



Bail Slip

The Petitioners/Accused/viz Balachandran @ Babu, S/o.Krishnappa, Nagarathinamma, W/o.Krishnappa, Gujji, d/o.Venkatasamy directed to be released on bail as per the order of this Court dated 10.10.2019 made in CrI.M.P.No.14467 of 2019 and 14468 of 2019 in CrI.R.C.No.1063 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C. No.1063 of 2019

1. Balachandran @ Babu
S/o. Krishnappa
 2. Nagarathinamma,
W/o. Krishnappa
 3. Gujji,
D/o. Venkatasamy
- ... Petitioners/Appellants/Accused
- Vs-

State rep. By
The Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri District.
(Crime No.37 of 2013) ... Respondent/Respondent/Complainant

Prayer : Criminal Revision Case filed under Section 397 (1) and 401 of Criminal Procedure Code, praying to call for the records pertaining to the judgment in C.A.No.1 of 2017 dated 23.07.2019 passed by the learned Additional Sessions Judge, Krishnagiri confirming the judgment in C.C.No.20 of 2014 dated 23.10.2016 passed by the learned Judicial Magistrate-I, Hosur, Krishnagiri District, set aside the same.

For Petitioners : Mr.A.Balamurugan for
Mr. K.Selvakmaraswamy

For Respondent : Mr.C.Raghavan,
Government Advocate (CrI. Side)



O R D E R

WEB COPY (This case has been heard through video conference)

The respondent police registered a case against the petitioners in Crime No.37 of 2013 for the offence under Section 498(A) and 494 of I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

2. After investigation, the respondent police laid a charge sheet before the Judicial Magistrate No.1, Hosur. After completing formalities and after framing charge, the learned Judicial Magistrate had taken the charge sheet on file in C.C.No. 20 of 2014 for the offence under Section 498-A, 494 of I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. In order to substantiate the charge, on the side of prosecution, during trial, 7 witnesses were examined as P.W.s 1 to 7 and 4 documents were marked as Exhibits P1 to P4. The learned Judicial Magistrate after conclusion of trial, had found the 1st Petitioner/A1 guilty for the offence under Sec.498(A) I.P.C. and 494 I.P.C., 2nd petitioner/A2 was not found guilty for offence under Sec.494 I.P.C. and found guilty for the offence under Section 4 of Dowry Prohibition Act, 3rd petitioner/A3 was not found guilty for the offence under Section 498-A I.P.C. and found guilty only for the offence under Section 494 I.P.C. The 1st petitioner/A1 was convicted for the offence under Section 498-A and 494 of I.P.C. and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.2000/-, in default, to undergo 3 months simple imprisonment for the offence under Section 498-A and he was convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.2000/-, in default, to undergo 3 months simple imprisonment for the offence under Section 494 I.P.C. The 2nd petitioner/A2 was convicted and sentenced to undergo 6 months simple imprisonment and to pay a fine of Rs.1000/-, in default, to undergo two months simple imprisonment under Section 4 of Dowry Prohibition Act. The 3rd petitioner/A3 was convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.2000/-, in default, to undergo one year rigorous imprisonment for the offence under Section 494 I.P.C. Challenging the said judgment of conviction and sentence, all the accused filed an appeal before the learned Principal Sessions Judge, Krishnagiri. The learned Principal Sessions Judge has taken the appeal on file in CrI. A.No. 1 of 2017 and made over to the learned Additional Sessions Judge, Krishnagiri for disposal in accordance with law.



3. The learned Additional Sessions Judge, after hearing arguments and also on perusal of the grounds of appeal, as a fact finding court had dismissed the criminal appeal and confirmed the conviction and the sentence passed by the Trial Court. Neither on the side of prosecution nor the victim had filed any appeal against acquittal. Challenging the said judgment of appellate court, all the accused have filed the present Criminal Revision Case before this Court.

4. The learned counsel for petitioners would submit that the appellate court failed to re-appreciate the case of defence that the P.W.1 separated from the 1st petitioner on her own and in her cross-examination, she admits that she has no intention to live with the 1st petitioner. Further, the appellate court failed to consider the evidence of PW.2 and PW.2 in her cross-examination stated that her daughter P.W.1 did not give her willingness to live with the 3rd petitioner. However, the 1st petitioner and P.W.1 were living separately from the year 2007. Further, there is an inordinate delay in filing the complaint with regard to the alleged demand of dowry and cruelty and the alleged complaint was filed only in the year 2013 and there is no explanation given for the delay in filing the complaint, which is fatal to the case of prosecution. The 1st and 3rd petitioners were convicted for the offence under Section 494 I.P.C. only based on the oral evidence of P.Ws.1 and 2 that the 1st petitioner got married with the 3rd petitioner. The appellate court has also confirmed the conviction and sentence passed by the Trial Court and failed to re-appreciate the evidence and there is no proof that the 1st petitioner got married with the 3rd petitioner during the subsistence of marriage with P.W.1. The appellate court failed to appreciate the evidence adduced before the trial court. Therefore, to set aside the judgment of lower appellate court, the present Criminal Revision Case has been filed.

