

Bail Slip

The Petitioner in CrI.R.C.No.243/2016 viz Raja Perumal S/o. Late Mr.R.Perumal was directed to be released on bail as per order of this Court dated 10.03.2016 and made in CrI.M.P.No.1650/2016 in CrI.R.C.No.243/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
22.10.2019	10/02/20

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.R.C.No.243 of 2016

Rajaperumal

..... Petitioner

Vs.

The State of Tamil Nadu Rep.by
The Inspector of Police
All Women Police Station
Tambaram, Chennai

..... Respondent

PRAYER: This Criminal Revision under Section 397 read with 401 of Criminal Procedure Code is filed against the judgment dated 08.01.2016 made in C.A.No.31 of 2005 by the Principal Sessions Judge, Chengalpattu and to set aside confirming the judgment dated 10.02.2005 made in C.C.No.1003 of 2004 by the Judicial Magistrate, Alandur

For Petitioner : Mr.Rajarathinam
for M/s.Selvi George

For Respondent : Mr.M.Mohammed Riyaz
Additional Public Prosecutor
Mr.N. Iyyakannu
for Intervenor

ORDER

This Criminal Revision is filed against the judgment dated 08.01.2016 made in C.A. No.31 of 2005 by the learned Principal Sessions Judge, Chengalpattu, confirming the judgment dated 10.02.2005 made in C.C.No.1003 of 2004 by the learned Judicial Magistrate, Alandur, thereby convicting and sentencing

petitioner/A1 for the offence under Section 498(A) of IPC to undergo one year Rigorous Imprisonment and acquitting A2 to A6 for the offence under Section 498(A) of IPC and acquitting A1 to A6 for the offence under Section 4 of the DP Act.

2. The facts leading to filing of this Criminal Revision Petition and necessary disposal are as follows:

a) According to the prosecution, there are six accused persons namely A1 to A6. The revision petitioner herein is A1. A2 and A3 are the father and mother of the A1. A4 is the brother of A1 and A5 is the wife of A4. A6 is the sister of A1. The petitioner/ Accused had married the defacto complainant , Krishneveni, PW 1 on 27.04.2001 at Chennai. After three days, he left to USA and thereafter the defacto complainant had also joined the petitioner/ accused on 23.06.2001 at USA. She lived there with great difficulty for four months and she left from USA and came to Chennai. In the mean time, at USA, the petitioner/accused had filed an application for divorce. The defacto complainant had returned to India and also approached the Sub Court, Poonamallee, seeking restitution of conjugal rights. Then, she had filed the complaint, Ex.P.1 against the petitioner/Accused and his family members A2 to A6 for dowry harassment and cruelty inflicted upon her. On the basis of Ex.P.1, the petitioner/accused along with other accused were charge sheeted for the offence under Sections 498(A) of IPC and Section 4 of Dowry Prohibition Act.

b) The case was taken on file in C.C.No. 1003 of 2004 by the Judicial Magistrate, Alandur and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW 6 and also marked Exhibits. P.1 and 2.

c) On completion of the evidence on the side of the prosecution the accused were questioned under Section 313 of Cr.P.C as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case. During the trial A2 died and hence the charges levelled against him stood abated.

d) The trial Court after hearing the arguments advanced on either side and also looking into the materials available on record, acquitted A1 to A6 from the charges levelled under Section 4 of Dowry Prohibition Act, while acquitting A3 to A6 for the offence under Section 498(A) of IPC found the petitioner/ A1 alone guilty for the offence under Section 498 (A) of IPC and convicted and sentenced him to undergo one year

Rigorous Imprisonment. Against the judgment of conviction and sentence the petitioner filed C.A.No.31 of 2005 before the Principal Sessions Court, Chengalpattu in C.A. No.31 of 2005 and the appeal was allowed and the petitioner was acquitted by judgment dated 01.03.2006. Against the order of acquittal of the other accused in C.C.No.1003 of 2004 dated 10.02.2005 the second respondent filed Crl.R.C.No. 742 of 2005 and Crl.R.C.No.743 of 2005 and they were later withdrawn on 21.09.2010. However against the order of acquittal of the petitioner in C.A.No. 31 of 2005, the second respondent filed Crl.R.C.No.442 of 2014. This Court allowed Crl.R.C.No.442 of 2014 and set aside the order of acquittal by order dated 10.02.2014 and remitted the matter back to the Principal Sessions Court, Chengalapattu. The petitioner had filed a petition to recall the exparte order in Crl.R.C.No.442 of 2014 and it was dismissed by this Court on 29.09.2014 against which the petitioner had file Special Leave Application (Crl.) in Crl.M.P.No.21952 of 2014 before the Honourable Supreme Court. The Apex Court dismissed the same by order dated 17.11.2014 however held that the Appellate Court shall not weigh with the observation made by the High Court in Crl.R.C.No.442 of 2014. After remand the appeal was heard afresh and in and by the impugned judgment of the lower appellate Court, the judgment and conviction of sentence of the trial Court was confirmed. As against the same, this Criminal Revision has been filed by the petitioner /A1.

