



BAIL SLIP

The Petitioner/Accused viz., Nagaraj, Male aged 30 years S/o.Vellingiri was directed to be released on bail wide order dated 02/01/2017 in Crl.M.P.14119 of 2016 in Crl.R.C.No.1696 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.1696 of 2016

Nagaraj

...Petitioner

Vs

1.State represented by
Inspector of Police,
AWPS (West) B-2 R.S.Puram PS,
Coimbatore.
(Crime No.30 of 2011)

2.State Represented by Public Prosecutor,
Coimbatore

...Respondents

PRAYER: This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., against order of the learned III Additional District and Sessions Judge, Coimbatore dated 16.11.2016 made in Crl.A.No.180 of 2015 by confirming the judgment of the learned Judicial Magistrate (Additional Mahila Court), Coimbatore dated 03.08.2015 in C.C.No.78 of 2013.

For Petitioner : Mr.J.Franklin

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been preferred by the petitioner/accused challenging the judgment of the the learned III Additional District and Sessions Judge, Coimbatore dated 16.11.2016 made in Crl.A.No.180 of 2015, confirming the judgment of the learned Judicial Magistrate (Additional Mahila Court), Coimbatore dated 03.08.2015 in C.C.No.78 of 2013, in which, the



petitioner was convicted and sentenced as below:-

Sl.No.	Offence under Section	Punishment Imposed on the accused
1	498-A	To undergo six months Rigorous Imprisonment and to pay a fine of Rs.3000/-, in default, to undergo a Simple Imprisonment for a period of six months.

2. The marriage between the de-facto complainant and the petitioner/accused took place on 18.02.2008 as per Hindu Rites. After marriage, they have been living together as husband and wife in the house of the accused. They also got a child out of their marital life. The allegation of the de-facto complainant is that the accused used to beat PW1(wife), by demanding gold jewels and used to scold her and finally, sent her away from the matrimonial home.

3. It is further alleged that, when PW1 was at her parents' house, she heard that the accused got married with some other woman. On the complaint given by PW1 on 06.11.2011, PW10 Ms.Yogambal, Sub-Inspector of Police, has registered the FIR in Cr.No.30 of 2011 under Sections 498-A and 494 IPC. After PW10 took up the case for investigation, she examined the witnesses and thereafter, she arrested the accused and sent him to remand. She examined further witnesses and after completing her investigation, she filed the charge sheet under Sections 498-A and 494 IPC.

4. After the case was taken on file and on being satisfied with the materials available on record, charges have been framed against the accused under Sections 498-A and 494 IPC and the accused was questioned under Section 313 Cr.P.C., The accused pleaded innocence and claimed to be tried.

5. On the side of the prosecution, 11 witnesses were examined as PW1 to PW11 and four documents were marked as Exs.P1 to P4. On the side of the defence, no witnesses were examined and no documents were marked.

6. After considering both oral and documentary evidence adduced on the side of the prosecution, the learned Trial Judge found the accused guilty for the offences under Section 498-A of IPC and convicted and sentenced him to undergo 6 months Rigorous Imprisonment and imposed a fine of Rs.3,000/-, in default to undergo six months Simple Imprisonment. However, the



accused was acquitted of the charge under Section 494 IPC.

7. Aggrieved by the same, the accused had preferred an appeal before the learned III Additional District and Sessions Judge, Coimbatore in Crl.A.No.180 of 2015 and the said appeal was dismissed, confirming the judgment of the trial Court. Aggrieved by that, the accused has preferred this Criminal Revision Case before this Court.

8. Heard the learned counsel for the petitioner and the learned Government Advocate(Crl.Side) for the respondents and perused the materials available on record.

9. The learned counsel for the petitioner/accused submitted that PW1 (wife) and the accused (husband) got separated in the year 2009 itself and the complaint has been given in the year 2011 with false allegations. The Courts below, without properly appreciating the evidence, convicted the accused and it is not maintainable.

10. The learned Government Advocate(Crl.Side) appearing for the respondents submitted that the evidence of PW1 would show that she was subjected to harassment and cruelty by the accused and her evidence has been corroborated by PW2 to PW6, who are the parents and family members of PW1 and hence, there is no merit in the present revision case.

11. Point for consideration:

Whether the confirmation of the conviction and sentence of the accused for the offence under Sections 498(A) IPC by the learned Sessions Judge is fair and proper?

