

Crl.M.P.Nos.8947 of 2021 and 8587 of 2021in
Crl.A.No.246 of 2012

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Crl.A.No.246 of 2012

RMT.TEEKAA RAMAN,J.,

(Reserved on : 30.09.2021)

(Pronounced on : 21.10.2021)

The convicted first appellant is the petitioner herein.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.R.Sankarasubbu, learned counsel appearing for the second respondent.

3. The Brief facts that are necessary for determination this C.M.P are as under:-

(i) A1 is the husband of defacto complainant/P.W.1 and A2 and A3 are parents of A1. A4 is the younger mother of A1. A5 is the husband of A4. A6 is the elder brother of A7. A7 is the relative of A1. A8 is the second wife of A1. A9 and A10 are the parents of A8. P.W.1 practicing advocate and she belongs to SC/ST. A1 and P.W.1 lead a matrimonial life at Ariyalur.

(ii) During 2001, P.W.1 requested A1 to take her to his native place at Rasipuram, Namakkal District for which A1 refused and told her that he would do so, if she would get cash or Rs.1 lakh as dowry

from her parents and also intentionally insulted her by using her caste name and also used criminal force against her by kicking on her stomach and beating her with hands. Further, P.W.1 questioned A1 about his second marriage. A1 to A3, A6 and A7 intentionally insulted P.W.1 by scolding and using her caste name and committed criminal intimidation to her by threatening her to cause her death if she would go for a case and to Court and left for his native after leaving P.W.1 in her parental house. P.W.1 expressed her inability to give dowry and thereby A1 left to her parental house.

(iii) Based on the complaint of P.W.1 (wife of A1), a case was registered in Rasipuram Police Station in Crime No.966 of 2002 under Sections 498(A), 352, 494, 506(i) I.P.C r/w.109 Cr.P.C and 4 of Dowry Prohibition Act and Section 3(1)(X)SC/ST Act on 26.10.2002.

(iv) The prosecution has examined 14 witnesses and marked 24 exhibits and no material object is marked. On the defence side, one witness D.W.1 was examined. No exhibit and no material object are marked on the side of the defence.

(v) The Trial Court by its judgment in S.C.No.196 of 2003, dated 28.03.2012, the petitioner/accused –1 was found guilty and convicted for the following offences:–

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U/s.4 of Dowry Prohibition Act	Sentenced him to undergo 1 year Simple Imprisonment and to pay fine of Rs.10,000/- in default to undergo 1 year Simple Imprisonment.
U/s.498(A) I.P.C	Sentenced him to undergo 1 year Simple Imprisonment and to pay fine of Rs.10,000/- in default to undergo 1 year Simple Imprisonment.
U/s.357 Cr.P.C	Sentenced him to undergo 5 year Simple Imprisonment and to pay fine of Rs.10,00,000/- is to be paid to P.W.1 and her child Tamil Amudhan as by way of compensation
U/s.3(1)(x) of SC/ST Act	Sentenced him to undergo 1 year Simple Imprisonment and to pay fine of Rs.10,000/- in default to undergo 1 year Simple Imprisonment.
U/s.506(ii) I.P.C	Sentenced him to undergo 1 year Simple Imprisonment and to pay fine of Rs.5,000/- in default to undergo 6 months Simple Imprisonment

The above sentences shall run concurrently.

(vi) The petitioner/appellant filed a Criminal Appeal petition vide C.A.No.246/2012 before the High Court of Madras and the same was came up for hearing on 16.02.2018 and the same was dismissed for non-prosecution since the petitioner's counsel has not appeared before the Court on 16.02.2018.

(vii) Aggrieved over the above order, the petitioner/A1 preferred a Special Leave Petition before the Hon'ble Supreme Court of India in C.A.no.809/2021 and the Hon'ble Supreme Court on 08.07.2021 has directed the petitioner to first surrender and produce surrender certificate and thereafter the appeal will be remitted back to the High Court for consideration on its own merits. Accordingly, on 30.07.2021,

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A1 to A8 surrendered themselves before the Trial Court and A9 on 02.08.2021 and A1, A4, A5 and A7 are lodged in Central Prison, Coimbatore and A2, A3, A6 and A8 are lodged in Women's Jail, Thorapadi, Vellore. During the pendency of the case, A5 has died.

(viii) On 12.08.2021 has disposed of the C.A.No.809 of 2021 with the following order:-

"9. Accordingly, we have no hesitation in setting aside the impugned judgment and order and relegate the parties before the High Court for hearing of Criminal Appeal No.246/2012 afresh on its own merits and in accordance with law".

4. After order of re-hearing passed by the Hon'ble Supreme Court in the above said all the accused convicted appellants were surrendered before the concerned Magistrate Court and remanded to Judicial custody and thereafter moved the bail.

5. This Court has considered the bail application No.8950 of 2021 for all other accused, except A1 and after hearing the parties the suspension of sentence and grant of bail was ordered on 07.09.2021. Since there was a charge under the SC&ST Act, notice was given to P.W.1 and Mr.Sankarasubbu, learned counsel appearing for the second respondent has filed his objections.

