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BAIL SLIP

The Petitioner / accused viz., Murthy @ Munusamy aged 35 years S/o.Kasi was directed to be released on bail vide order in CrI.M.P.No.3806 of 2017 in CrI.R.C.No.410 of 2017 dated 13/03/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

CrI.R.C.No.410 of 2017

Murthy
S/o.Kasi

...Petitioner / Accused

Vs.

State rep by
Inspector of Police,
All Women Police Station,
Gummidipoondi.
Thiruvallur District.
(Crime No.2/2012)

...Respondent / Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the judgment passed by the learned Principal District and Sessions Judge, Thiruvallur in C.A.No.104 of 2014 dated 23.08.2016 confirming the judgement made by the Learned Judicial Magistrate-I, Ponneri in C.C.No.84 of 2012 on 09.12.2014.

For Petitioner : Mr.S.N.Arun Kumar

For Respondent : Mr.A.Gopinath
Government Advocate (CrI.Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment of the learned Principal District and Sessions Judge, Thiruvallur dated 23.08.2016 made in C.A.No.104 of 2014 which modified (in respect of the sentence alone, but confirming the findings with regard to the guilt of the accused) the judgment of the learned Judicial Magistrate-I, Ponneri dated 09.12.2014 made in C.C.No.84 of 2012.



2. The de facto complainant is wife of the first accused. They married on 19.04.2001 and they have been living together as husband and wife at the house of the first accused. They also blessed with a girl child through their wedlock. On 29.01.2012 at about 2.00 p.m, the first accused assaulted PW1 with iron box and injured her. The occurrence is said to have taken place when PW1 questioned the first accused about his alleged illegal intimacy with one woman. It is further alleged that the first accused had demanded jewels and money from the de facto complainant.

3. On the complaint given by PW1, Ms.Devika/Sub Inspector of Police, All Women Police Station, Ponneri registered a case in Crime No.2 of 2012 for the offence under Sections 498(A), 323, 324 and 506(ii) IPC read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After registering the case, she took up the investigation, examined the witnesses and the Doctor, who treated PW1 and got wound certificate. After completing her investigation, she filed the charge sheet against the accused for the offence under Sections 498(A), 323, 324 and 506(ii) IPC read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After the case was taken on file and on consideration of the materials available on record, the learned trial Judge framed the charges against the accused for the offence under Sections 498(A), 323, 324 and 506(ii) IPC read with Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and the accused was questioned. Since the accused denied the charges and claimed to be tried, trial was conducted.

4. During the course of the trial, on the side of the complainant, 7 witnesses have been examined as PW1 to PW7 and 3 documents were marked as Exs.P1 to P3. On the side of the defence, no witness was examined and no document was marked.

5. At the conclusion of trial and considering the materials available on record, the learned trial Judge found the first accused guilty for the offence under Sections 498(A) IPC and convicted and sentenced him to undergo Rigorous Imprisonment for One Year and to pay a fine of Rs.3,000/- in default Simple Imprisonment of One Month. The first accused was acquitted from rest of the charges and the other accused were acquitted from the case. The appeal preferred by the first accused in C.A.No.104 of 2014 was partly allowed by modifying the sentence alone by ordering the accused to undergo Rigorous Imprisonment of Six months. However, the finding as to the guilt of the accused was confirmed by the Appellate Court. Aggrieved over that, the first accused has preferred the present revision.

6. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent. Perused the entire materials available on record.



7. The learned counsel for the revision petitioner/first accused submitted that despite the de facto complainant has alleged that she was assaulted by the first accused and got injured, no medical proof is produced to substantiate the said allegation; PWs4 to 7 turned hostile and they did not support the case of the prosecution and the evidence of PWs1 to 3 also did not support the case of the prosecution; the Investigation Officer was not examined; the learned trial Judge had omitted to give benefit of doubt to the accused by appreciating the evidence in proper perspective.

8. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that in the offences of this nature, the evidence of the victim (PW1) alone is sufficient to convict the accused, if the evidence is found to be reliable. Since the Court below found the evidence of victim is reliable, the first accused was found guilty and convicted.

9. Point for consideration:-

Whether the punishment of the accused for the offence under Section 498(A) IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

10. On perusal of the records, it is seen that the marriage between the first accused and the de facto complainant was not denied. They had a female child born out of their marriage was also not denied. PW1 is differently-abled woman and it is alleged that from the date of marriage, she had put to several harassment by the first accused and his relatives. But, however in her evidence, she has not stated anything against the first accused with regard to the demand of the dowry. She has alleged that the first accused was in illegal intimacy with another woman and married some other woman when his marriage with PW1 was subsisting. When she questioned this, the first accused got wild and attacked her with iron box. A specific event which had taken place on 29.01.2012 has triggered PW1 to give this complaint. Despite the marriage had taken place on 18.03.2002, no complaint for harassment or demand for dowry was made until 29.01.2012. PW1 had stated in her evidence that subsequent to the complaint, there was some negotiations held between PW1 and the elder members of the family of the first accused. Believing the assurance given by the elders, PW1 went back to the house of the first accused. She has further stated that even thereafter she was ill-treated by the first accused.

11. So far as the cause of action for this case is concerned, it relates back to the event that had occurred on 29.01.2012. After the case was registered, PW1 had condoned his acts and went to his house and lived with him for some time. If



PW1 was affected thereafter, she ought to have filed another complaint only. The Doctor, who had treated PW1 and the Investigation Officer were not examined in this case as witnesses. Hence, the prosecution had failed to prove the alleged occurrence and the injuries sustained by PW1 and her treatment as an inpatient in the hospital. The learned Trial Judge had overlooked the above material aspects and proceeded to convict the accused. The learned First Appellate Judge also did not appreciate the evidence on record and other attending circumstances in proper perspective. Hence, it is liable to be reversed.

12. In this context, it is also relevant to mention that as per the submission of the learned counsel for the petitioner, the de facto complainant and the first accused had dissolved their marriage and now they are living separately.

13. In the result, this Criminal Revision is allowed. The judgment dated 23.08.2016 made in C.A.No.104 of 2014 on the file of the learned Principal District and Sessions Judge, Thiruvallur is hereby set aside.

Sd/-
Assistant Registrar (CS-II)

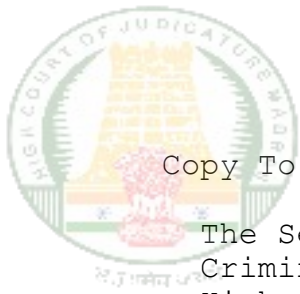
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Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.I,
Ponneri.
- 2.The Chief Judicial Magistrate,
Thiruvallur.
- 3.The Principal District and Sessions Judge,
Thiruvallur.
- 4.The Inspector of Police,
All Women Police Station,
Gummidipoondi.
Thiruvallur District.
- 5.The Public Prosecutor,
High Court of Madras,
Chennai-104.



Copy To

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

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Cr1.R.C.No.410 of 2017

AD(CO)
RVM(07/02/2022)