



Bail Slip

1.N.Thirumaran, S/o.R.Subbiah, 2.Subbian, S/o.Ramasamy,
3.Angammal, W/o.Subbiah, Petitioners/Accused 1 to 3 were released on
bail, vide Court order dated 22.03.2010 made in MP(MD)No.1 of 2010
in Crl.RC(MD)No.78 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C. (MD)No.78 of 2010

1.N.Thirumaran

2.Subbian

3.Angammal

...Petitioners / Appellants/ Accused Nos.1 to 3

Vs.

State represented by
the Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai District.

(Crime No.24 of 2000)

... Respondent / Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order passed in the judgment dated 21.08.2009, passed in C.C.No.673 of 2000, on the file of the Judicial Magistrate No.VI, Madurai, as confirmed in the judgment dated 10.02.2010, in C.A.No.79 of 2009, on the file of the Additional District and Sessions Judge / Fast Track Court No.I, Madurai and set aside the same.

For Petitioners : Mr.R.Anand

For Respondent : Mr.Suyambulinga Bharathi
Government Advocate
(Criminal side)

ORDER

The petitioners are Accused Nos.1 to 3 in C.C.No.673 of 2000. The trial Court by the judgment dated 21.08.2009 had convicted the petitioner and sentenced them as follows:-

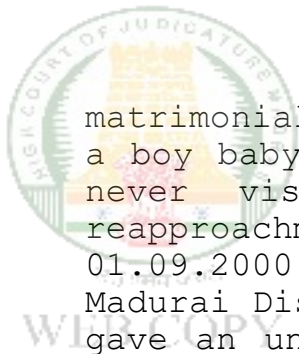


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Accused	Penal Provision	Punishment
Accused No.1	Section 498-A I.P.C	To undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple Imprisonment
Accused No.2	Section 498-A I.P.C	To undergo three months Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple Imprisonment
Accused No.3	Section 498-A I.P.C	To undergo Imprisonment till rising of the Court and to pay a fine of Rs.5,000/- in default to undergo six months simple Imprisonment

Against which, the accused filed an Appeal in C.A.No.79 of 2009, before the learned Additional District Sessions Judge / Fast Track Court No.I, Madurai. The Lower Appellate Court by the judgment dated 10.02.2010, had dismissed the Appeal, filed by them and confirming the sentences imposed by the Trial Court. The period of sentence already undergone by the petitioners, if any, shall be given set off as required under Section 428 Cr.P.C.

2. The case of the prosecution is that the marriage between the first petitioner and P.W.1 / *de facto* complainant had taken place on 21.02.1999 at Madurai. During the marriage, 25 sovereigns of gold, 5 sovereigns of gold to the first petitioner / bridegroom, cash of Rs.10,000/-, Television, Mixie and household articles were given as *seethana* articles by the parents of P.W.1. Initially, P.W.1 and the first petitioner were living in Madurai. Later, they shifted their residence to Vasantham Colony at Anna Nagar, Madras. The first petitioner was working as a Teacher in the M.k. Higher Secondary School at Chennai. The first petitioner and P.W.1 were residing in the ground floor. The sister-in-law of P.W.1 was residing with her family in the first floor. After while, they were staying in Chennai, accused Nos.2 and 3, the parents of the first petitioner had come there, demanded more dowry, were persistent. Thereafter, on the guise of attending the Chithirai Festival, P.W.1 was left in her parents house and the first petitioner stated that she has to be taken only after the dowry demand was given. In the meanwhile, P.W.2 had become pregnant and despite, several efforts had been made by the family members of P.W.1 and the petitioners and his family members were not willing to take back P.W.1 into the



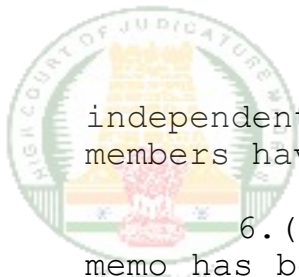
matrimonial home and demanding for dowry continued. On 06.12.1999, a boy baby was born to P.W.1. After the delivery, the petitioners never visited P.W.1. After taking all steps, failed for reapproachment of their marriage, P.W.1 had lodged a complaint on 01.09.2000 before the All Women Police Station, Thirupparankundram, Madurai District. The petitioner had appeared before the Police and gave an undertaking to take her back, despite the same, P.W.1 has not taken back. Thereafter, on completion of investigation, charge sheet came to be filed and the trial Court had convicted the accused as stated above. Against which, the petitioners had filed an Appeal before the learned Additional District Sessions Judge / Fast Track Court No.I, Madurai in C.A.No.79 of 2009. The lower Appellate Court had dismissed the Appeal and confirming the conviction and sentence of the petitioners.

3. To prove the case, the prosecution examined P.Ws.1 to 5 and marked Ex.P-1 and Ex.P-2 and no material objects were marked. On the side of the accused, no witness was examined nor any document was marked and marked Exs.D.1 and Ex.D.2.

4. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same.

5. The trial Court, after considering the oral and documentary evidences, convicted and sentenced the accused as aforesaid, against which, the petitioners had filed an appeal before the learned Additional District Sessions Judge / Fast Track Court No.I, Madurai in C.A.No.79 of 2009. The lower Appellate Court had dismissed the Appeal and confirming the conviction and sentence imposed on the petitioners before the trial Court. Aggrieved over the same, the petitioners have filed this petition before this Court.

6. The contention of the petitioners is that the entire case rests only on the interested testimony of P.W.1 to P.W.5. The witnesses had given the exaggerated and embellished versions, which the Trial Court admits, ought to have acquitted the petitioners and convicted them. The trial Court on the evidences found that there is no evidence to show that the petitioners were committed the offence under Section 406 I.P.C., had acquitted the petitioners. But, on the same set of evidence had convicted the petitioners. The material witnesses are interested witnesses, who had given exaggerated versions and the evidences are not corroborated by the independent witnesses. P.W.1's father was working in the Revenue Department and he had official influence over the Police and the Police in order to favour P.W.1's father, dragged the first petitioner from his house at odd hours as though the first petitioner was an hardened criminal, such ignominy was created to the petitioners. P.W.1's family members expected the first petitioner to become a house husband, but, first petitioner was



independent person with self respect. Hence, the entire family members have been falsely implicated in this case.

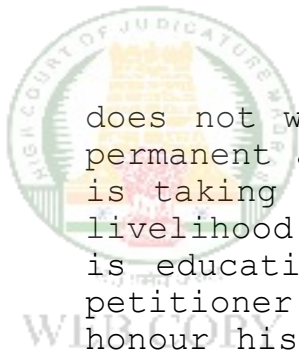
6.(i). He further submitted that today, a joint compromise memo has been filed by both parties. It has been signed by both the parties and also by their learned counsel.

6.(ii). He further submitted that the first petitioner had now undergone a heart surgery and without support of anyone, he is unable to move. He further submitted that during the pendency of this petition, a compromise has been arrived at between the petitioners and P.W.1 and as per the compromise, the first petitioner has agreed to pay a sum of Rs.14,00,000/- towards permanent alimony. Out of which, Rs.5,00,000/- was paid on 27.02.2020 and the second installment of Rs.3,00,000/- would be paid on or before 27.04.2020 and third installment of Rs.3,00,000/- would be paid on or before 27.06.2020. The last payment of Rs.3,00,000/- would be paid soon after passing of the divorce decree on mutual consent not later than 27.08.2020, whichever is early. Thus, the dispute between them is resolved.

6.(iii). He further submitted that the *de facto* complainant / P.W.1 and the first petitioner will file a petition under Section 13 (1) (b) before the Family Court, seeking divorce by mutual consent.

7. The learned Government Advocate (Criminal side) appearing for the respondent submitted that on receipt of a complaint from P.W.1, a case came to be registered. The marriage between the *de facto* complainant and the first petitioner were taken place on 21.02.1999. During the marriage, customary seethana articles were given and again the petitioners demanded dowry from P.W.1 and on the pretext of visiting P.W.1's parents for Chithirai festival, the first petitioner had left P.W.1 in her parents house and thereafter, he had never taken up to her matrimonial home. The parents and family members of the petitioner had continued their harassment. He further submitted that P.W.1 had lodged a complaint on 01.09.2000, before the All Women Police Station, Thirupparankundram, Madurai District and after examining all the witnesses, collecting the documents, a charge sheet came to be filed. He further submitted that during the pendency of this revision, compromise had been arrived at between the petitioner and the *de facto* complainant / P.W.1 and as per the compromise, the marriage has to be dissolved by mutual consent and permanent alimony has to be made.

8. Today, the *de facto* complainant / P.W.1 had appeared before this Court along with her brother. She had narrated her difficulty in bringing up her son, who is a school going child. She expressed her hope that one day P.W.1 would take her back to his matrimonial home. But, later she came to know that the first petitioner had living in relationship with another lady and now, she



does not want to join him any more and she would be satisfied, if permanent alimony is paid. Further, she submitted that her brother is taking care of her and she is depending on her brother for her livelihood and not having any income and with great difficulty, she is educating her only son. She further submitted that the first petitioner on earlier occasions had made such promises, failed to honour his commitments and she apprehends that this undertaking of the first petitioner would not be fulfilled.

9. The first petitioner undertakes that now he is having heart ailments and he had undergone surgery and he will honour his commitment as per the affidavit. Further, to show his bonafide, he has handed over Rs.5,00,000/- to P.W.1 and the balance to be paid as stated in the compromise memo.

