



Bail Slip

The Appellant/Sole Accused namely Karunakaran S/o Sabapathy was directed to be released on bail order of this Court dated 08/05/2019 made in Crl.M.P.No.6443 of 2019 in Crl.R.C.No.414 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C. No. 414 of 2019

Karunakaran

....Revision Petitioner

Vs

State Rep by
The Inspector of Police
All Women Police Station
Kallakurichi
Crime No.37/2012

....Respondent

Prayer: The Criminal Revision Petition is filed under Section 397 of Cr.P.C. praying to call for the records pertaining to the judgment rendered by the Hon'ble III Addl. District & Sessions Court, Kallakurichi in Crl.A. No. 8/2019 dated 12.04.2019 confirming the judgment rendered by the Hon'ble Judicial Magistrate No.1, Kallakurichi in C.C.No.38 of 2014 dated 10.01.2019 and set aside the same by allowing the revision petition.

For Petitioner	:	M/s.A.G.Rajan
For Defacto complainant	:	Mr.N.Manokaran
For Respondent	:	Mr.S.Sugendran Government Advocate (Criminal Side)

ORDER

This Criminal Revision case has been filed against the Judgment passed by the learned III Additional District and



Sessions Judge, Kallakurichi in CrI.A.No.8 of 2019 dated 12.04.2019 confirming the order of the learned Judicial Magistrate No.1, Kallakurichi, in C.C.No.38 of 2014 dated 10.01.2019.

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2. The respondent police registered a case in Crime No.37 of 202 against the petitioner and nine others and after investigation, laid charge sheet before the learned Judicial Magistrate-I, Kallakkurichi, against the petitioner/A1 for the offence under Sections 498A, 494, 506(i) of IPC and Section 4 of Dowry Prohibition Act and as against A2 to A8 and A10 for the offences under Sections 109 and 506(i) of IPC and as against A9 for the offence under Section 494 and 506(i) IPC. The learned Magistrate taken the charge sheet on file in C.C. No.38 of 2014. On completion of trial and conclusion of arguments, the trial Court acquitted all the other accused from all the charges and convicted the petitioner alone for the offence under Section 494 IPC, however, acquitted him from the other charged offences. Challenging the order of conviction and sentence passed by the trial Court for the offence under Section 494 of IPC, the petitioner preferred an appeal before the Principal District and Sessions Judge, Villupuram. The learned Principal District and Sessions Judge, taken the appeal on file in CrI.A.No.8 of 2019 and made over the case to the III Additional District and Sessions Judge, Kallakurichi. The learned III Additional District and Sessions Judge, after hearing the arguments and considering the materials on record, dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate for the offence under Section 494 of IPC. Again challenging the said Judgment of dismissal of appeal, the petitioner has filed the present revision case before this Court.

3. Learned Counsel for the petitioner would submit that the prosecution failed to substantiate the charge framed against the petitioner for the offence under Section 494 of IPC. Further, none of the witnesses have spoken about the second marriage and no eye witnesses were produced and there is no documentary proof to show the second marriage of the petitioner and both the trial Court as well as appellate Court have failed to appreciate the same. It is the duty of the prosecution to prove the second marriage of the petitioner, when the first marriage was subsisting. Further, the documents relied on by both the Courts below are not sufficient to prove the second marriage of the petitioner and the Courts below have failed to appreciate the same. Only the admission made in the other proceedings has been relied on by the Magistrate and the appellate Court which is against the Principles of Law and therefore, the conviction



rendered based on the admission made by the petitioner in other proceedings is not sufficient to prove the second marriage of the petitioner. Therefore, the Judgments of both the Courts below are perverse and they are liable to be set aside.

