

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl.R.C.No.304 of 2014

Murali @ Periyathambi

...Petitioner/Accused No.1

Vs.

State by Inspector of Police,
All Women Police Station,
Sooramangalam, Salem District,
Crime No.24 of 2011

...Respondent/Complainant

Prayer: Criminal Revision petition has been filed under Section 397 r/w 401 Cr.P.C to set aside the judgment of C.A.No.82 of 2013 dated 28.10.2013 on the file of III Additional District and Sessions Judge, Salem by modifying the sentence punishment passed in the judgment passed in C.C.No.92 of 2013 dated 16.08.2013 on the file of the Judicial Magistrate (Additional Mahila Court), Salem and to allow the above Criminal Revision.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Ms.S.Thankira
Govt. Advocate (Criminal side)

O R D E R

सत्यमेव जयते

The Judicial Magistrate (Additional Mahila Court), Salem by judgment dated 16.08.2013 in C.C.No.92 of 2013 has convicted the revision petitioner under Section 498-A IPC and Section 4 of Dowry Prohibition Act and sentenced him to undergo rigorous imprisonment for one year and pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months and under Section 4 of Dowry Prohibition Act and sentenced him to undergo rigorous imprisonment for one year and pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months and so far as the charge levelled against the revision petitioner under Section 494 IPC, the revision petitioner had been acquitted of the aforestated charge. Challenging the same, the

revision petitioner has preferred the criminal appeal No.82 of 2013 on the file of the III Additional District and Sessions Court, Salem and the appellate Court, on an appreciation of the materials available on record and the submissions made by the respective parties, was pleased to confirm the conviction of the revision petitioner as determined by the Judicial Magistrate, however, chose to modify the sentence and accordingly, sentenced him to undergo rigorous imprisonment for six months each for the offences punishable under Section 498-A and 4 of the Dowry Prohibition Act and also to pay Rs.1000/- each for the aforesaid offences and accordingly, partly allowed the appeal preferred by the revision petitioner. Impugning the same, the criminal revision has been preferred by the revision petitioner.

2.Considering the materials available on record and the submissions put forth by the revision petitioner, it is found that the revision petitioner and the defacto-complainant PW1 Rajeswari got married on 07.06.2006 at Vazhappadi and at the time of marriage, 10 sovereigns of Gold, 2 rings and other jewels were provided as dowry, however, according to PW1 Rajeswari from the inception of marriage, her husband viz., the revision petitioner used to consume liquor and picked up quarrel with her and committed cruelty on her insisting her to bring more amount and jewels as dowry and as PW1's father had already died 13 years ago and as her mother was living separately, she was able to collect little amount from her mother and handed over the same to the revision petitioner, however, not satisfied with the same, the revision petitioner had insisting her to bring a sum of Rs.50,000/- and threatened and beat her with reference to the same and consequently, she pledged her jewels for Rs.13,000/- and handed over the amount to the revision petitioner and the revision petitioner started a CD shop and thereafter, the defacto complainant got conceived. When she was in confinement at her mother's house, even then the revision petitioner used to insist her to bring jewels and money and further, put forth that she gave birth to a male baby on 22.07.2008 and thereafter, when she was residing with the revision petitioner, he again consumed liquor, beat her insisting and directing her to bring Rs.5,00,000/- and also forced her to leave the matrimonial home and during 2009 left her at Salem bus stand and despite mediation, the revision petitioner had failed to take her back in the matrimonial home and sent her notice on 16.10.2011 seeking divorce and further, the defacto complainant PW1 came to know that the revision petitioner had contracted a second marriage and on that score also, started humiliating and ill-treating her and accordingly, lodged the complaint against the revision petitioner for the offences committed against him.

3.It is found that based on the complaint given by PW1, the case had been registered against the revision petitioner under Sections 498-A, 494 IPC and Section 4 of Dowry Prohibition Act.

4.To sustain the prosecution case, PWs1 to 9 were examined and Ex.P1 to 3 were marked. No MO has been marked. On the conclusion of the prosecution evidence, the revision petitioner was questioned qua the incriminating evidence tendered against him by the prosecution witnesses and he had denied the same. On the side of the revision petitioner, no oral and documentary evidence has been adduced. No MO has been marked.

5.As above stated, on an appreciation of the materials available on record and the submissions made, the trial Court was pleased to convict and sentence the revision petitioner and the same has also been confirmed by the appellate Court. However, the appellate Court had modified the sentence imposed on the revision petitioner. Impugning the same, the criminal revision petition has been laid by the revision petitioner.

