

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. No.124 of 2014

Kavitha

... Petitioner

Vs.

1.Kumaresh

2.Andal

3.Sridhar

4.Kala

5.Samu

6.Santhi

7.The Sub-Inspector of Police,
All Women Police Station,
Vaniyambodi,
Vellore District
(Crime No.8/2006)

.... Respondents

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 06.11.2012, passed by the District and Sessions Judge, Vellore, in CA.No.228/2011 reversing the judgment, dated 21.09.2011, passed by the District Munsif-cum-Judicial Magistrate, Vaniyambodi, Vellore, in C.C.No.189 of 2006.

For Petitioner : Ms.S.Priyadharshini
for M/s.R.Thulasi

For R1 to R6 : No appearance
(Notices served)

For R7 : Mr.R.Surya Prakash
Government Advocate(Crl. Side)

O R D E R

This Criminal Revision Case has been filed against the judgment, dated 06.11.2012, passed by the District and Sessions Judge, Vellore, reversing the judgment of conviction and sentence, dated 21.09.2011, passed by the District Munsif-cum-Judicial Magistrate, Vaniyambodi, Vellore, in C.C.No.189 of 2006.

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

3.Kavitha (P.W.1) got married to Kumaresh (A1) on 20.08.2004 and after marriage, she lived in joint family with her in-laws, namely, Andal (A2), Sridhar (A3), Kala (A4), Samu (A5) and Santhi (A6). On the allegations that the accused inflicted cruelty and intimidated her, Kavitha (P.W.1) lodged a complaint to the police, based on which, a case in Crime No.8 of 2006 was registered for the offences under Sections 498-A and 506(ii) IPC and Section 4 of Dowry Prohibition Act, 1961. After completing the investigation, the police filed a final report in C.C.No.189 of 2006 in the Court of District Munsif-cum-Judicial Magistrate, Vaniyambodi, Vellore, for the aforesaid offences against the six accused.

4.The trial Court framed charges for the offences under Sections 498-A and 506(ii) IPC and Section 4 of the Dowry Prohibition Act, 1961, against the six accused. When questioned, the accused pleaded 'not guilty'.

5.To prove the case, the prosecution examined 13 witnesses and marked Exs.P1 and P2.

6.When the accused were questioned under Section 313 Cr.P.C., they denied the allegations. Kumaresh (A1) examined himself as D.W.1 and also examined one Saroja and Prathaban as D.W.2 and D.W.3 respectively. From the side of the accused, Exs.D1 to D4 were marked.

7.After considering the evidence on record and hearing either side, the trial Court, by order dated 21.09.2011, in C.C.No.189 of 2006, convicted A1 to A6 of the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961, and sentenced Kumaresh (A1) to simple imprisonment for one year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months, and sentenced A2 to A6 to pay a fine of Rs.3,000/- each, in default, to undergo simple imprisonment for three months.

8.On appeal in C.A.No.228 of 2011, the District and Sessions Judge, Vellore, by judgment and order dated 06.11.2012, set

aside the order of the trial Court and acquitted all the accused.

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

10. Though notice has been served on the respondents/accused, none has entered appearance.

11. Heard Ms.S.Priyadharshini for Mrs.R.Thulasi, learned counsel on record for the de facto complainant (petitioner) and learned Government Advocate (Crl. Side) and also perused the records.

12. It is the case of the prosecution witnesses that, after marriage, Kavitha (P.W.1) was subjected to cruelty by the accused.

13. On the contrary, it is the specific case of the accused that Kavitha (P.W.1) was suffering from depression and had suicidal tendencies. To prove this, Kumaresh (A1) examined himself as D.W.1 and marked Exs.D1 to D4.

14. In the cross-examination, Roja (P.W.2), the mother of Kavitha (P.W.1), has admitted that her daughter suffered from serious menstrual problems. Kavitha (P.W.1) herself has admitted that the Protection Officer had advised her to take treatment for her depression. The prosecution witnesses also admitted that Kavitha (P.W.1) once attempted to commit suicide by consuming tablets. Last but not the least, even before the F.I.R. was registered, Kumaresh (A1) initiated divorce proceedings by filing H.M.O.P.No.32 of 2006 on 30.12.2005 in the Sub-Court, Vaniyambodi, on the ground that his wife Kavitha (P.W.1) was suffering from depression and was having suicidal tendencies. Only after the filing of the matrimonial proceedings, the complaint in this case was given by Kavitha (P.W.1) and the F.I.R. was registered on 03.10.2006. Thus, one year after the matrimonial proceedings commenced, a criminal complaint was given by Kavitha (P.W.1) and an F.I.R. was registered. The matrimonial proceedings ended in favour of Kumaresh (A1) and divorce was granted, aggrieved by which, Kavitha (P.W.1) appears to have filed an appeal and the same is pending. The appellate Court had considered the positive evidence adduced by D.Ws.1 to 3 to hold that the accused had not inflicted the alleged cruelty on Kavitha (P.W.1).

15. 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 :

"'3. 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."

16. In Arulvelu v. State [(2009) 10 SCC 206], the Supreme Court has held that, in an appeal against acquittal, when two views are possible, the one which favours the accused should merit consideration.

As a result, this Criminal Revision Case is devoid of merits and stands dismissed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

mkn

Copy to :

- 1.The District and Sessions Judge,
Vellore.
- 2.The Principal District Judge,
Vellore.
- 3.The District Munsif-cum-Judicial Magistrate,
Vaniyambodi,
Vellore.
- 4.The Sub-Inspector of Police,
All Women Police Station,
Vaniyambodi,
Vellore District.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Deputy Registrar | with a direction to send back the
(Criminal Section), | records to the respective Court
High Court, Madras. | if received

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SV(CO)
GS(20/05/2020)



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