



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.228 of 2014

Sudalaimani

..Petitioner / Appellant/ Accused No.1

Vs.

1.The State represented by its
Inspector of Police,
All Women Police Station,
Karaikudi.
(Crime No.03 of 2001)

2.Umayal

..Respondents / Respondents / Complainants

(Respondent No.2 impleaded as per order of
this Court dated 17.12.2019 in Crl.R.C.(MD).
No.228 of 2014)

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 28.01.2014 in Crl.A.No.44 of 2010, on the file of the learned Sessions Judge, Sivagangai, partly confirming the order dated 06.05.2010 in C.C.No.179 of 2002, on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi and set aside the same in respect of confirming the fine amount imposed by the trial Court for the offences under Section 498 (A) and Section 4 of Dowry Prohibition Act.

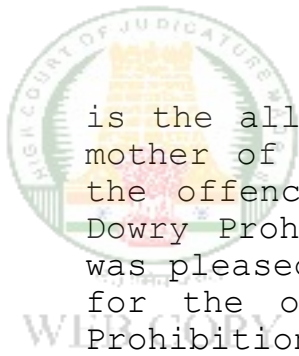
For Petitioner : Mrs.J.Ananthavalli
for Mr.A.L.Kannan

For R-1 : Mr.Suyambulinga Bharathi
Government Advocate
(Criminal side)

For R-2 : Mr.V.Om Prakash

ORDER

The petitioner is Accused No.1 in C.C.No.179 of 2002. There are totally three accused in C.C.No.179 of 2002. The petitioner / Accused No.1 is the husband of the second respondent. Accused No.2



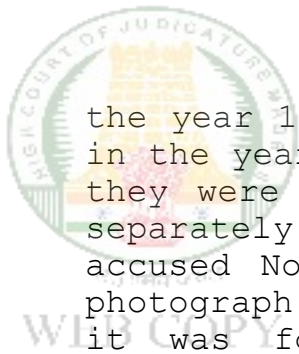
is the alleged second wife of the petitioner. Accused No.3 is the mother of the petitioner. They were tried by the trial Court for the offences under Sections 498, 494 I.P.C. and Section 4 of the Dowry Prohibition Act. The trial Court after a fullfledged trial was pleased to acquit Accused Nos.2 and 3 and convict the petitioner for the offence under Sections 498 (A) and Section 4 of Dowry Prohibition Act. The trial Court by the judgment dated 06.05.2010 had convicted the petitioner and sentenced him as follows:-

Penal Provision	Punishment
Section 498-A I.P.C	To undergo one year Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo three months rigorous Imprisonment
Section 4 of the Dowry Prohibition Act	To undergo one year Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo three months rigorous Imprisonment

The sentence period for both offences shall run concurrently. Against which, the accused filed an Appeal in C.A.No.44 of 2010, before the learned Sessions Judge, Karaikudi. The Lower Appellate Court by the judgment dated 28.01.2014, had partly allowed the Appeal, filed by him and set aside the sentences imposed by the trial Court for the offences under Sections 498 (A) I.P.C. and Section 4 of Dowry Prohibition Act and confirmed the fine amount imposed by the trial Court for the offences under Section 498(A) I.P.C. and Section 4 of Dowry Prohibition Act. Against which, the present petition has been filed

2. The brief facts of the case is that P.W.1 / second respondent is the wife of the petitioner. P.W.2 is the daughter of the petitioner and the second respondent. P.W.3 and P.W.4 are the brothers of P.W.1. P.W.5 and P.W.6 are the family friends of P.W.1. P.W.8 is the house owner in Kottaiyur. P.W.9 is the relative of P.W.1. P.W.10 is the Principal of Kendriya Vidhyalaya in Central Leather Research Center, Adyar, Chennai where Accused No.2 was employed. P.W.11 is the Manager in the New Woodlands Hotel, Chennai. P.W.12 is the Inspector of Police.