3. The learned counsel for the petitioner would contend that the trial Court having acquitted the petitioner and the other accused for offence under Section 4 of DP Act and having acquitted the other accused for offence under Section 498(A) of IPC erred in convicting the petitioner alone for the offence under Section 498(A) of IPC on the same set of evidence. The trial Court erred in convicting the petitioner when no ingredients of offence under Section 498(A) of IPC has been made out against the petitioner. The trial court disbelieved the case of prosecution in respect of incidents regarding demand of dowry and cruelty in India. However, trial Court taking into consideration the allegations regarding the incidents that happened in USA found the petitioner guilty for offence under Section 498(A) of IPC. The allegations made in respect of the incidents that happened in USA do not made out a case for offence under Section 498(A) of IPC. The finding of the trial court that issuance of legal notice for divorce in USA would amount to harassment and cruelty is perverse, when there is absolutely no further evidence to prove that the conduct of the petitioner was of such a nature which had driven the defacto complainant to commit suicide or to cause grave injury or danger to life, limb or health(whether mental or physical) of the woman or that the harassment was with a view to coerce her for dowry. He would further contend that when the finding of

guilt is in respect of incident that are alleged to have taken place in USA, the trial Court erred taking cognizance without there being a sanction from the Central Government as required under Section 188 Cr.P.C. The finding of the trial court does not make out a case of continuing offences. Since, the trial court had in entirety disbelieved the allegations in respect of the incidents in India and found that the incidents at USA would amount to cruelty. Whereas the appellate Court in total contradictions to the findings of the trial court and without any appeal being filed by the defacto complainant has wrongly held that it was a continuing offence and that there was no requirement of sanction as contemplated under Section 188 of Cr.P.C and confirmed the sentence. The finding of both Courts below suffers from the legality and perversity and the judgment of conviction and sentence have to be set aside.

4. The learned Additional Public Prosecutor would submit that even before marriage there was a demand of dowry and at the time of marriage 150 sovereigns of jewels and Rs.2 lakhs was paid in cash and thereafter they wife/defacto complainant went to USA. During her stay in USA, the petitioner had issued a legal notice for divorce and had filed the petition for divorce and thereby committed cruelty.

5. The learned counsel for the second respondent/defacto complainant would submit that there was a demand of dowry by the parents of the petitioner and Rs.11lakh was paid to the parents of the petitioner and subsequently there was a demand of Rs. 5 lakhs and after going to USA the petitioner had committed cruelty on the defacto complainant/wife had sent her legal notice and also by filing the petition for divorce. During the stay of the defacto complainant at USA the petitioner had pushed her from the cot and caused harassment and cruelty on her.

6. Per contra the learned counsel for the petitioner would submit that the trial court had disbelieved the evidence with regard to the receipt of Rs.1 lakh and further demand of Rs. 5 lakhs during the defacto complainant's stay at India and had categorically held that the prosecution has not proved the allegations of demand of Rs.5 lakhs and had acquitted the petitioner and other accused for the offence under Section 4 of Dowry Prohibition Act. The trial Court had erred in finding that by sending the legal notice at USA the petitioner had committed cruelty on the defacto complainant. He would further submit that at no stretch of imagination the conduct of sending a legal notice and filing a petition for divorce at USA can be held to be an act of Cruelty within the meaning of Section 498(A) of IPC. In Support of his contention the learned counsel for the petitioner relied on the following judgment:

1. Girdhar Shankar Tawade -Vs- State of Maharashtra reported in

(2002)5 Supreme Court Cases 177

2. Manjaram Kalita- Vs- State of Assam reported in 2009 (13) SCC 330

3. Thota Venkateswarlu -Vs- State of Andhra Pradesh reported in

(2011) 9 SCC 527

7. Heard the counsel for parties and perused the entire materials available on record and judgments of both Court below.

8. The trial Court after analyzing the entire evidence had taken into consideration the contradiction between the witnesses and found that the prosecution has not proved the case with cogent evidence and had disbelieved the case of prosecution with regard to receipt of Rs.11lakh and demand of Rs.5 lakh by the accused and acquitted all the accused for offence under Section 4 of D.P.Act. However, the trial court had rendered a finding that the petitioner by sending legal notice at USA and having initiated the proceedings against the defacto complainant for divorce at USA had committed cruelty and convicted him for offence under Section 498(A) alone.

9. This Court has to examine the correctness and findings recorded by the trial court and affirmed by the appellate Court whether the alleged sending of legal notice and filing of the petition for divorce has in any way constituted "Cruelty" within the meaning of Explanation (a) and (b) to Section 498(A) of IPC. The trial Court had disbelieved the prosecution with regard to the incidents of demand of dowry in India and acquitted all the other accused for offences under Section 4 of Dowry Prohibition Act and Section 498(A) of IPC and convicted the petitioner for offence under Section 498(A) of IPC. The trial court had found that sending a legal notice and filing a petition for divorce at USA after marrying the defacto complainant constituted offence of cruelty warranting of conviction under Section 498(A) of IPC.

