1 maintained his wife and he has not ill-treated her. To prove it, no contra evidence was let in on the side of the petitioner/A1. Hence, the argument put forth on the side of the petitioner/A1 stating that A1 never ill-treated his wife and maintain her is not at all acceptable.

20.On careful perusal of the evidence of PW1 and PW6, it reveals that after marriage, A1 was ill-treated by PW1 and failed to



21.For all the reasons stated above, this court is of the considered view that the judgment of the first appellate court do not call for any interference by this court. However, considering the fact that the petitioner is the sole breadwinner of the family, the punishment imposed on the petitioner requires modification.

22.In the result, the criminal revision is **partly allowed**. The punishment imposed on the petitioner for the offence under Section 498(A) IPC by the first appellate court is reduced to **3 months RI**. The period of sentence, if any already undergone by the petitioner/A1 shall be given set off under Section 428 of Cr.P.C. The petitioner/A1 is directed to pay a compensation of Rs.50,000/- each to the PW1 and her child, within a period of four weeks from the date of receipt of a copy of this order, failing which, the punishment imposed by the first appellate court shall stand restored.

23.For reporting compliance, post the matter after four weeks.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To,

- 1.The I Additional District Judge, (PCR), Tiruchirappalli.
- 2.The Judicial Magistrate, Manapparai.
- 3.The Chief Judicial Magistrate, Trichy.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Sub Inspector of Police, All Women Police Station,
Manapparai.

Copy to:

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

Crl.RC (MD) No.63 of 2011
08.11.2019

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