10. Considering the rival submissions made on either side and the materials available on record and also taking into consideration the welfare of P.W.1 and her son, who is the School going child and considering the fact that the marriage is irreconcilable and failed and there is no possibility between both of them to join together and considering the fact that the various mediations had taken place before this Court and on later deliberations, it was agreed that the petitioner to pay permanent alimony of Rs.14,00,000/- and the petitioner and the de facto complainant / P.W.1 already filed a petition under Section 13 (1) (b) seeking divorce by mutual consent, this Court feels that the conviction and sentence imposed on the petitioners is liable to be set aside. For the sake of clarity the compromise memo is extracted hereunder:

"The petitioners and the second respondent would jointly submit that during the pendency of this revision, they have arrived at a compromise solution on the following terms and conditions:

a)The de facto complainant agrees to give consent for filing a divorce petition on the ground of mutual consent and undertake to extend her fullest co-operation to get the decree of mutual consent divorce,

(b).Towards her maintenance, as a permanent alimony, the first petitioner agrees to pay a sum of Rs.14,00,000/- in four installments in which today (27.02.2020) in open Court, the petitioner is paying a sum of Rs.5,00,000/- by cash and the de facto complainant is also, on receipt of the same, is giving acknowledge through this compromise memo.

(c).The second installment of Rs.3,00,000/- would be paid by the first petitioner on 27.04.2020 and the third installment of Rs.3,00,000/- by the first petitioner on 27.06.2020 and the last payment of Rs.3,00,000/- would be given to the de facto



complainant. Soon after the passing of divorce decree on mutual consent i.e., on the same day of the decree itself.

(d).The first petitioner and the de facto complainant give at a clear undertaking that they would not deviate from the aforesaid assurances at any event in the later point of time.

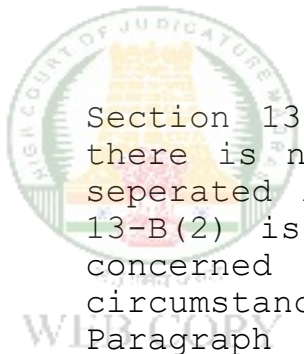
(e).In view of such arrival of compromise, the de facto complainant expresses her whole hearted willingness to compound the offence of Section 498 (A) of I.P.C. For which the petitioner is found guilty by the Court below. She would further make it clear that all the petitioners may be given with Hon'ble acquittal from the charge of 498(A) of I.P.C.

(f).In view of this amicable settlement, neither the first petitioner nor the de facto complainant would claim any right whatsoever either from the property presently own by them or from the property which would be procured by them in future. In other words, both of them do not have any right to make any claim between them.

(g).The first petitioner and the de facto complainant undertake that they would not make any complaint or initiate any proceedings or civil suit against each of them in future.

(h).Since the above sum is being paid as a permanent alimony, the de facto complainant on receipt of the same forgoes her right of claiming further maintenance in future during his lifetime from the first petitioner."

10.(i). The learned counsel appearing for the petitioners has produced a citation of the Hon'ble Apex Court in the case of **Amardeep Singh Vs. Harveen Kaur** reported in **(2017) 8 SCC 746**, wherein, it has been held that when the parties were living separately for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and further waiting period will only prolong their agony and the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties. Hence, regular applications can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court. The waiving period intra in



Section 13-B(2) can be waived in the interest of justice, where, there is no chance of reconciliation and the parties were already separated in a longer period than the period mentioned in Section 13-B(2) is not mandatory, but, directory, it will be open to the concerned Court to exercise its discretion in the facts and circumstances of the case. At this juncture, it is relevant to note Paragraph No.19 of the above said judgement and it reads as follows:-

"19.Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

(ii) all efforts for mediation / conciliation including efforts in terms of Order 32-A Rule 3 CPC / Section 23 (2) of the Act / Section 9 of the Family Court Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony."

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the Court concerned."

10.(ii). Hence, this Court is of the view that this case satisfies all the conditions enumerated by the Hon'ble Apex Court. In view of the same, the concerned Family Court has to consider the petition of the first petitioner and the second respondent in its right perspective. Thus, this Court finds that the compromise between the parties are genuine and their grievance is redressed and the petitioners have to make the balance payment and also to conclude the Family Court proceedings, within the stipulated period and to report to this Court about the completion of entire payment and obtaining divorce by mutual consent by taking all these factors.



11. In view of the above observations, this Court is inclined to allow this petition and the conviction and sentence imposed on the petitioners by the lower courts are set aside and the petitioners are acquitted from all charges framed against them.

12. Registry is directed to post the matter on **07.09.2020** under the caption "for reporting compliance" before this Court.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

To

1. The Additional District and Sessions Judge
/ Fast Track Court No.I, Madurai.

2.The Judicial Magistrate No.VI, Madurai.

3.The Inspector of Police,
All Women Police Station,
Thirupparankundram, Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.R.ANAND, Advocate (SR-9669[F] dated 02/03/2020)

Crl.RC. (MD)No.78 of 2010
27.02.2020

MK (17.03.2020) 8P 6C