

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI. R.C. No.1573 of 2013

A.Immelda

... Revision Petitioner

Vs.

1.R.Anthonisamy

2.R.Rayappan

3.R.Thersammal

4.The State

Represented by the Inspector of Police
All Women Police Station,
Neyveli.

... Respondents

Criminal Revision Case filed under Section 397 r/w.
401 Cr.P.C., against the judgment, dated 04.12.2007, passed
by the Additional District and Sessions Judge, Fast Track
Court No.II, Cuddalore, in C.A.No.11 of 2006, reversing the
judgment of conviction and sentence, dated 17.01.2006, passed
by the Judicial Magistrate No.III, Cuddalore, in C.C.No.19 of
2004.

For Petitioner : Mr.K.P.Prabhu Raj
for M/s.R.Srinivas

For R1 to R3 : Mr.R.Muralidharan &
Mr.S.Venkidasamy

For R4 : Mr.R.Surya Prakash
Government Advocate (CrI. Side)

O R D E R

This Criminal Revision Case has been filed against the
judgment, dated 04.12.2007, passed by the Additional District
and Sessions Judge, Fast Track Court No.II, Cuddalore, in
C.A.No.11 of 2006, reversing the judgment of conviction and
sentence, dated 17.01.2006, passed by the Judicial Magistrate
No.III, Cuddalore, in C.C.No.19 of 2004.

2.For the sake of convenience, the parties will be
referred to by their name.

3.The case of the prosecution is as under :

3.1.The family of Anthonisamy (A1) and Immelda (P.W.1) arranged for their marriage and had the betrothal on 11.02.2003 in the house of Immelda (P.W.1). At the time of the betrothal, Anthonisamy (P.W.2), the father of Immelda (P.W.1), (in this case, there are two Anthonisamys, viz., A1 and P.W.2) assured the family of the groom that he (P.W.2) will give 15 sovereigns of gold, one small vehicle, and other household articles like bed, cot, bureau, etc., Since Easter festival was round the corner, the marriage date was not fixed in the betrothal ceremony. The betrothal ceremony was photographed by Annadurai (P.W.7).

3.2.After the betrothal, the family of the accused demanded 25 sovereigns of gold and a large vehicle, which, Anthonisamy (P.W.2) was not able to arrange. Therefore, the family of the accused refused to have the marriage performed.

3.3.Hence, Immelda (P.W.1) lodged a complaint on 11.09.2003 before the Inspector of Police, All Women Police Station, alleging that the accused are going back on their promise to have her married to Anthonisamy (A1), as her father was not able to comply with their demand of 25 sovereigns of gold and a large vehicle. On this complaint, the police called both the parties for enquiry and at that time, the accused party agreed for the marriage.

3.4.Accordingly, on 22.09.2003, the marriage of Immelda (P.W.1) with Anthonisamy (A1) was performed in Kolanjiyappar Temple in Vridhachalam. The marriage ceremony was photographed by Mohammed (P.W.8).

3.5.After the marriage, Immelda (P.W.1) lived for 22 days with her husband and in-laws. During that time, the accused starting pressing for their earlier demand and harassed Immelda (P.W.1) to such an extent that she was chased out of the matrimonial home.

3.6.Immelda (P.W.1) lodged a complaint on 04.11.2003 (Ex.P1), based on which, the police registered a case in Crime No.5 of 2003 and after completing the investigation, filed a final report in C.C.No.19 of 2004 before the Judicial Magistrate No.III, Cuddalore, for the offences under Section 498-A IPC and Section 4 of Dowry Prohibition Act, 1961, against Anthonisamy (A1), his parents Rayappan (A2) and Thersammal (A3).

4.The trial Court framed the aforesaid charges against the accused and when questioned, the accused pleaded 'not guilty'.

5.To prove the case, the prosecution examined 8 witnesses, marked two Exhibits and 14 Material Objects.

6.When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked from the side of the accused.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 17.01.2006, in C.C.No.19 of 2004, convicted and sentenced A1 to A3 as follows :

Provision under which convicted	Sentence
Section 498-A IPC	Rigorous imprisonment for one year each and a fine of Rs.500/- each, in default, to undergo rigorous imprisonment for three months
Section 4 the Dowry Prohibition Act, 1961	Rigorous imprisonment for one year each and a fine of Rs.500/- each, in default, to undergo rigorous imprisonment for three months

8.Challenging the aforesaid conviction and sentence, the accused preferred a Criminal Appeal in C.A.No.11 of 2006, which was heard by the Additional District and Sessions Judge, Fast Track Court No.II, Cuddalore. The appellate Court, by judgment and order dated 04.12.2007, in C.A.No.11 of 2006, acquitted A1 to A3 of all the charges.