6. The learned counsel for the petitioner submitted that the petitioner herein was convicted for an offence under Section 494 I.P.C along with the other offences as stated supra.

7. The learned counsel for the petitioner submitted that the first accused and P.W.1 are advocates. While they are studying in a Law College, they were college mates and they have intend to have love marriage and therefore dowry or any demand whatsoever will not arise and further stated that P.W.1 being an Advocate filed the complaint after 6 months and hence delay was not properly explained regarding demand of dowry. The alleged second marriage is totally false and the essential ingredients for charge under Section 494 (A) I.P.C is not made out.

8. (i) Heard the learned counsel for P.W.1 and he could contend that A1 is a practicing advocate in Ariyalur, belongs to Hindu Barkava Kula Mooppanar, a backward community. P.W.1 was staying in Rasipuram with her parents even after marriage. It is alleged that A1 is demanding Rupees one lakh towards dowry and also to take P.W.1 to his house in Ariyalur. When she was unable to pay A1 and he left her in Rasipuram with her parents and went away.

(ii) On 03.02.2002 at 7PM when P.W.1 requested A1 to take her child to parents home at Ariyalur. A1 is alleged to have demanded

Rupees One Lakh. Since he wasn't paid, he committed cruelty on P.W.1. On 30.06.2002, A1 is alleged to have married A8. Hence, it is alleged that A2 to A10 had abetted A1 to commit bigamy.

9. The learned Government Advocate could contend that on earlier occasion after obtaining the bail, all the accused has not persuaded the Criminal Appeal and allowed the appeal for dismissal by virtue of the order passed by the Hon'ble Supreme Court, the said order of dismissal was set aside and the matter was directed to be re-heard on merits.

10. After hearing the rival submissions and after perusing the documents filed along with the bail applicaiton, I find that A1 was convicted for offence under Sections 4 of Dowry Prohibition Act, 498(A) I.P.C, 506 (ii), 494 and 3(1)(x) of SC&ST Act. A2 and A5 died pending appeal and hence the charges against them are stand abated and A7 is already acquitted of all charges by the learned Sessions Judge.

11. A1 and P.W.1 are Advocates. They had a love marriage and it was registered on 05.04.2021. P.W.1 belongs to Adidravida Scheduled Caste. A1 belongs to Bargava Kula Mooppanar, a backward community and hence, complainant for an offence under Section 3(1)(x) of SC&ST Act is held to be maintainable and on committal, the cognizance

taken by the learned Session Judge cannot be found fault.

12. (a) The crux of the issue is that P.W.1 has demanded Rs.1 Lakh as a dowry and also laid as a pre-condition to take P.W.1 to his house at Ariyalur. The alleged date on 03.02.2021 at about 7.00 P.M when P.W.1 had requested A1 to take her child to the parents house. A1 alleged to have demanded Rs.1 lakh and subsequently on 30.06.2012 to A1 alleged to have married A8 during the subsistence of marriage between A1 and P.W.1 and hence the charge for bigamy.

(b) When the same was questioned by P.W.1 on 08.09.2012 about A1's marriage with A8 in the house of A2 it is the evidene of P.W.1 that A1, A2, A3, A6 and A7 have uttered caste word in the public view so is the finding by the learned Session Judge.

(c) With regard to the charge under Section 498(A) of I.P.C there is a specific finding. During the pendency of the appeal, he was granted bail. Subsequently, he failed to conduct himself properly and not conducted the case before the Court when the case was listed and resulted in dismissal of the Criminal Appeal for default.

(d) Thus, I find that A1 having obtained suspension of sentence he has not interested to conduct the appeal and allowed the appeal to dismissal for non-prosecution. The Investigation Officer have also expressed apprehension that in the event the being the suspension

and he will be flee away and will not be available to conduct the case once again.

13. Considering the provisions conducted of A1 he being an Advocate should know what should not be done, when he was a convicted person. In this view of the matter, I am not inclined to suspend of sentence.

14. Accordingly,

(i) This Crl.M.P is **dismissed**.

(ii) The Registry is directed to make the additional typed set of papers after collection of all the necessary documents and connected papers both from the lower Court as well as the Hon'ble Supreme Court in the above said S.L.P.

(iii) Post the matter before the roaster Court on 15.11.2021.

(iv) The Registry is directed to print the name of Mr.Sankarasubbu, learned counsel for P.W.1 in the cause list when the case is listed for final disposal.

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(v) In view of the order passed by the Hon'ble Apex Court in Crl.A.No.809 of 2021 dated 12.08.2021 wherein the order of dismissed for default has been set aside by the Hon'ble Supreme Court, no separate order is necessary in Crl.M.P.No.8587 of 2021 and accordingly the same stands closed.

21.10.2021

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Speaking order: Yes/No

Internet : Yes/No



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Order in
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