



Bail Slip

The Appellant/Sole Accused Maharajan was directed to be released on bail order of this Court Dated 09.01.2017 and made in Cr1.MP(MD)No.190/2017 in Cr1.RC(MD)No.22/2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Cr1.R.C.(MD) No. 22 of 2017

Maharajan : Petitioner/1st Appellant/Accused No.1

Vs.

The State rep. by,
The Inspector of Police,
All Women Police Station,
Tirunelveli Rural.
(Crime No.21 of 2012).

: Respondent/Respondent/
Complainant

PRAYER: The Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the judgment passed by the Additional Mahila Court, Tirunelveli in C.C.No.543 of 2013, dated 08.10.2015, which has been confirmed by the learned III-Additional District and Sessions Judge, Tirunelveli in C.A.No.115 of 2015, dated 25.11.2016 and set aside the same and consequently acquit the petitioner from all the charges.

For Revision Petitioner	: Mr.R.Anand
For Respondent	: Mr.M.Muthumanikkam
	Government Advocate (Crl.side)

JUDGMENT

The present Criminal Revision Case has been filed to check the correctness of the judgment, dated 25.11.2016, made in C.A.No.115 of 2015 on the file of the III-Additional District and Sessions Judge, Tirunelveli, wherein, the judgment rendered by the Additional Mahila Court, Tirunelveli in C.C.No.543 of 2013, dated 08.10.2015 was modified.

2.Before the trial Court, the respondent police filed a charge sheet against the revision petitioner and 5 other accused alleging that they have committed the offences punishable under Sections 498(A), 294(b), 506(i) and 406 of IPC r/w Section 4 of Dowry Prohibition Act.



3.After full-fledged trial, the learned trial Court found the revision petitioner and the other accused are guilty for the following offences and accordingly, they were convicted and sentenced as follows:-

Accused	Section	Sentence
A1, A2, A4 & A5	498 (A) IPC	Convicted and sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.1,000/- in default to undergo 1 week simple imprisonment.
A1, A2, A4 & A5	Section 4 of Dowry Prohibition Act	Convicted and sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/- in default to undergo 1 week simple imprisonment.
A 3 & A6	498 (A)	Convicted and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of 1 week.
A3 & A6	Section 4 of Dowry Prohibition Act	Convicted and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 1 week. (the sentences are run concurrently)

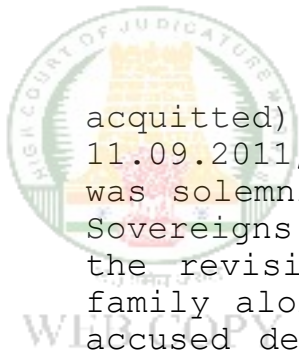
and acquitted the accused from the other charges.

4.Challenging the said conviction and sentence, all the accused preferred an appeal in C.A.No.115 of 2015 before the III-Additional District and Sessions Judge, Tirunelveli, wherein, the judgment, dated 25.11.2016, the learned Sessions Judge had partly allowed the appeal by confirming the conviction and sentence awarded in favour of the revision petitioner/1st accused under Section 498(A) of IPC and Section 4 of Dowry Prohibition Act. In respect to the other accused, the appeal prepared by them has been allowed and the conviction and sentence awarded in their favour are all set aside. In the said circumstances, to check the correctness of the conviction and sentence awarded, the first accused/revision petitioner is before this Court with this Criminal Revision Case.

5.The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

(i)The revision petitioner Maharajan is the husband of P.W.1-Valli. The Accused Nos.2 and 3 (now acquitted) are her father-in-law and brother-in-law respectively. The Accused Nos. 4 to 6 (now

<https://hcservices.mca.gov.in/hcservices/>



acquitted) are the brothers of the revision petitioner. On 11.09.2011, the marriage between the revision petitioner and P.W.1 was solemnised. During their marriage, the parents of P.W.1 gave 25 Sovereigns of gold jewels and Rs.25,000/- as a Sridhana property to the revision petitioner. After the marriage, P.W.1 leads a joint family along with all the accused. In the said occasion, the first accused demanded the P.W.1 to bring Rs.1,00,000/- and one Bike as additional dowry for the purpose of searching a house in Ernakulam, wherein, he run a hotel business.

