



Bail Slip

The Petitioner namely Senthilkumar @ Kumarasami male was released on Bail as per order of this Court dated 07/09/2017 made in Crl.MP(MD)8165/17 in Crl.Rc(MD)711/2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.09.2021

CORAM:

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

Crl.R.C. (MD)No.711 of 2017

1.Senthilkumar @ Kumarasami
2.Kumarathal

.. Petitioners

Vs.

State, through
Sub-Inspector of Police,
All Women Police Station,
Palani,Dindigul District.
(Crime No.6 of 2006)

.. Respondent

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, against the judgment dated 19.07.2017, passed in C.A.No.35 of 2015, by the learned Additional District and Sessions Judge, Palani, who partly allowed the appeal and set aside the conviction and sentence of each six months R.I., Rs.100/- fine, in default, 1 month S.I. for an offence under Section 4 of the Dowry Prohibition Act, and confirmed the conviction and sentence of each 3 months R.I., Rs.100/- fine, in default, 1 month S.I. for an offence under Section 498-A I.P.C., imposed by the learned Judicial Magistrate, Palani, in C.C.No.277 of 2006, dated 13.08.2015.

For Petitioners
For Respondent

: Mr.S.Sarvagan Prabhu
: Mr.M.Muthumanikkam
Government Advocate
(Criminal side)

ORDER

The present Criminal Revision has been filed to check the correctness of the conviction and sentence, dated 19.07.2015, passed in Crl.A.No.35 of 2015, on the file of the learned Additional District and Sessions Judge, Palani, wherein, she modified the findings arrived at by the learned Judicial Magistrate, Palani, dated 13.08.2015, passed in C.C.No.277 of 2006.

2.The revision petitioners 1 and 2 are arrayed as Accused Nos.1 and 2 in C.C.No.277 of 2006, on the file of the Judicial Magistrate, Palani. They stood charged for the offence punishable under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act, 1961.



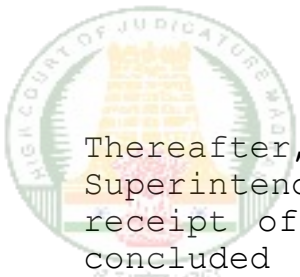
After full-fledged trial, the learned Judicial Magistrate, by judgment dated 13.08.2015, found the revision petitioners/accused guilty of the offence under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act, 1961. In view of the above, both the accused are convicted under Section 498-A I.P.C. and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one month. Similarly, they were convicted under Section 4 of the Dowry Prohibition Act, 1961 and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one month.

3. Aggrieved over the said conviction and sentence, the accused preferred an appeal in Crl.A.No.35 of 2015, on the file of the Additional District and Sessions Judge, Palani. The learned Additional District and Sessions Judge, Palani, vide judgment dated 19.07.2017, came to the conclusion that the accused are guilty of the offence under Section 498-A I.P.C. alone and confirmed the sentence awarded by the trial Court. In otherwise, in respect of conviction and sentence rendered by the trial Court for the offence under Section 4 of the Dowry Prohibition Act, 1961, she allowed the appeal and acquitted the accused. In order to check the correctness of those judgments, both the accused are before this Court with this Criminal Revision Petition.

4. The case of the prosecution is as follows:-

(i) P.W.1 - Udayamalar is the wife of the first accused. Their marriage was solemnized on 11.11.2002 in Tiru Avinankudi, Palani. During the time of marriage, 50 sovereigns of gold jewels and Rs.50,000/- were given by the parents of P.W.1 to the first accused as Stridhana property. After sometime, from the date of marriage, in order to confirm the job of the first accused, both the accused demanded P.W.1 to bring Rs.50,000/- from her parents house. Further, after made such demand, they had driven away P.W.1 from the matrimonial house. After four months from the said occurrence, the elders of both the family settled the issue and in turn, P.W.1 returned to her matrimonial house. However, after sometime, from the date on which P.W.1 returned to Al's house, again, both the accused insulted P.W.1 and made demand to bring Rs.50,000/-. Ultimately, P.W.1 lodged a complaint before the All Women Police Station, Palani, under Ex.P.1. On receipt of the said complaint, P.W.9 - Poongothai, the then Inspector of Police, All Women Police Station, Palani, on 03.05.2006 registered a case in Crime No.6 of 2006 for the offence under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act. The printed F.I.R. is marked as Ex.P.2.

(ii) After registration of the case, P.W.9 visited the scene of occurrence, examined the witnesses and recorded their statements. He arrested the first accused and produced him before the learned Judicial Magistrate for sending him to judicial custody.



Thereafter, she handed over the case records to the Deputy Superintendent of Police, Palani, for further investigation. On receipt of the same, the Deputy Superintendent of Police, Palani, concluded the investigation and filed final report as both the accused are liable to be convicted under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act. He filed a final report accordingly.

5.From the above materials, the learned trial Judge framed charges against the accused under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act, 1961. Both the accused denied same and opted for trial. Hence, both of them were put on trial. In the course of trial proceedings, in order to prove the case on the side of the prosecution, 9 witnesses were examined as P.W.1 to P.W.9 and two documents were exhibited as Ex.P.1 and Ex.P.2.

(i) Out of the said witnesses, P.W.1 - Udayamalar, who is the wife of the first accused, being the victim, speaks about the occurrence as after the marriage, both the accused made demand to bring Rs.50,000/- for the purpose of confirming the job, which already had by the first accused temporarily.

(ii) P.W.2 - Subramani, who is the father of P.W.1, gave evidence as during the relevant point of time, due to the demand of dowry made by the accused, her daughter returned to the house.