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4. The Learned Government Advocate (Crl. Side) would submit that the petitioner himself has admitted his first marriage with the defacto complainant and he has also admitted that he left the matrimonial home. Though, the petitioner alleged that the defacto complainant had developed intimacy with another person namely Prabhu and she had voluntarily handed over the Thali (Mangal Suthra) to the petitioner and that the second marriage was not proved by the prosecution, however when the defacto complainant had filed a complaint before the Protection Officer under Domestic Violence Act, the same was referred to the Magistrate and in the said proceedings, the petitioner herein entered into the witness box and he himself admitted that the defacto complainant while leaving the matrimonial home had voluntarily removed Thali (Mangal Suthra) and handed over the same to the petitioner and thereby, he conducted second marriage with A9. Therefore, the admission is the best piece of evidence and based on the admission made by the revision petitioner in the Domestic Violence Act Proceedings, the trial Court convicted the petitioner and the prosecution proved its case beyond reasonable doubt.

5. Mr.Manoharan, appearing for defacto complainant has filed a petition to assist the prosecution. This Court permits Mr.Manoharan to make his submission and also to assist the prosecution.

6. Mr.Manoharan, appearing for defacto complainant would submit that in the earlier proceedings under the Domestic Violence Act, the petitioner himself admitted the second marriage with A9. Therefore, the admission is the best piece of evidence and no other material is required. Therefore, based on the admission given by the petitioner, both the trial Court as well as the appellate Court, found that the prosecution proved its case that the petitioner conducted second marriage with A9 when the first marriage of the petitioner with the defacto complainant was subsisting. Therefore there is no perversity in the Judgments of both the Courts below regarding appreciation of evidence and thereby, the revision Court cannot interfere with the findings given by both the trial Court as well as appellate Court. There is no merit in the revision and the revision is liable to be dismissed.



7. Heard the learned Counsel for the petitioner and learned Government Advocate appearing for the respondent police and the learned Counsel for the defacto complainant and also perused the materials on record.

8. The case of the prosecution is that the petitioner with the help of his parents and others, married A9 while the first marriage with the defacto complainant was subsisting. Hence, the complaint.

9. In this case, this Court has to see whether the petitioner married A9 as a second wife when the first marriage was subsisting with the defacto complainant. On the side of the prosecution totally 8 witnesses were examined and 5 documents were marked. Though there were no eye witnesses, the exhibits produced by the prosecution clearly proved that the petitioner himself voluntarily admitted that he conducted second marriage with A9 when the first marriage with the defacto complainant was subsisting. Further, he has not produced any document to show that he had obtained divorce from the defacto complainant in the manner known to law.

10. Insofar as the first marriage with the defacto complainant is concerned, it is well settled proposition of law that when the first marriage is in subsisting, without dissolving the marriage in the manner known to law, a man cannot conduct second marriage with other woman. If the first marriage is subsisting and if he conducts second marriage then it is an offence under Section 494 of IPC. As pointed out by the learned Government Advocate (Crl. Side) as well as Mr. Manoharan, the learned Counsel for the defacto complainant, the admission made by the petitioner in other proceedings is nothing but a previous statement which is a best piece of evidence and the trial Court as well as appellate Court have rightly appreciated the evidence and convicted the revision petitioner for the offence under Section 494 IPC.

11. As a revision Court, this Court cannot exercise the power as that of the trial Court or the appellate Court by re-appreciating or re-visiting the entire materials or evidence. The revision Court has to see as to whether there is any perversity in the appreciation of evidence. Unless there is perversity, normally the revision Court cannot interfere with the fact findings of the Courts below.



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12. This Court does not find any perversity in appreciation of evidence by both the Courts below. There is no merit in the revision and the revision is liable to be dismissed.

13. Accordingly, this Criminal Revision Case is dismissed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dsn/ksa-2

To

1. The III Additional District and Sessions Judge,
Kallakurichi.
2. The Judicial Magistrate No.I,
Kallakurichi.
3. -Do- Thro The Chief Judicial Magistrate,
Villupuram.
4. The Inspector of Police,
All Women Police Station,
Kallakurichi.
5. The Public Prosecutor
High Court, Madras.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.G.Rajan, Advocate Sr.47135
+1cc to Mr.N.Manokaran, Advocate Sr.46944

Cr1.R.C.No.414 of 2019

gmr[col]
srg 04/03/2022