2.(i). The marriage between the petitioner and P.W.1 was solemnized on 24.08.1980 in Puliyanakudi. During the marriage, the parents of P.W.1 gave 20 sovereigns of gold ornaments, Rs.50,000/- in cash and household articles worth about Rs.25,000-/. On the date of their marriage itself, dispute and quarrel arose between the accused and P.W.1, with regard to dowry. Out of their marriage, P.W.2 viz., Karthicka, was born to them, in



the year 1982 and the second daughter viz., Lakshmi Priya, was born in the year 1985. Till 1988, both of them had good relationship and they were living together. Thereafter, the petitioner was living separately and started neglecting the family of P.W.1. While the accused No.1 was working in Rajapalayam, P.W.1 happened to see a photograph of Accused No.2 along with the petitioner. Thereafter, it was found that Accused No.2 was working in the Kendirya Vidhyalaya in the Central Leather Research Center, Adyar, Chennai. In her service register, Accused No.2 had given the petitioner's name as her husband and nominee and later, came to know that the marriage between the petitioner and accused No.2, was held at the New Woodlands Hotel, Chennai.

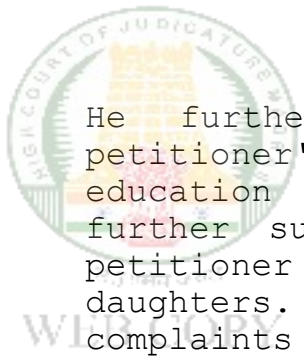
2.(ii). P.W.1 gave a complaint to the first respondent Police. The respondent on registration of the case, examined the witnesses and filed charge sheet in this case.

3. To prove the case, the prosecution examined P.Ws.1 to 12 and marked Exs.P.1 to Ex.P.15 and no material objects were marked. On the side of the accused, D.W.1 to D.W.3 were examined and marked Exs.D.1 to Ex.D.7 and no material objects were marked.

4. When the accused was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

5. The trial Court, after considering the oral and documentary evidences, convicted and sentenced the accused as aforesaid, against which, the petitioner had filed an appeal before the learned Sessions Judge, Sivagangai, in C.A.No.44 of 2010. The lower Appellate Court had partly allowed the Appeal and set aside the sentences imposed by the trial Court and confirmed the fine amounts imposed on the petitioner by the trial Court. Aggrieved over the same, the petitioner has filed this petition before this Court.

6. The contention of the petitioner is that the trial Court had given a finding that the petitioner had given exaggerated and embellished versions and the prosecution could not prove that the petitioner had second marriage with Accused No.2, as well as there was any demand by the mother of the petitioner. He further submits that the finding of the trial Court was challenged before the Lower Appellate Court and the Lower Appellate Court finds that there is no corroboration on the allegation of demand of dowry. But the Lower Appellate Court confirmed the fine amounts imposed on the petitioner and set aside the conviction imposed on him. He would further submit that the petitioner had filed a petition under Section 340 Cr.P.C., for generating false complaint by the second respondent against the petitioner, which is now pending as Appeal in C.A.No.4 of 2013, before the learned Principal Sessions Judge, Sivagangai.



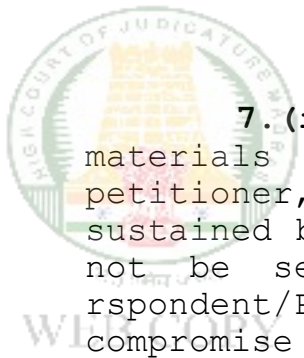
He further submitted that after their marriage, from the petitioner's money, the second respondent herein, had undergone her education and she got entered into the teaching profession. He further submitted that even after both of them separated, the petitioner continued to meet out all the educational expenses to his daughters. But not considering this, the second respondent gave complaints and petitions to the petitioner's Department.

6.(i). The petitioner was working as a Finger Print Expert in the Police Department on the technical side. Due to complaints given by the second respondent, he was forced to go on compulsory retirement in the year 2003 and his entire terminal benefits could not be availed. The petitioner had only shown the second respondent as nominee for all his pensionary benefits and he is suffering from cardiac problem and now, he is under medication. He further submitted that the Courts below have not given a clear finding with regard to the demand of any dowry. The petitioner had not demanded any dowry. The lower Court had not considered and discussed anything with regard to the defence witnesses and defence exhibits. He further submitted that the petitioner is living with another lady and in such circumstances, the demand of dowry does not arise and hence, he prays for acquittal of all the charges framed against him.