10. In the judgment in Girdhar Shankar Tawade -Vs- State of Maharashtra reported in (2002)5 Supreme Court Cases 177, the Apex Court has held as follows:

" 16. We have already noted Section 498-A herein before in this judgment and as such we need not delve upon the same in greater detail herein excepting recording that the same stands attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial Court as regards the death negated suicide with a

positive finding of accidental death. If suicide is rule out then in that event applicability of Section 498-A can be had only in terms of explanation (b) thereto which in no uncertain terms records harassment of the woman and the Statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce her to 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- there is total absence of any of the requirements of the Statute in terms of Section 498-A. The three letters said to have been written and as noticed earlier cannot possibly lend any credence to the requirement of the Statute or even a simple demand for dowry.

11. Further in the case of Manjoram Kalita- Vs- State of Assam reported in 2009 (13) SCC 330 the Honourable Apex Court has held as follows:

"20 In Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078; this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

21. "Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

.....

.....

27 Thus, from the above, it is evident that the Trial Court itself had been of the view that there was no evidence of cruelty on the part of the appellant with a view to drive the complainant to

commit suicide. The appellate Forum reached the conclusion that mental torture was of the magnitude that the complainant had to leave her matrimonial home during her pregnancy. The Revisional court did not find that the complainant had been subjected to cruelty continuously. Thus, in our opinion, all the three courts below erred in not considering the case in correct perspective. The findings so recorded by the Courts below may be relevant for granting the relief in a matrimonial dispute i.e. divorce etc. but could not bring home the charge under Section 498-A IPC"

12. While analyzing the evidence and findings of both Courts below in consonance with the judgments of the Apex Court referred above, the trial Court while disbelieving the prosecution case with regard to the demand of dowry had found that the act of the petitioner in taking his wife to USA and thereafter sending legal notice to her seeking divorce in USA amounted to acts of cruelty. In the opinion of this Court the act of the petitioner sending a legal notice cannot be brought within the meaning of "Cruelty" under the Explanation (a) and (b) of Section 498(A) of IPC and thereby both the Courts below have committed error in finding the petitioner guilty for offence under Section 498(A) of IPC.

13. Further in this case the trial Court had disbelieved the evidence with regard to the incidents in India and then what remains is the allegations in respect of the offence alleged to have been committed by the petitioner in USA alone.

14. In *Thota Venkateswarlu -Vs- State of Andhra Pradesh* reported in (2011) 9 SCC 527 the Apex Court has held that in respect of offences committed outside India sanction is required in terms of Section 188 of Cr.P.C which is lacking in this case. The relevant para which reads as follows:

" 15 Although the decision in *Ajay Aggarwal's* case (supra) was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 Cr.P.C. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which

clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

16. Accordingly, upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.

17. It may also be indicated that the provisions of the Indian Penal Code have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of Section 4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the Indian Penal Code, subject to the limitation imposed under the proviso to Section 188 Cr.P.C.

18. Having regard to the above, while we see no reason to interfere with the High Court's decision to reject the petitioner's prayer for quashing of the proceedings in Complaint Case No.307 of 2007, we also make it clear that the learned Magistrate may proceed with the trial relating to the offences alleged to have been committed in India. However, in respect of offences alleged to have been committed outside India, the learned Magistrate shall not proceed with the trial without the sanction of the Central Government as envisaged in the proviso to Section 188 Cr.P.C".

"

15. In this case the trial Court disbelieved the prosecution with respect of offence committed in India and had found the petitioner guilty of offences alleged to have been committed outside India, whereas no sanction had been obtained as envisaged in the proviso to Section 188 of Cr.P.C.

16. In view of the above, this Court is of the opinion that findings of the Courts below suffers from illegality and both Court below committed error in finding the petitioner guilty for offence under Section 498(A) of IPC.

17. For the above stated reasons, the revision petition is allowed and the judgements of the courts below are liable to be set aside. In the result, the Criminal Revision Petition is allowed and the judgment of the trial court in C.C No.1003 of 2004 confirmed by the Sessions Court in C.A.No. 31 of 2005 is hereby set aside. The revision petitioner/accused is acquitted. Bail bond if any executed by him, shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

srcm/ aav
To

1. The Principal Sessions Judge, Chengalpattu,
- 2.The Judicial Magistrate, Alandur
3. Do Thro The Chief Judicial Magistrate, Chengalapattu
4. The Inspector of Police
All Women Police Station
Tambaram, Chennai
5. The Public Prosecutor
High Court, Madras.

+1 CC to Mrs. Selvi George, Advocate sr 10692.
+1 CC to Mr.N. Iyyakannu, Advocate sr 11152.

सत्यमेव जयते

Cr1.R.C.243 of 2016

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SP(18/05/2020)