9.Aggrieved by the acquittal of the accused, Immelda (P.W.1) has filed the present Criminal Revision Case, before this Court, under Section 397 r/w. 401 Cr.P.C.

10.Since the acquittal was on 04.12.2007, the benefit of the proviso to Section 372 Cr.P.C. was not available to Immelda (P.W.1), as the said provisions came into force only on 31.12.2009.

11.Heard Mr.K.P.Prabhu Raj, learned counsel appearing for Immelda (petitioner), Mr.R.Muralidharan & Mr.S.Venkidasamy, learned counsel for the respondents 1 to 3 (accused) and Mr.R.Surya Prakash, learned Government Advocate (Crl. Side) appearing for the State.

12.When the matter was taken up for hearing, learned counsel for the accused submitted that, Rayappan (A2) died some 10 years ago. Since no death certificate has been produced, this Court has to proceed on the footing that Rayappan (A2) is alive.

13.The law relating to the scope of Section 397 Cr.P.C. while dealing with a revision case has been succinctly laid down by the Supreme Court in Kaptan Singh and others v. State of M.P. and another [(1997) 6 SCC 185] as follows :

"13. In Chinnaswamy [AIR 1962 SC 1788] this Court held that though it was open to the High Court to set aside an order of acquittal even at the instance of the private parties the revisional jurisdiction should be exercised only in exceptional cases when there was some glaring defect in the procedure or there was a manifest error on a point of law and consequently there had been a flagrant miscarriage of justice. This Court Pointed out that it was not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies but indicated some cases which would justify the High Court to interfere with an order of acquittal in revision. The cases so indicated are: where the trial Court has no jurisdiction to try the case but has still acquitted the accused or where the trial Court has wrongly shut out evidence which the prosecution wished to produce or where the appeal Court has wrongly held evidence which was admitted by the trial Court as not admissible or where material evidence has been overlooked either by the trial court or by the appeal Court or where the acquittal is based on a compounding of an offence, which is invalid under law. In the other Cases referred to above this Court reiterated the principles laid down in Chinnaswamy (supra) and observed that the revisional jurisdiction when invoked by a private complainant against all order of acquittal ought not to be exercised lightly and that it could be exercised only in exceptional case where the interests of public justice required interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice."

14. This Court called for the records from the trial Court and perused the same.

15. Immelda (P.W.1), in her evidence, has stated that her betrothal with Anthonisamy (A1) was held in her house on 11.02.2003 and at the time of the betrothal, her father (P.W.2) assured that he will give 15 sovereigns of gold, a small vehicle, and other household articles for the marriage; the accused agreed to it; at the time of betrothal, the date of marriage was not fixed because Easter festival was round the corner and so, both sides decided to fix the date later; after the betrothal, the accused started demanding 25 sovereigns of gold and a large vehicle and said that the marriage will happen only if this demand was satisfied; she lodged a complaint on 11.09.2013 in the All Women Police Station, Neyveli; the police called both parties for enquiry; during enquiry, the accused agreed for the marriage; her

marriage with Anthonisamy (A1) was solemnised on 22.09.2003 in Kolanjiyappar Temple, Vridhachalam; at the time of the marriage, her father (P.W.2) gave the promised 15 sovereigns of gold, a small vehicle and household articles; after the marriage, she went and lived with Anthonisamy (A1) in joint family with A2 and A3 in Karunguzhi Village; she lived there for 22 days and at that time, all the accused started harassing her, demanding 25 sovereigns of gold, a large vehicle and Rs.50,000/- towards the marriage expenses incurred by them; the accused chased her out of the matrimonial home and therefore, she went back to her natal home; after that, she lodged the complaint (Ex.P1).

16.The evidence of Anthonisamy (P.W.2) and Ambrose (P.W.3) corroborated the evidence of Immelda (P.W.1).

17.The prosecution examined Annadurai (P.W.7), who, in his evidence, has stated that he runs a photo studio in the name of "Subham Studio"; on 11.02.2003, his services were engaged for taking photographs in the betrothal ceremony of Immelda (P.W.1) by her father Anthonisamy (P.W.2) and accordingly, he took photographs in the betrothal ceremony and the negatives were marked as M.Os.1 to 4 and the photographs were marked as M.Os.5 to 8.