6.(ii). He further submitted that during the pendency of this revision, the compromise had been arrived between the petitioner and the *de facto* complainant / P.W.1 and a compromise memo to that effect has been filed.

7. The learned Government Advocate (Criminal side) appearing for the first respondent submitted that a complaint was lodged by P.W.1 on 27.07.2001. P.W.12, the Inspector of Police, registered a case in Crime No.03 of 2001, for the offences under Sections 498 (A), 494 and Section 4 of Dowry Prohibition Act. Ex.P.15 is the First Information Report. The charge sheet in this case revealed that Accused No.2 had given a letter to the Principal of Kendriya Vidhyalaya to enter the name of P.W.1 in her Service Register as her husband. P.W.11 is the Manager of New Woodlands Hotel, Chennai, who produced the letter viz., Ex.P.14 - for the reception, held in this hotel. P.W.1 and other family members had clearly spoken about the demand of dowry, the harassment and cruelty caused to P.W.1. The petitioner had wrote letters to the parents of P.W.1, seeking property as dowry. The said letters have been marked as Ex.D.1 to Ex.D.3 and on one occasion, the petitioner locked P.W.1 in a room for three days. This shows the extend of harassment caused on P.W.1 by the first accused.

7.(i). In this case, the prosecution had examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.15.



7.(ii). The Courts below on consideration of the evidence and materials produced by the prosecution, had rightly convicted the petitioner, which need not be interfered with. The conviction sustained by the petitioner is only a meagre punishment, which need not be set aside. He confirms that the petitioner and 2nd respondent/P.W.1 now resolved their differences and arrived at a compromise between them.

8. The contention of the second respondent is that the petitioner, who is working in the Police Department in the technical side, had been able to successfully drag on the proceedings by one way or other. The Accused No.2 and the petitioner were living as husband and wife and this was proved by the Service Register of the second accused and also relevant records were produced in this regard. The Accused No.3 is the mother of the petitioner had not abated the petitioner to demand dowry from her and also subjected P.W.1 to cruelty. The Accused No.3 had also demanded dowry and her demand was made even on the very same day of the marriage. The trial Court on technical grounds had acquitted the Accused Nos.2 and 3 and convicted the Accused No.1.

9. It is admitted by the learned counsel for the second respondent that during the pendency of the revision, good sense prevailed now the petitioner and the second respondent have resolved their differences and entered into the compromise and as per compromise, the petitioner admits to withdraw Crl.A.No.4 of 2014, pending on the file of the learned Principal District Sessions Judge, Sivagangai and he is ready to settle 1/5th share of his ancestral property, which he is entitled to inherit the property situated at No.48, Vempadi Amman Kovil Street, Pettai, Tirunelveli, in favour of the second respondent and further, the petitioner shall give 50% of his retirement benefits to the second respondent and further affirmed that other than the ancestral property, if anything found available on the petitioner in future, he is ready to settle 50% of the said property in favour of the second respondent. For the sake of clarity, the affidavit of the petitioner is extracted hereunder:-

01. I am the petitioner herein and as such I am well acquainted with the facts of the case.

02. I submit that I have filed the above Criminal Revision Petition as against the order dated 28.01.2014, passed in Criminal Appeal No.44 of 2010, on the file of the learned Sessions Judge, Sivagangai, in partly confirming the order dated 06.05.2010, passed in C.C.No.179 of 2002, on the file of the learned District Munsif cum Judicial Magistrate, Karaikudi, to set aside the same in respect of confirming the fine amount imposed by the trial Court for the offence under Section



498(A) of Indian Penal Code and Section 4 of Dowry Prohibition Act. I crave leave of this Hon'ble Court to treat the memorandum of grounds of Criminal Revision Petition as part and parcel of this affidavit.

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3.I submit that I got married to the second respondent herein on 24.08.1980. I submit that out of said wedlock we were blessed with two daughters namely Mrs.S.Karthika presently working as Assistant Professor in Parasakthi College, Kutralam and she married and settled with her husband. Second daughter namely S.Lakshmi Priya she is also married and settled with her husband and she is taking care of the family business. I submit that we were happily lived till 2001. Due to difference of opinion we got separated.