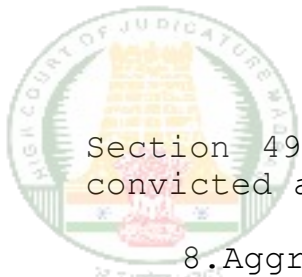
(iii) P.W.3 - Ramaathal, who is the wife of P.W.2, also gave evidence in support of the evidence given by P.W.2 as during the relevant point of time, the accused made dowry demand.

(iv) P.W.4 - Thirumalaisamy, P.W.5 - Appukutty @ Thangamuthu, P.W.6 - Chinnathambi, P.W.7 - Mukudeeswaran and P.W.8 - Dhandapani are the witnesses residing in the same locality, wherein the first accused was residing. They spoke about the occurrence as during the relevant point of time, they conducted Panchayat in respect of the dispute having by P.W.1 and the accused.

(v) P.W.9 - Poongothai, the then Inspector of Police, speaks about the registration and investigation of the case and about the filing of final report.

6.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., both the accused denied the same as false. However, they did not choose to examine any witness nor mark any documents on their side.

7.Having considered the materials placed before him and upon hearing the arguments advanced by the learned counsel appearing on either side, the learned Judicial Magistrate, Palani, came to the conclusion that both the accused found guilty of the offence under



Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act, convicted and sentenced them as stated in Paragraph 2 of this order.

8. Aggrieved over the same, the accused preferred an appeal in Crl.A.No.35 of 2015 before the learned Additional District and Sessions Judge, Palani. The learned Additional District and Sessions Judge, Palani, had partly allowed the appeal, confirming the conviction and sentence in respect of Section 498-A I.P.C. and acquitted the accused for the offence under Section 4 of Dowry Prohibition Act, 1961.

9. Aggrieved over the same, the petitioners/Accused are before this Court by way of filing the present Criminal Revision Petition, to check the correctness of those judgments rendered by the Courts below.

10. I have heard Mr.S.Sarvagan Prabhu, learned counsel appearing for the petitioners and Mr.M.Muthumanikkam, learned Government Advocate (Criminal side) appearing for the respondent police.

11. It is the submission made by the learned counsel appearing for the petitioners that the demand made by the first accused not comes under the purview of cruelty and therefore, the offence under Section 498-A I.P.C. cannot be attracted against both the accused.

12. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent Police contended that the reasoned judgment rendered by the Courts below are found correct and it cannot be said that the judgments rendered by the Courts below are perverse and prayed for dismissal of this Criminal Revision.

13. I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record carefully.

14. Now, on considering the submissions made by the learned counsel appearing for the petitioners with the relevant records to resolve the issue raised in this revision, it would be necessary to see whether the allegation levelled against the accused comes under the purview of Section 498-A I.P.C. In this regard, it is necessary to extract Section 498-A I.P.C., which reads as follows:-

''498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section,

'cruelty' means—
<https://hcservices.ecourts.gov.in/hcservices/>



(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.'

Therefore, in view of the said Section, it is for the prosecution to prove that while at the time of occurrence, the accused herein had committed cruelty on P.W.1.

15. In this connection, on going through the evidence given by P.W.1 to P.W.3, who are the sufferers, it seems that during the relevant point of time, the first accused herein with a view to get confirmation of his job, had demanded P.W.1 to bring Rs.50,000/-. As already observed, in view of Section 498-A I.P.C., the term 'cruelty' consists of two clauses. To attract Section 498-A I.P.C., it must be established that the cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide.

16. Here, it is the case, as rightly pointed out by the learned counsel appearing for the petitioners that at no stretch of imagination, P.W.1 to P.W.3 have not stated as during the time of occurrence, the accused herein made harassment to P.W.1 by means of using force to cause grave bodily injury to her or to commit suicide. Therefore, in view of the explanation given in Clause 'a', the act committed by the accused is not coming under the purview of Section 498-A I.P.C. In respect of Clause 'b' of the said definition, it is for the prosecution to prove that during the time of occurrence, both the accused made harassment by way of compelling P.W.1 to fulfil the illegal demand of dowry.

17. In this occasion, to see whether the demand made by the accused is within the meaning of demand of dowry. In general, in respect of dowry, it was defined in the Dowry Prohibition Act, 1961 that, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly - (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person. Therefore, to attract the word 'dowry', it should be necessary that the demand should be connection with the marriage. In otherwise, here it is the case, the accused made demand to bring Rs.50,000/- only with a view to get confirmation of his job. Further, on going through the evidence given by P.W.1, it does not appear that P.W.1 has conclusively established that the beating and harassment were with a



view to force her to commit suicide or to fulfil the illegal demands. Therefore, the said act committed by the accused is also not coming within the ambit of Section 498-A I.P.C. The Courts below without understanding the meaning of dowry, convicted the accused, which is erroneous in law and therefore, the conviction and sentence awarded by the Courts below are liable to be set aside.

18.In the result, this Criminal Revision is allowed and the conviction and sentence dated 13.08.2015, passed in C.C.No.277 of 2006, by the learned Judicial Magistrate, Palani, which was modified by the learned Additional District and Sessions Judge, Palani, in Crl.A.No.35 of 2015, dated 19.07.2017, is set aside and the appellants are acquitted from the charges. The fine amount, if any, paid by them shall be refunded to them. Bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Additional District and Sessions Judge,
Palani.
- 2.The Judicial Magistrate,
Palani.
- 3.The Sub-Inspector of Police,
All Women Police Station,
Palani,Dindigul District.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.
- 5.Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-28745[F] dated
09/09/2021)

Crl.R.C.(MD)No.711 of 2017
08.09.2021