12. The marriage between the de-facto complainant and the accused was not denied. After marriage, they lived together as husband and wife at the house of the accused. According to the evidence of PW1, who is the de-facto complainant, they lived together only for nine months and thereafter, there was misunderstanding between themselves and the accused started to harass her by beating and demanding dowry. Her evidence reveals that in view of the problems between the couple, she was sent out of the matrimonial home. While she was living with her parents' house, she got a notice for divorce. Subsequently the accused himself came again and took her back with a promise that they would live together happily. However, on 13.04.2009, problem arose between the couple and she was beaten up and abused badly by the accused. Thereafter, she was not allowed to live with the accused and she got separated from him. At the time when the complaint was filed, PW1 was living in her parents' house. PW1 had stated in her evidence that on 06.11.2011, she heard through her brother that the accused got



married to some one else. Only on hearing the information that the accused got married once again, PW1 got visibly disturbed and lodged a complaint. There was nearly 1 ½ years gap from the date of the complaint.

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13. The learned Trial Judge has also observed that there was delay in making the complaint. However, he proceeded to convict the accused on the ground that there is no other reason for PW1 to get separated from her husband and she lived in her parents' house. But, in order to prove the guilt of the accused under Section 498-A IPC, it has to be proved that PW1 was subjected to cruelty. The cruelty should be of such a nature that the wife might be driven to commit suicide or to cause serious injury on her for the purpose of getting dowry like property or valuable security. It is relevant to extract the provisions of Section 498-A IPC.

''498A. Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or 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 meet such demand.]''

14. In the case in hand, the evidence of PW1 does not show what exactly was the demand of the accused. She has stated that the accused demanded dowry and she was beaten and scolded by him. The couple were happy for about 9 months from the date of their marriage. At the time when the notice for divorce was sent by the accused, PW1 was at her parents' house. Once again they re-united and started to live together. They got separated once again from 13.04.2009.

15. Had PW1 given a complaint immediately after she was sent out of her matrimonial house, it is understandable that she was forced to be at her parents' house only because of the harassment meted out to her. She lived at her parents house for nearly for 1 ½ years. Only on the date when she heard about the re-marriage of the petitioner/accused, she got prompted to give



a complaint. Until then, she neither opted to take steps for restitution of conjugal rights, nor gave any complaint for cruelty. The allegation that the accused got married once again is not proved and the accused got acquitted from the charge under Section 494 IPC. The main grievance of the de-facto complainant as it appears from her complaint is that the accused should not have married anyone else. So the complaint is nothing but an emotional reaction given by PW1 in hearing the news that the accused got married to some one else.

16. In the said circumstances and from the materials on record, I do not find anything that would prove the guilt of the accused in respect of the offence under Section 498-A IPC., The learned Trial Judge had convicted the accused on the presumption that there cannot be any other reason for PW1 to live in her parents' house, except harassment or marital cruelty. Since the learned Trial Judge and the learned First Appellate Judge did not understand the import of Section 498-A IPC in the above given circumstances of the case and proceeded to find the accused guilty for the offence under Section 498-A IPC. Hence, the judgments of the Courts below is liable to be set aside and the point is answered accordingly.

17. In the result, this Criminal Revision Case is allowed and the judgment of the learned III Additional District and Sessions Judge, Coimbatore, dated 16.11.2016 made in CrI.A.No.180 of 2015 is set aside. The petitioner/accused is on bail, pending this Criminal Revision Case. Since now, this Court has acquitted him of the charge under Section 498-A IPC, the bail bond, if any executed by him, shall stand cancelled. The fine amount, if any paid by him, shall be refunded to him.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

ssn

To

1.The III Additional District and Sessions Judge,
Coimbatore.

2.-do- through The Principle District and Sessions Judge,
Coimbatore.



3.The Judicial Magistrate (Additional Mahila Court),
Coimbatore.

4.-do- through The Chief Judicial Magistrate,
Coimbatore.

5.The Inspector of Police,
AWPS (West) B-2 R.S.Puram PS,
Coimbatore.

6.The Public Prosecutor,
Coimbatore.

7.The Public Prosecutor,
High Court of Madras,
Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court,
Madras

Crl.R.C.No.1696 of 2016

PMK (CO)
PR (15/02/2022)