18.Mohammed (P.W.8), in his evidence, has stated that he is the Proprietor of "Golden Photo Studio"; on 22.09.2003, his services were engaged by Anthonisamy (P.W.2) to take photographs in the wedding of Immelda (P.W.1) in Kolanjiyappar Temple, Vridhachalam, and accordingly, he took photographs; the photographs were marked as M.Os.9 to 11 and the negatives were marked as M.Os.12 to 14.

19.The trial Court considered the evidence in detail and returned a finding of guilt which has been reversed by the appellate Court.

20.The learned counsel for the accused submitted that the parties are admittedly Christians and not Hindus, and therefore, the marriage solemnised at Kolanjiyappar Temple was void and consequently, the accused cannot be convicted of the offence under Section 498-A IPC. The learned counsel further supported the judgment of the appellate Court and contended that, when two views are possible, the view that favours the accused merits consideration and this Court should not, as a matter of routine, upset the order of acquittal.

21. Per contra, learned counsel for Immelda (P.W.1) took this Court through the findings of the appellate Court. In Para No.7, the appellate Court has given a finding that the marriage of Immelda (P.W.1) with Anthonisamy (A1), that was solemnised in Kolanjiyappar Temple, was not a valid marriage, as the parties were Christians and consequently, the conviction of the accused of the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961, was illegal. In the opinion of this Court, this finding is, on the face of it, perverse in the light of the authoritative pronouncement of the Supreme Court in Reema Aggarwal v. Anupam and others [(2004) 3 SCC 199], wherein, it is held as follows :

"18. ... Legislation enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with a certain element of realism too and not merely pedantically or hypertechnically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent

jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions – Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

22. In Para No.10, the appellate Court has held that, since Immelda (P.W.1) had stated that she was happy for 22 days after her marriage, her evidence that she was subjected to cruelty cannot be accepted. This Court perused the evidence of Immelda (P.W.1) and observed that a stray statement in the cross-examination, that she was happy after marriage, has been given undue importance, ignoring the incriminating materials against the accused in the other portions of her deposition.

23. The appellate Court has held that there were no independent witnesses to corroborate the evidence of Immelda (P.W.1), Anthonisamy (P.W.2) and Ambrose (P.W.3). The appellate Court has lost sight of the fact that it was dealing with a matrimonial offence, which normally take place within the four walls of the matrimonial home, for which, public witness will seldom be available.

24. In Para No.12, the appellate Court has held that Immelda (P.W.1) and Anthonisamy (P.W.2) have not stated the date on which the demand of 25 sovereigns of gold, a big vehicle and Rs.50,000/- was made by the accused. This reasoning, in the opinion of this Court, is also perverse, because, such demand was not made and stopped on a particular date.

25. The appellate Court has given a sweeping finding that the evidence of Immelda (P.W.1), Anthonisamy (P.W.2) and Ambrose (P.W.3) do not inspire confidence. The trial Court,

which had the opportunity of seeing these three witnesses in flesh and blood, has acted upon their testimony, whereas, the appellate Court has simply brushed aside their evidence in a cavalier manner.

26. On the whole, this Court finds that the reasons given by the appellate Court for acquitting the accused are manifestly perverse and require interference in this revision.

27. The next question is what order can this Court pass. The answer to this question is given in Para No.11 of the judgment of the Supreme Court in K.Chinnaswamy Reddy v. State of Andhra Pradesh and another [AIR 1962 SC 1788], which reads as follows :

'11. The next question is what order should be passed in a case like the present. The High Court also considered this aspect of the matter. Two contingencies arise in such a case. In the first place there may be an acquittal by the trial court. In such a case if the High Court is justified, on principles we have enunciated above, to interfere with the order of acquittal in revision, the only course open to it is to set aside the acquittal and send the case back to the trial court or retrial. But there may be another type of case, namely, where the trial court has convicted the accused while the appeal court has acquitted him. In such a case if the conclusion of the High Court is that the order of the appeal court must be set aside, the question is whether the appeal court should be ordered to re-hear the appeal after admitting the statement it had ruled out or whether there should K necessarily be a retrial. So far as this is concerned, we are of opinion that it is open to the High Court to take either of the two courses. It may order a retrial or it may order the appeal court to re-hear the appeal. It will depend upon the facts of each case whether the High Court would order the appeal court to re-hear the appeal or would order a retrial by the trial court. Where, as in this case, the entire evidence is there and it was the appeal court which ruled out the evidence that had been admitted by the trial court, the proper course in our opinion is to send back the appeal for rehearing to the appeal court. In such a case the order of the trial court would stand subject to the decision of the appeal court on re-hearing. In the present case it is not disputed that the entire evidence has been led and the only defect is that the appeal court wrongly ruled out evidence which was admitted by the trial court. In the circumstances we are of opinion that

the proper course is to direct the appeal court to re-hear the appeal and either maintain the conviction after taking into consideration the evidence which was ruled out by it previously or to acquit the accused if that is the just course to take. We should like to add that the appeal court when it re-hears the appeal should not be influenced by any observations of the High Court on the appreciation of the evidence and should bring to bear its own mind on the evidence after taking into consideration that part of the evidence which was, considered inadmissible previously by it. We therefore allow the appeal subject to the modification indicated above.''

