



Bail Slip

The Petitioner herein/Accused viz Alwin Ebineser aged 44 years, S/o. Victor was directed to be released on bail as per the order of this Court dated 22.04.2015 made in M.P. No. 1/2014 in CrI.RC.No.853/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 08.03.2021
PRONOUNCED ON : 29.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN
CrI.RC.No.853 of 2014
(Through Video Conferencing)

Alwin Ebineser ...Petitioner/Accused

Vs

State by Inspector of Police
All Women Police Station, Vellore

...Respondent/Complainant

Prayer:- This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 13.08.2014, passed in CA.No.193 of 2011, by the I Additional District Sessions Judge, Vellore, confirming the judgement of conviction and sentence, dated 23.08.2011, passed in CC.No.117 of 2009, by the Judicial Magistrate IV, Vellore.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr.G.Ramar, GA

ORDER

1.This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 13.08.2014, passed in CA.No.193 of 2011, by the I Additional District Sessions Judge, Vellore, confirming the judgement of conviction and sentence, dated 23.08.2011, passed in CC.No.117 of 2009, by the Judicial Magistrate IV, Vellore, thereby convicting and sentencing the Petitioner/Accused for the offence under Section 498A of IPC to undergo one year Simple Imprisonment and to pay a fine of Rs.4,000/-, in default to undergo Simple Imprisonment for six months and for the offence under Section 4 of the Dowry Prohibition Act to undergo two years Simple Imprisonment and to pay a fine of Rs.4,000/-, in default to undergo six months Simple Imprisonment and ordering the sentences to run concurrently.

2.The Petitioner/Accused was charge sheeted for the offences under Sections 498A, 294(b), 506(ii) of IPC and 4 of the Dowry



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Prohibition Act, alleging that at the time of marriage between PW.1 and the Petitioner/Accused on 05.05.2005, PW.1 was given 5 sovereigns of jewels and sridhana articles and that after the marriage, the PW.1 was living with the accused as joint family and the Petitioner/Accused used to come home in a drunken mood frequently and assault her, demanding money and that her pregnancy ended in abortion and that she was harassed physically and mentally by the Petitioner/Accused, suspecting her fidelity and thereafter, the Petitioner/ Accused insisted her to abort her pregnancy for the second time and that the Petitioner/Accused demanded Rs.20,000/- as dowry and caused cruelty to her and that unable to bear with the harassment and cruelty, she went to her parent house and that on 23.03.2009 at 7.30 p.m. at Sipcot Bazaar, the Petitioner/Accused snatched the sacred thread of PW.1, by abusing her in a filthy language.

3. Before the Trial Court, PW.1 to PW.8 were examined and Ex.P1 and Ex.P2 were marked. On the side of the defence, neither any document was marked nor any witness was examined. The Trial Court found the Petitioner/Accused guilty and convicted and sentenced him, as stated above. In the appeal, the judgement of conviction and sentence of the Trial Court was confirmed. Hence, this Criminal Revision Case has been filed.
4. This court heard the submissions of the learned counsel on either side.
5. The learned counsel for the Petitioner would submit that the findings rendered by the courts below are perverse and that the courts below accepted the evidence of PW.1, PW.3 to PW.5 and PW.8 without cross examination of the said witnesses and that the judgements of the courts below are contrary to law and weight of evidence and hence, the matter may be remanded back to the trial court. The learned counsel would rely on the decisions reported in 2012 3 SCC Cri 1139 (Mohd. Hussain Vs. State), 2020 2 MLJ Cr1 389 SC (Anokhilal Vs. State of MP) and 1986 SCC Cri 166 (Suk Das Vs. Union Territory of Arunachal Pradesh).
6. On the other hand, the learned Government Advocate for the Respondent would submit that the Prosecution has proved its case, beyond all reasonable doubts, by adducing valid and cogent evidence and that both the courts below have considered the evidence both oral and documentary and convicted and sentenced the accused as stated above and there is no valid ground for acquitting the accused and hence, this Criminal Revision Case is liable to be dismissed.
7. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned



through the entire evidence available on record and also perused the impugned judgement.

8. The main grounds raised by the Petitioner/Accused are that PW.1, PW.2 to PW.5 and PW.8 were not cross examined by the accused and while so, the trial was concluded and an opportunity may be given to cross examine them, by remanding the matter.
9. The question that arises for consideration is as to whether the matter is to be remanded back to the trial court, by giving opportunity to the accused to cross examine the witnesses.
10. PW.1 is the victim and Petitioner/Accused is her husband. PW.2 is the mother of PW.1. PW.3 to PW.5 are the Members of Communist Party. PW.4 was the Assistant Secretary of the Labour Union, wherein the Petitioner/Accused was a Member and their marriage was conducted by the said Union. In chief, all the above witnesses have deposed about the harassment and cruelty meted out to her by the Petitioner/Accused. PW.8 is the Sub Inspector of Police, who registered the FIR.
11. Every endeavour should be made by the Trial Court to see that the trial is fair. Each one has an in-built right to be dealt with fairly in a criminal trial. However, though the power of retrial exists, it should not be exercised in a routine manner and should be exercised only when in the opinion of the appellate court, such course becomes indispensable to avert failure of justice. Further, this power cannot be used to fill up the lacunae by either side. A retrial is not a second trial and it is the continuation of the same trial and same Prosecution. Exercise of such power will depend on the facts and circumstances of each case, for which no straitjacket formula can be formulated.
12. In this case, though there were allegations of harassment and cruelty caused to the victim by the Petitioner/Accused and all the witnesses have also spoken to that effect, the core witnesses, namely, PW.1, PW.3 to PW.5 and PW.8 have not been cross examined by the Petitioner/Accused and thereby, there was a denial of opportunity to cross examine them to disprove the charges levelled against the Petitioner/Accused. On the other hand, it is not the case of the Prosecution that in spite of sufficient opportunity being given to the Petitioner/Accused to cross examine those witnesses, he failed to do so. As such, in the interest of justice, by giving one more opportunity to the accused to cross examine the witnesses to put forth his defence, the matter is required to be remanded for retrial.



13. Accordingly, while setting aside the impugned judgements of the courts below, the matter is remanded back to the Trial Court for conducting retrial from the stage of the Prosecution evidence only for the purpose of cross examining PW.1, PW.3 to PW.5 and PW.8. The Trial Court shall give opportunity to the Petitioner/Accused to cross examine PW.1, PW.3 to PW.5, and PW.8, by recalling them and shall further ensure that the trial is concluded, within a period of three months, from the date of receipt of a copy of this order. However, above exercise shall be done subject to the payment of costs of Rs.5,000/- to PW.1, each Rs.2,500/- to PW.3 to PW.5 and PW.8, by the Petitioner/Accused, within a period of two weeks from the date of receipt of a copy of this order.

14. In fine, with the above directions, this Criminal Revision Case is disposed of. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Srcm
To

1. The I Additional District Sessions Judge, Vellore
 3. The Chief Judicial Magistrate
Vellore (for confirmation)
 4. The Inspector of Police, All Women Police Station, Vellore
 5. The Public Prosecutor, Madras High Court, Madras
- +1 CC to Mr.R.Sankarasubbu, Advocate sr 26587.

Cr1.RC.No.853 of 2014

BS(CO)
SP(15/07/2021)