(ii)Further, during such time, the first accused stated that Sridhana properties given at the time of marriage was his personal property. When the said occurrence had reported to the other accused, they were abused the P.W.1 by saying that her father cheated them. Further, they were made threatening that they proposed to perform second marriage to the revision petitioner.

(iii)Even after celebrating the Deepavali, the revision petitioner made the same demand and also due to the reason that the other accused constantly abused P.W.1, she lodged a complaint before the police under Ex.P.1.

(iv)In turn, on receipt of the said complaint, P.W.6-Tmt.Prema, the then Sub-Inspector of Police, registered a case against the revision petitioner and 5 others in Crime No.21 of 2012 under Sections 498(A), 406, 294(b) and 506(i) of IPC r/w Section 4 of Dowry Prohibition Act. The printed FIR was marked as Ex.P.2. After registering the case, she has forwarded the copy of the FIR to P.W.7 for investigation.

(v)P.W.7-Sonamuthu, the then Inspector of Police, Thalaiyuthu Police Station, on receipt of the said FIR took the same for investigation. He examined the witnesses and recorded their statements. On 19.09.2012 around 9.30 a.m., he arrested the second accused and produced before the Judicial Magistrate No.3 for judicial custody. Since the other accused got anticipatory bail, he concluded the investigation and filed a final report against all the accused.

6.Based on the above materials, the trial Court framed the charges against the accused for the offences punishable under Sections 498(A), 406, 294(b) and 506(i) of IPC r/w Section 4 of Dowry Prohibition Act. All the accused denied the charges and opted for trial. Therefore, the accused was put on trial.

7.During the course of trial proceedings, in order to prove their case on the side of the prosecution, 7 witnesses were examined as P.W.1 to P.W.7 and 2 documents were exhibited as Ex.P1 & Ex.P2.

8.Out of the above said witnesses, P.W.1-Valli, who is the wife of the accused, speaks about the occurrence as during the



relevant point of time, after the marriage, the revision petitioner, who is her husband demanded to bring Rs.1,00,000/- and one bike as additional dowry.

(I)P.W.2-Seeni, who is the father of P.W.1, and P.W.3-Ganesan, who is the brother of P.W.1, have also deposed before the trial Court as after the marriage, the revision petitioner herein demanded P.W.1 to bring Rs.1,00,000/- and one bike as additional dowry.

(ii)P.W.4-Murugan and P.W.5-Vembu, who are also the relatives of P.W.1, speaks about the occurrence as the revision petitioner demanded P.W.1 to bring the additional dowry.

(iii)P.W.6-Prema and P.W.7-Sonamuthu are the police officers speaks about the registration of the case, investigation and about the filing of final report.

9.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., all the accused denied the same as false. However, they did not chose to examine any witness or mark any document on their side.

10.Having considered all the above materials, the learned Additional Mahila Court, Tirunelveli, came to the conclusion that all the accused are found guilty under Sections 498(A) of IPC and Section 4 of Dowry Prohibition Act, convicted and sentenced as stated above. In the appeal, the learned III-Additional District and Sessions Judge, Tirunelveli had confirmed the conviction and sentence awarded to the revision petitioner alone and acquitted the other accused from the respective charges. Aggrieved over the same, the revision petitioner is before this Court to check the correctness of those judgments.

11.I have heard Mr.R.Anand, learned counsel appearing for the Revision Petitioner and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the State. I have also perused the records carefully.

12.The learned counsel appearing for the revision petitioner would contend that being the reason that the revision petitioner was convicted under Section 498(A) of IPC and Section 4 of Dowry Provision Act, it is for the prosecution to prove that the revision petitioner committed a cruelty towards P.W.1, which comes under the purview of explanation found in Clause "a" and "b" of Section 498(A) of IPC. Further, it is contended that the evidence given by the prosecution witnesses did not disclose the fact that the alleged additional demand made by the revision petitioner is not in connection with the marriage, which solemnised between the revision petitioner and P.W.1. Therefore, the allegation levelled against the



has also not been within the ambit of said Act. He would further submit that the Courts below without considering those aspects, convicted the revision petitioner and sentenced as above, which is erroneous in law.

13. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent police would contend that the evidence let in by the prosecution witnesses in respect to the occurrence are all would sufficient to hold that the revision petitioner committed an offence under Sections 498(A) of IPC and Section 4 of Dowry Prohibition Act. According to him, interference of this Court in the findings arrived by the Courts below does not necessary.

14. I have considered the rival submissions made by the learned counsels appearing on either side.

15. It is the case that there was no dispute that P.W.1 is the wife of the revision petitioner, further, it is also not in dispute that during the time of their marriage, the parents of P.W.1 gave 25 Sovereigns of gold and Rs.30,000/- to the revision petitioner as Sridhana. In respect to the payment of Sridhana property, the evidence given by P.W.1 and P.W.2 would not disclose that the same has been paid to the revision petitioner only upon the demand made by him at the time of marriage.

16. Herein it is the case, the evidence given by the prosecution witnesses disclosed the fact that before the marriage, the revision petitioner has running a hotel business at Ernakulam and after the marriage, when the revision petitioner moved to Ernakulam for continuing the hotel business, P.W.1 wanted to accompany with him and while such time, she requested the revision petitioner to take her to Ernakulam. In otherwise, only in the said occasion, the revision petitioner herein told to P.W.1 to bring Rs.1,00,000/- for searching a house at Ernakulam.

17. In respect to the occurrence, the evidence given by P.W.1 is quite clear that the alleged additional dowry demanded by the revision petitioner is not in connection with their marriage. At this juncture, it would relevant to see the judgment of **Vipin Jaiswal vs. State of Andhra Pradesh** reported in **2013(3) Supreme Court Cases 684**, wherein, our Hon'ble Apex Court has held as follows:-

"In our view, both the trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a "dowry demand" within the meaning of Section 2 of the Dowry Prohibition Act, 1961.

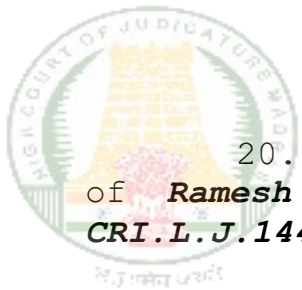


10.This Court has held in **Appasaheb vs. State of Maharashtra (SCC pp. 726-27, para 11)**

"11. in view of the aforesaid definition of the word 'dowry' any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India vs. Garware Nylons Ltd. and Chemical and Fibres of India Ltd. vs. Union of India)".

18.Applying the said principles narrated by our Hon'ble Apex Court with the case on hand, herein also, P.W.1 had given a categorical evidence that only to set up the separate house in Ernakulam, he requested P.W.1 to bring Rs.1,00,000/- and the same did not comes under the purview of Dowry and thereby, convicting the revision petitioner under Section 4 of Dowry Prohibition Act is nothing but an erroneous under the said provision.

19.As far as the conviction and sentence awarded under Section 498(A) of IPC is concerned, it is for the prosecution to show that the demand made by the revision petitioner before P.W.1 and towards her parents, is an unlawful demand. Further, it is necessary to prove that P.W.1 was subjected to cruelty as contemplated clause (a) of explanation under Section 498(A) of IPC. In this regard, first we should decide whether the demand made by the revision petitioner is unlawful one or not. As already said the categorical evidences given by the prosecution witnesses are quite clear that only in order to set up a separate house at Ernakulam, the revision petitioner demanded P.W.1 to bring Rs.1,00,000/-, further in earlier paragraphs of this judgment, it was decided that the amount asked by the revision petitioner is not comes under the



20. In otherwise, in respect to the unlawful demand, in a case of **Ramesh Chand vs. State of Uttar Pradesh** reported in **1992 CRI.L.J.1444** the High Court of Allahabad has held as follows:-

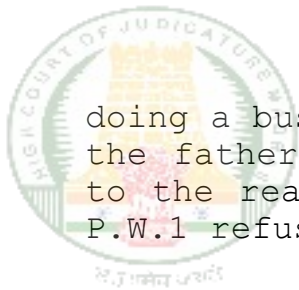
"A complaint under Section 498(A) of IPC could succeed only if it can be proved that there was an "unlawful demand" by the husband of some money. Assuming that the husband had asked the wife to bring some jewellery this by itself could not be unlawful demand as no law would punish mere demand without settlement of dowry at the time of marriage. It may in some cases be that it the husband makes a demand through his wife it may also be conceded by the father-in-law and if that is done, the demand would not become unlawful and, therefore, subsequent refusal by the father-in-law is not a determinative factor whether the demand was unlawfully made unless the said demand can come within the definition of dowry."