This Court implicitly proposes to follow the aforesaid dictum. In this case, it is not necessary to order retrial and it will suffice if the matter is reheard by the appellate Court.

28.This Criminal Revision Case is allowed and the judgment dated 04.12.2007, passed by the Additional District and Sessions Judge, Fast Track Court No.II, Cuddalore, in C.A.No.11 of 2006, is set aside. The appellate Court shall hear the appeal without in any manner influenced by the observations made by this Court above.

29.The accused are directed to appear before the Additional District and Sessions Judge, Fast Track Court No.II, Cuddalore, at 10.30 a.m. on 01.04.2020 to prosecute the appeal in C.A.No.11 of 2006. On the failure of the accused to appear, it is open to the appellate Court to secure them by issuing Non-Bailable Warrant.

Registry is directed to send all the records immediately to the Additional District and Sessions Judge, Fast Track Court No.II, Cuddalore.

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Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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Copy to :

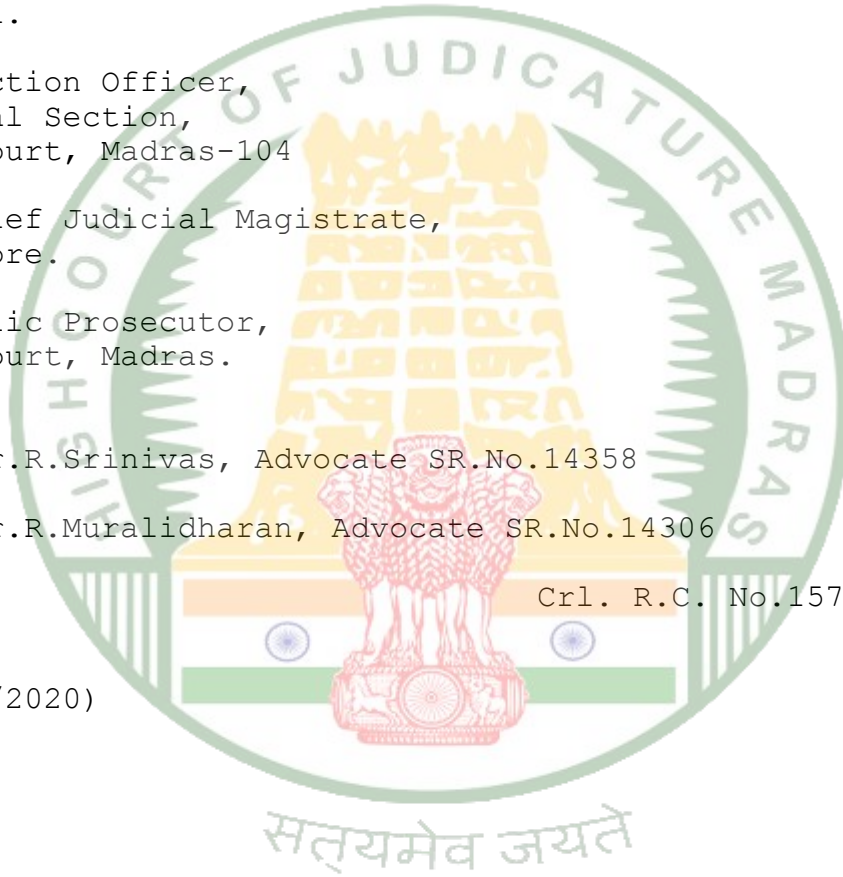
- 1.The Additional District and Sessions Judge,
Fast Track Court No.II,
Cuddalore.
- 2.The Judicial Magistrate No.III,
Cuddalore.
- 3.The Inspector of Police
All Women Police Station,
Neyveli.
4. The Section Officer,
Criminal Section,
High Court, Madras-104
5. The Chief Judicial Magistrate,
Cuddalore.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Srinivas, Advocate SR.No.14358

+1cc to Mr.R.Muralidharan, Advocate SR.No.14306

Cr1. R.C. No.1573 of 2013

NRL (CO)
GMY (05/03/2020)



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