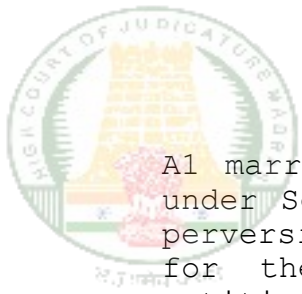
5. The learned Government Advocate (Crl. Side) appearing for respondent State would submit that the complaint was given only after the 1st petitioner got married with the 3rd petitioner. Though the 1st petitioner has not disputed the fact that the 1st petitioner got married with P.W.1 and they are living separately without obtaining divorce or dissolving the marriage legally. P.W.1 is the legally wedded wife and without obtaining the divorce under the due process of law and during the subsistence of first marriage, the 1st petitioner has got married with the 3rd petitioner and the evidence of P.W.1 and 2 would prove the same and the 1st petitioner has also not denied the marriage between A1 and A3. The main defence taken by the petitioners is that P.W.1 left 1st petitioner/A1 without any valid reason and living separately from the year 2007 onwards. Therefore, the defence



itself would show that the 1st petitioner admitted the marriage with P.W.1 and there is no proof to show that the marriage between P.W.1 and first petitioner was subsequently dissolved by due process of law. Therefore, even on the date of second marriage, the first marriage was in subsistence and P.W.1 was the legally wedded wife of the first petitioner. Therefore, the offence under Section 494 I.P.C. against A1 and A3 was proved by the prosecution. The 2nd petitioner/A2, who is mother of A1 was accused of demanding dowry from P.W.1. However, P.W.1 could not prove the dowry demand made by the 2nd petitioner and that A2 had caused cruelty, due to which, P.W.1 left the matrimonial home. However, prosecution has not proved the offence against the 2nd petitioner about the cruelty due to dowry demand and she also participated in the second marriage of her son. Though the 2nd petitioner was acquitted for the offence of cruelty and the second marriage, the prosecution has proved the demand of dowry, and hence, the Trial Court convicted the 2nd petitioner only for the offence of Section 4 of Dowry Prohibition Act. However, the prosecution has not proved the offence against the 1st petitioner that he demanded dowry, however, proved that he had caused cruelty on the P.W.1 and also conducted second marriage when the subsistence of first marriage with P.W.1. Therefore, there is no merit in this Criminal Revision Case and the same is liable to be dismissed.

6. I have heard submissions on either side and perused the records carefully.

7. Admittedly, the 1st petitioner was charged for an offence under Section 498-A and 494 of I.P.C. and Section 4 of Dowry Prohibition Act. The 2nd petitioner was charged for offence under Section 498-A and also under Section 4 of Dowry Prohibition Act and the 3rd petitioner was charged for offence under Section 494 of I.P.C. After framing the charge, the Trial Court found guilty of the 1st petitioner for offence under Section 498-A and 494 I.P.C. and convicted and sentenced as stated above. The 2nd petitioner was convicted for the offence under Section 4 of Dowry Prohibition Act and sentenced as above. The 3rd petitioner was convicted for offence under Section 494 I.P.C. and sentenced as above. The main defence of the prosecution is that A1 got married with P.W.1 and during subsistence of marriage, he had caused cruelty on P.W.1 and A2 demanded dowry. From the evidence of P.W.1, it is proved that since P.W.1 could not meet the demand of dowry, A1 got married with A3 during the subsistence of marriage between A1 and P.W.1, they have committed the offence under Section 498-A, 494 I.P.C. and Section 4 of Dowry Prohibition Act. The materials would show that the marriage between A1 and P.W.1 was not legally dissolved. Therefore, the marriage between P.W.1 and A1 is subsisting and the P.W.1 is the legally wedded wife of A1. During the subsistence of marriage,



A1 married A3. Therefore, A1 and A3 have committed the offence under Section 498-A and 494 I.P.C. This Court does not find any perversity on the conviction recorded by both the courts below for the offence under Section 494 I.P.C. against the 1st petitioner/A1 in this case. As far as Section 498-A I.P.C. is concerned, P.W.1 has clearly deposed that A1 caused cruelty and P.W.2 also corroborated the same. P.W.3 and P.W.5 also supported the same. Therefore, the findings against A1 for the offence under Section 498-A also proved by the prosecution and since during the subsistence of first marriage, A1 conducted second marriage with A3, the conviction recorded against A3 for the offence under Section 494 I.P.C. was also proved and there is no perversity in the said finding. As far as 2nd petitioner is concerned, the evidence of P.W.1 and P.W.2 clearly shows that A2 demanded dowry. Therefore, the conviction recorded against A4 for the offence under Section 494 I.P.C. was also proved by the prosecution in the manner known to law.

8. As the scope of revision is limited, the Revision Court cannot exceed its jurisdiction, especially, this Court cannot re-appreciate the evidence on fact findings and substitute its own reason. The reading of entire materials and the reading of judgments of both the courts below, this Court does not find any perversity in appreciation of evidence by both courts below. A plain reading of the complaint, deposition of prosecution witnesses and the documents marked by the prosecution, this Court does not find any perversity in appreciation of evidence and the Trial Court has rightly appreciated the evidence produced before the Trial Court. The Appellate Court, as a fact finding court has re-appreciated the entire evidence, this Court does not find any reason to interfere with the findings of courts below and as a Revisional Court, this Court also does not find any perversity in the findings of both the courts below. Hence, there is no merit in this Revision and accordingly, this Criminal Revision Case stands dismissed.

Sd/-

Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

rpp

To

1. The Judicial Magistrate -I,
Hosur, Krishnagir District.



2. -do-through Chief Judicial Magistrate,
Krishnagiri.

3. The Addl. Sessions Judge,
Krishnagiri.

4. -do- through Principal Sessions Judge,
Krishnagiri.

5. The Public Prosecutor,
High Court, Madras.

Copy To

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

+1cc to Mr.K.Selvakmaraswamy, Advocate SR.No.41197

Crl.R.C.No. 1063 of 2019

KV(CO)
GMY(02/03/2022)