



BAIL SLIP

That the Appellant / Accused namely Kathavarayan S/o.Velu was released on bail as per order of this court dated 24.02.2020 made in Crl.M.P.No.19079 of 2019 in Crl.R.C.No.1500 of 2019 of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1500 of 2019

Kathavarayan

...Petitioner/Accused-1

vs.

State Rep. By
The Inspector of Police,
All Women Police Station,
Arni.

...Respondent/Complainant

Prayer: This Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the Judgment passed by the Learned Additional District Judge, Fast Track Court, Arni in Crl. A. No.8 of 2016 dated 22.10.2019 confirming the Judgment passed by the Learned Judicial Magistrate, Arni in C.C.No.92 of 2012 dated 11.02.2016 and allow the above Criminal Revision Petition.

For Petitioner : Mr.C.Samivel

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

The present criminal revision has been filed to set aside the judgment passed by the learned Additional District Judge, Fast Track Court, Arni in Crl.A.No.8 of 2016 dated 22.10.2019 confirming the judgment passed by the learned Judicial Magistrate, Arni in C.C.No.92 of 2012 dated 11.02.2016 and allow the above criminal revision petition.



2. The respondent-police registered a case in Crime No. 01 of 2012 against the petitioner and others for the offence under Sections 498(A), 406, 494, 506(i) of IPC and Section 4 of Dowry Prohibition Act, 1961. After investigation, the respondent/police laid a charge sheet before the learned Judicial Magistrate, Arni. After completing the formalities, the learned Judicial Magistrate taken the charge sheet on file in C.C.No.92 of 2012.

3. After framing charges, on completion of trial, hearing arguments advanced on either side and considering the materials, the learned Judicial Magistrate found guilt of the petitioner for the offence under Section 498(A) of IPC and he was convicted and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo further period of 3 months simple imprisonment and acquitted for all other offences. Challenging the said judgment of conviction and sentence, the petitioner/1st accused has filed an appeal before the learned Principal District and Sessions Judge, Tiruvannamalai District.

4. The learned Principal District and Sessions Judge taken the appeal on file in Crl.A.No.8 of 2016 and made over the same to the Additional District Judge (FTC) Arni, Thiruvannamalai District. After hearing the appeal, the Additional District Judge (FTC), Arni, by an order dated 22.10.2019, dismissed the appeal and confirmed the judgment of the learned Judicial Magistrate. Challenging the said judgment of conviction and sentence, the petitioner/1st accused has filed the present revision before this Court.

5. The learned counsel for the petitioner would submit that the prosecution has not proved its case that the petitioner/1st accused married the 4th accused, while the first marriage was in subsistence, and further, there is no witness to spoke about the marriage between A1 and A4. The Court below rightly acquitted both the petitioners for the offence under Section 494 IPC and also there is no demand of dowry and there is no threat. However, wrongly convicted the petitioner for the offence under Section 498(A) IPC.

6. Even though there is no material to show that there was cruelty, the petitioner was convicted for the offence under Section 498(A) and also Section 4 of Dowry Prohibition Act 1961, but he cannot be convicted for the offence under Section 498(A). None of the witnesses have spoken about the cruelty and due to the previous motive, the respondent/police foisted a false case against the petitioner/1st accused and prosecution tried to establish its case beyond reasonable doubt. However, he filed an appeal before the Appellate Court. The Appellate Court without



considering the material facts and the evidence independently, only endorsed view of the learned Magistrate and simply dismissed the appeal, which warrant interference.

7. Learned Government Advocate (Crl.Side) appearing for the respondent would submit that the 1st accused is the husband of the PW.1 and P.W.2 gave a complaint stating that after the petitioner/1st accused married the 4th accused during subsistence of marriage with P.W.1 and he caused cruelty to PW.1 and PW.2 is the mother of the 4th accused and she has also reiterated the evidence of P.W.1/1st wife of the Petitioner/1st accused is clearly shows that the petitioner caused cruelty on PW.1 and the Trial Court and Appellate Court acquitted the petitioner from other charges and however, convicted him for the offence under Section 498(A) and there is no merit in the revision.

8. Heard both sides and perused the materials available on record.

9. Admittedly, P.W.1 is the wife of the petitioner/1st accused. Though PW.1 gave a complaint before the respondent-police stating that the petitioner is torturing and beating her and that the 4th accused is the wife of the petitioner and therefore, PW.2 who is the mother of PW.4, also gave a complaint against the 1st accused for kidnapping her daughter/4th accused and also deposed about the second marriage between the 1st accused and the 4th accused and they are living as husband and wife.

10. Though both the Courts delivered judgment in favour of prosecution on considering the evidence of PW.1/the 1st wife of the 1st accused and PW.2/the mother of the 4th accused that during subsistence of marriage between the petitioner and PW.1, he kidnapped the 4th accused, there is no material evidence in that regard. However, from the evidence of PW.1, which clearly shows that the 1st accused caused cruelty on PW.1 and therefore, from the evidence of PW.1, the prosecution has proved its case. In the cases of this nature, the evidence of victim alone can be taken into consideration.

11. It is well settled proposition of law that the revision court cannot step into the shoes of the Appellate Court and re-visit and re-appreciate the entire materials independently. The Revisional Court has to see as to whether there are any perversity in the appreciation of the evidence.

12. On reading of the evidence of PW.1, PW.2, PW.9 shows that the 1st accused and the 4th accused are living together as husband and wife and even though the marriage was not proved and the 1st accused is giving mental and physical torture to PW.1/the



1st wife of the petitioner and therefore, the Trial Court rightly appreciated that when the 1st marriage is in subsistence, the 1st accused has extra marital relationship and as consequence thereof, used to beat his wife and give mental and physical torture to PW.1 and thereby, caused cruelty to PW.1 and therefore, this Court does not find any perversity in appreciation of the evidence and there is no merit in the revision and revision is liable to be dismissed.

13. Accordingly, the criminal revision is dismissed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Arni.
2. The Chief Judicial Magistrate,
Thiruvannamalai.
3. The Additional District Judge,
Fast Track Court, Arni.
4. The Inspector of Police,
All Women Police Station,
Arni.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Samivel, Advocate, S.R.No.41401

Cr1.R.C.No.1500 of 2019

MG(CO)
RGA(18/10/2021)