

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Cr1.A.No.99 of 2020

Palanivel @ Prakash ... Appellant/Petitioner (Accused)

Vs.

1.State Rep.by Inspector of Police  
Thalaivasal Police Station  
Salem District.  
Cr.No.15/2020.

...1<sup>st</sup> Respondent/Complainant

2.Valliyammal ...2<sup>nd</sup> Respondent/Defacto Complainant

PRAYER: Criminal Appeal filed under Section 14 A (2) of SC/ST (POA) Act, 1989 as amended by Act 1 of 2016, to call for the records pertaining to the order dated 10.02.2020 passed in CMP.No.445/2020 on the file of the Principal Sessions Judge, Salem and to set aside the same and enlarge the appellant on bail in connection with Crime No.15 of 2020 on the file of the respondent police by allowing the Criminal Appeal before this Court.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.T.ShunmugaRajeswaran, for R1  
Government Advocate (Cr1.Side)  
: Mr.R.Thirumoorthy for R2

JUDGMENT

This appeal has been filed by the accused under Section 14A(2) of SC/ST (POA) Act, 1989 to set aside the order passed by the learned Principal Sessions Judge, Salem (Special Court under the SC/ST (POA) Act, in Cr1.M.P.No.445 of 2020 dated 10.02.2020.

2. The petitioner herein was arrested for the alleged offences under Sections 174(3) Cr.P.C @ 3(1) (r ), 3(1) (s), 3 (2) (va) of SC/ST (POA) Act on 17.01.2020 and remanded to Judicial Custody and from that date onwards, he is in custody. The petitioner herein has filed a bailable application before the learned Principal Sessions Judge, Salem {Special Court under

the SC/ST (POA) Act} in CrI.M.P.No.445 of 2020. The learned Principal Sessions Judge, Salem by the order dated 10.02.2020 has dismissed the said bailable application. Challenging the said order, the petitioner has filed the present appeal.

3. The case of the prosecution is that the petitioner belongs to Vellala Gounder Community whereas, the deceased Rajeswari belongs to Scheduled Tribe. The petitioner and the said family members insisted the second respondent to give her daughter (deceased) in marriage to the petitioner. Though the second respondent and her family members initially refused the said request, finally the second respondent agreed for the same. Accordingly the marriage between the petitioner and the deceased was solemnized on 04.09.2019 in Aragallur Iswaran temple. Its further case is that after the marriage, the petitioner and his family members indulged in harassing the deceased by showing discrimination on the ground that she belongs to Scheduled Tribe and suddenly, she was admitted in the hospital on the pretext that she was suffering from jaundice. When the deceased was in hospital, she informed the second respondent that the petitioner and his family members gave a powder for nearly two months and also compelled her to consume the same and accordingly she consumed the same.

4. Subsequently, the deceased died in a private hospital. The second respondent suspected that her daughter (deceased) might have died by giving of poison by the petitioner and his family members. Accordingly, she lodged a complaint before the first respondent on 14.01.2020 and based on the said complaint, the first respondent has registered an FIR in Cr.No.15 of 2020 under Section 174(3) Cr.P.C. Subsequently, the case was altered into under Sections 3(1) (r), 3(1) (s), 3(2) (va) of SC/ST (POA) Act and the petitioner was arrested on 17.01.2020 and remanded to Judicial Custody.

5. The learned counsel for the petitioner has submitted that the petitioner is in custody for more than 45 days. He further submitted that the chemical report would show that poison was not detected in the internal organs. He further submitted that the Doctor who conducted the post mortem gave an opinion that the deceased would appear to have died due to liver disease and therefore, there is no material to substantiate the allegation made in the complaint that the petitioner and his family members have administered poison to the deceased and caused her death. Therefore, he prayed to set aside the order passed by the Principal Sessions Judge, Salem and allow the appeal and grant bail to the petitioner.

6. The learned Government Advocate (Crl.side) who is appearing for the first respondent has fairly conceded that the chemical report would show that the poison was not detected in any of the internal organs. He further submitted that the Doctor who conducted the post-mortem gave an opinion that the deceased would have died due to liver disease and hence he prayed to pass suitable orders.

7. The learned counsel for the second respondent has submitted that at the time of marriage, jewels and household articles were given to the deceased as dowry by the second respondent and the said jewels and household articles are only with the petitioner and his family members and therefore, he requested to direct the petitioner and his family members to handover the said jewels and articles.

8. The learned counsel for the petitioner by way of reply has submitted that in the complaint no where it is stated that the second respondent or her family members gave any jewels or articles as dowry either at the time of marriage or subsequent to the marriage and therefore, no dowry articles are available with the petitioner or his family members.

9. In the First Information Report it is not stated that any dowry was given to the petitioner either at the time of marriage or subsequent to the marriage. On the contrary, it is stated that the petitioner and his family members did not insist any dowry. Further, the Chemical report shows that poison was not deducted in any of the internal organs. Further, the post mortem certificate shows that the Doctor who conducted the post-mortem gave an opinion that the deceased would appear to have been died due to liver disease.

10. Taking into consideration of the aforesaid facts, this Court is inclined to allow this appeal. The order passed by the learned Principal Sessions Judge, Salem in Crl.M.P.No.445 of 2020 dated 10.02.2020 is set aside. The trial Court is directed to release the petitioner on bail subject to the following conditions:

(i) The petitioner shall execute a bond for Rs.10,000/- (Rupees Ten Thousand Only) with two sureties for a like sum each to the satisfaction of the trial Court;

(ii) The petitioner shall appear before the first respondent for investigation purpose as and when required by the first respondent;

(iii) the petitioner shall not abscond either during investigation or trial;

(iv) the petitioner shall not tamper with the witness either during investigation or trial.

(v) On breach of any of the aforesaid conditions, the learned Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Trial Court itself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

(vi) If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

Sd/-

Assistant Registrar(C.S.III)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Sessions Judge, Salem.

2.The Inspector of Police  
Thalaivasal Police Station  
Salem District.

3.The Public Prosecutor  
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate Sr.No.18629

+1cc to Mr.R.Thirumoorthy, Advocate Sr.No.19091

AKM/04.03.2020 /4P-6C/

Crl.A.No.99 of 2020

सत्यमेव जयते

WEB COPY