4.I submit that after marriage from my funds 2nd respondent herein had undergone B.Ed., in the year 1982, M.Ed., in the year 1990, M.A. (English) in the year 1995 and she got entered into teaching profession and now she is working as Teacher in private school. I submit that even after we got separated I continue to meet out all the educational expenses for my daughters which facts were proved by me in M.C.No.5 of 2003, on the file of learned District Munsif cum Judicial Magistrate Court, Karaikudi.

5.I submit that due to complaints and litigations preferred by the second respondent herein I was suspended in the year 2001 and I was force to go on compulsory retirement in the year 2003. I submit that while permitting me to go on compulsory retirement Provident Fund, Gratuity and arrears were paid to me which comes around a sum of Rs.11,50,000/- which I have spend for my medical expenses, litigation expenses and livelihood purposes for the past 20 years. On the other hand I preferred appeal challenging the compulsory retirement, which is still pending before the Government on the ground pendency of criminal cases. I submit that during my service I have shown the second respondent as nominee for pensionary benefits.

6.I submit that as of now I am jobless and I am suffering with cardiac problems and taking treatment. I submit that I do not have any property other than my ancestors property situated at No.48, Vempadi Amman Kovil Street, Pettai, Tirunelveli-627 004, which shared along with my mother and three brothers. I submit that I was thrown to pillar to post to fact litigations after



litigations preferred by the second respondent, now I become aged and sick. I submit that H.M.O.P. preferred by me seeking Divorce is pending before the learned Sub Court, Devakottai for the past ten years. Hence, in order to purchase peace, I have decided to settle the matter amicably with the second respondent. Without prejudice to my right in the above Criminal Revision Petition, I hereby undertake to settle the matter on the following terms:

i. My self and my mother namely Pappammal wife of late. Madasamy Pillai ready to settle 1/5th share for which I am entitled, in the ancestry property situated at No.48, Vempadi Amman Kovil Street, Pettai, Tirunelveli-627 004 in favour of second respondent herein.

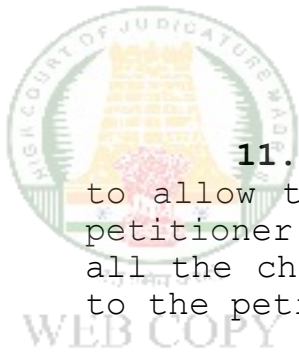
ii. I do not have any other immovable assests in my name as on date. If anything found available in future I am ready to settle 50% of my right in favour of the second respondent herein.

iii. I hereby agree to give 50% of my retirement benefits to the second respondent, if any paid to me in future from the department.

iv. I also agree and undertake to withdraw Criminal Appeal No.4 of 2013 pending on the file of the learned Principal District and Sessions Judge, Sivagangai.

I submit that I pray this Hon'ble Court to accept my affidavit and pass any appropriate orders including that of acquittal or setting aside the fine amount imposed by the appellate Court on me, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

10. Considering the rival submissions made on either side and the considering the fact that the children are now grown up and started their own life and both petitioner and 2nd respondent agreed for the compromise and they had also filed a petition under Section 320 Cr.P.C., before this Court to compound the offence and also it is seen that there is no offence is made out for dowry prohibition and the offence under Secion 498(A) I.P.C., is permitted to be compounded on the facts and circumstances of the case, hence, this Court accepts the same and permits the second respondent to compound the offence as against the petitioner.



11. In view of the above observations, this Court is inclined to allow this petition, setting aside the sentences imposed on the petitioner by the lower Courts. The petitioner is acquitted from all the charges framed against him. The fine amount to be refunded to the petitioner.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

To

1.The Principal District Munsif cum Judicial Magistrate,
Karaikudi.

2.The Sessions Judge, Sivagangai,

3.The Inspector of Police,
All Women Police Station, Karaikudi.

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

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.OMPRAKASH, Advocate (SR-9094[F] dated 28/02/2020)

CrI.RC. (MD) No.228 of 2014

27.02.2020

NR(11.06.2020) 8P 7C