So, the above narrated observations is quite clear, being the reason that the demand made by the revision petitioner is not comes under the purview of Dowry. It should also be decided that asking the said amount by the revision petitioner is not an unlawful demand.

21. In the said circumstances, it should be necessary to find out whether the revision petitioner committed cruelty towards P.W.1 in order to achieve his norms. It is difficult to straitjacket the term 'cruelty' by means of a definition, because cruelty is a relative term. What constitutes cruelty for one may not constitute cruelty for another person. It is a settled law that sporadic incidents of ill-treatment by husband do not attract definition of cruelty as these were aimed at pressuring wife for divorce and not aimed at pressuring her to satisfy demand of property.

22. In this case, a conjoint reading of the entire evidence given by the prosecution witnesses, none of the witnesses gave evidence in support of the case of the prosecution as stated about the illtreatment committed by the revision petitioner towards his wife. Further, there was no direct evidence about the harassment.

23. The specific evidence given by P.W.1 is that only due to non-payment of amount, which was asked by the revision petitioner, he is refused to led a matrimonial life with her. On the other hand, P.W.4-Murugan, who is the relative of P.W.1, who arranged the marriage, gave evidence as after the marriage, both P.W.1 and the revision petitioner leads a matrimonial life for the period of one year, he gave further evidence that after the marriage, the elder members of P.W.1's family requested the revision petitioner for not go to Kerala and the same was denied by the revision petitioner. In this regard, the revision petitioner demanded to Rs.1,00,000/- for



doing a business in Tamilnadu. Apart from that, P.W.5-Vembu, who is the father of P.W.1, gave evidence in his cross-examination as due to the reason that the revision petitioner was went to the Kerala, P.W.1 refused to stay in her matrimonial home.

24. Therefore, to cull out the entire evidence given by P.W.4 and P.W.5 and the evidence given by P.W.1, did not make a specific allegations against the revision petitioner as he has committed any offence, which comes under the purview of cruelty. The witnesses examined on the side of the prosecution had admitted in their cross-examination as the revision petitioner filed a HMOP in Thoothukudi Court, wherein, he prayed the relief of restitution of conjugal rights. Therefore, the entire circumstances narrates the same fact that P.W.1 insisted to set up a separate family in Tamilnadu and since the same was refused by the revision petitioner, this case has been foisted.

25. In this occasion, in a case of **Satya Narayan v. State** reported in **2003 Crl.L.J. NOC 185 (M)**, it was held that if there was no direct evidence about the illtreatment, conviction under Section 498(A) of IPC is not maintainable.

26. From the above, I am of the considered opinion that the evidence given by the prosecution witnesses is not in the form to accusing the revision petitioner that he had committed cruelty towards his wife and also he made unlawful demand towards P.W.1. In the absence of evidence in respect of the said aspects, convicting the accused under Section 498(A) of IPC is found not correct. Therefore, I am of the opinion that the conviction and sentence rendered by the Courts below under Section 498(A) of IPC and Section 4 of Dowry Prohibition Act is liable to be set aside.

27. In fine, this Criminal Revision Petition is allowed and the conviction and sentence imposed on the revision petitioner, by the learned Additional Mahila Court, Tirunelveli made in C.C.No.543 of 2013, dated 08.10.2015 and the same was confirmed by the learned III Additional District and Sessions Judge, Tirunelveli, made in C.A.No.115 of 2015, dated 25.11.2016, are set aside and the revision petitioner is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the revision petitioner shall stand cancelled.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

<https://hcservices.ecourts.gov.in/hcservices/>



To:-

- 1.The Additional Mahila Court,
Tirunelveli.
- 2.The III-Additional District and Sessions Judge,
Tirunelveli.
- 3.DO THROUGH The Principal Sessions Judge, Tirunelveli.
- 4.The Inspector of Police,
All Women Police Station,
Tirunelveli Rural.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras high Court,
Madurai.
- 6.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

**CrI.RC(MD)No.22 of 2017
21.09.2021**

NSN(CO)

RS (26.10.2021) 9P 8C