6.The counsel for the revision petitioner mainly contended that there is delay in the lodgement of the complaint by PW1 regarding the alleged cruelty and ill-treatment said to have been caused by the revision petitioner by demanding money and jewels and further, according to him, the mode of the lodgement of the complaint itself is not clear as to whether PW1 had lodged the complaint before the Commissioner of police, Salem or before the concerned police Station. On a perusal of the evidence of the sub-Inspector of Police examined as PW8, it is found that the complaint had been lodged by PW1 with the Commissioner of Police, Salem and on the same being forwarded to PW8, he had registered the case and therefore, it is found that there is some delay. No doubt, there is some discrepancy in the mode of lodgement of the complaint on the part of PW1. However, as rightly held by the Courts below, the same would not in any manner undermine or affect the truth of the prosecution case as such. As regards the delay in the lodgement of complaint, as held by the Courts below, considering the matrimonial issues in question and pending between the parties and when the complainant had alleged ill-treatment and cruelty on the part of the revision petitioner by assaulting her in a drunken mood and the issues between the parties pertain to the matrimonial problems, in such view of the matter, as rightly contended by the Government Advocate, normally, the lady, who is affected would be hesitant to come to the police station immediately and on the other hand, would only wait for the possibility of her husband modifying himself and treat her properly and the matrimonial offence being a continuous one, in such view of the matter, merely because there is some delay in the lodgement of the complaint by PW1 that itself would not lead to the

conclusion that the case put forth by her is a false one and the above aspect has been correctly considered by the Courts below and the same does not warrant any interference.

7. As far as the physical and mental harassment caused to PW1 by the revision petitioner in demanding jewels and money, we have the clear and reliable evidence of PW1 and she has testified that right from the inception, the revision petitioner used to come in a drunken mood and demand her money and jewels and on that score, used to assault her and also the inability of PW1 to pay the amount immediately and that the revision petitioner had even left her in the Salem bus stand and went away. Therefore, it is seen that only with a view to cause hardship, harassment and mental agony and distress to PW1, the revision petitioner had been ill-treating her by demanding more money and jewels and not even care to live with her and further, it is also noted that he has subsequently chosen to send a notice seeking divorce from her. Therefore, all the abovesaid factors would go to show that as put forth by PW1, the revision petitioner had been continuously ill-treating and harassing PW1 by demanding jewels and money from her and therefore, when the evidence of PW1 is totally convincing, in such view of the matter, as rightly held by the Courts below, the revision petitioner has committed the offences put forth against him under Section 498-A IPC and Section 4 of Dowry Prohibition Act. The evidence of PW1 has been corroborated by her mother examined as PW2, her brother examined as PW3 and her maternal uncle examined as PW4, they have in all aspects corroborated with the evidence of PW1 and accordingly, from a conjoint reading of the evidence of PWs1 to 4, it is clear that the matrimonial offences attributed against the revision petitioner had been made out and accordingly, the Courts below are found to be wholly justified in relying upon the evidence of PWs1 to 4 for sustaining the conviction of the revision petitioner under Sections 498-A IPC and 4 of the Dowry Prohibition Act. In addition to that, PW5 has also deposed in support of the complainant's case during the course of chief examination. However, during the course of cross examination, he has given a different version. However, as rightly held by the Courts below, considering the gap of his chief examination and cross examination, in the light of the abovesaid factor, merely because PW5 had turned hostile against the complainant during the course of cross examination, on that score, it cannot be held that he has not supported the complainant's case altogether. Therefore, PW5's evidence would also be supportive to the complainant's case and in coming to the conclusion that the revision petitioner has committed the offences attributed against him. No doubt, PWs6 & 7 had turned hostile. However, when the evidence of PWs1 to 5 put together is found to be adequate, trustworthy and reliable for bringing home the charges levelled against the revision petitioner, the

Courts below are wholly justified in sustaining the conviction of the revision petitioner under Section 498-A IPC and Section 4 of the Dowry Prohibition Act based on the evidence of PWS 1 to 5 cumulatively.

8. In the light of the abovesaid factors, the Courts below are correct in holding that the revision petitioner is guilty of Section 498-A IPC and Section 4 of the Dowry Prohibition Act and I do not find any valid reason to interfere with the abovesaid determination of the Courts below.

9. Lastly, the revision petitioner prayed that the leniency should be shown to him with reference to the sentence imposed on him by the Courts below. Considering the matter, when it is found that the appellate Court has already shown leniency in favour of the revision petitioner and modified the sentence in his favour, I do not find any valid ground to further modify the sentence as prayed for by the counsel for the revision petitioner.

In conclusion, the criminal revision petition fails and accordingly is dismissed. The trial court is directed to secure the presence of the revision petitioner and commit him to prison to undergo sentence imposed on him as per law, if he has not complied with the sentence.

Sd/-

Assistant Registrar(MD)

//True Copy//

Sub Assistant Registrar

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To

1. State by Inspector of Police,
All Women Police Station,
Sooramangalam, Salem District,
Crime No.24 of 2011.
2. The III Additional District and Sessions Judge,
Salem.
3. The Judicial Magistrate (Additional Mahila Court),
Salem.
4. The Public Prosecutor, High Court, Madras

+1cc to Mr.R.Nallliyappan, Advocate, S.R.No.23647

Cr1.R.C.No.304 of 2014

RSK(CO)
KKV/21/07/2020