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CRL.R.C.No.498 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.498 of 2018

1. Ashwath Reddy
2. Puttamma
3. Sarawathamma
4. Narasamma
5. Lakshmiddevamma
6. Sarojamma

... Petitioners

Vs.

The State represented by
The Sub-Inspector of Police,
Thali Police Station.

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set-aside the order imposing imprisonment passed in order and Judgment dated 28.02.2018 made in Criminal Appeal No.36 of 2013 on the file of Additional District Judge, Hosur and confirmed Judgment dated 06.06.2013 made in C.C.No.88 of 2004 on the file of District Munsiff and Judicial Magistrate, Dhenkanikottai and call for the records and acquit the petitioner from all the charges.

For Petitioners : Mr.R.Karthikeyan for
Mr.Mukund

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



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ORDER

This Criminal Revision case has been filed as against the Judgment passed in Criminal Appeal No.36 of 2013, dated 28.02.2018 on the file of Additional District Judge, Hosur, thereby confirmed the Judgment passed in C.C.No.88 of 2004, dated 06.06.2013 on the file of District Munsiff and Judicial Magistrate, Dhenkanikottai, thereby convicted the petitioners for the offences under Sections 342, 506(ii) and 498(A) of IPC.

2. The case of the prosecution is that on 12.03.2000, the victim got married with the first accused. During their marriage, 4.75 sovereigns of gold jewels, silver articles and other house hold articles worth about Rs.50,000/- were presented as gift. Even thereafter, all the family members harassed the victim by demanding huge dowry. After giving birth to a male child, the accused persons refused to take her back to the matrimonial home. They stated that only if the victim gives more dowry, they will take her to the matrimonial home. Hence, the complaint.

3. On receipt of the complaint, the respondent registered an FIR for the offences punishable under Sections 342, 506(ii) and 498(A) of IPC. After



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completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.88 of 2004 by the Trial Court.

4. On the side of the prosecution, they examined P.W.1 to P.W.10 and marked Exs.P.1 to P.4. On the side of the petitioners, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court found the petitioners guilty for the offences under Section 342, 506(ii) and 498(A) of IPC. They were sentenced to undergo three months simple imprisonment for the offence under Section 342 of IPC, six months simple imprisonment for the offence under Section 506(2) of IPC and six months simple imprisonment for the offence under Section 498(A) of IPC. Aggrieved by the same, the petitioners preferred an appeal and the same was dismissed, confirming the order passed by the Trial Court. Hence, this revision.

5. The learned counsel for the revision petitioners would submit that the victim was examined as P.W.1. At the time of her marriage, she had full knowledge that the first petitioner herein got married with the 6th petitioner herein. When the first marriage was very much in existence, there is no question of second marriage and it is illegal. Therefore, the victim is not a legally wedded wife and no offence under Section 498(A) of IPC would be



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attracted as against the accused persons. Infact, the victim and the 6th petitioner are cousins. Therefore, both have knowledge that the first petitioner already got married to the 6th petitioner. The first petitioner examined himself as D.W.1 and stated that after marrying A6, he was living with the victim and A6. A6 got pregnant. In the year 2003, the victim went to her parents house and thereafter, the victim gave birth to a male child. Thereafter, A6 also gave birth to a male child. Only after the birth of male child through the 6th petitioner, the victim got jealous over the same and she herself refused to return to the matrimonial home. There was no cruelty committed by the first petitioner or his family members. Therefore, without considering the above facts, the Trial Court mechanically convicted the petitioners. He further submitted that even according to the case of the prosecution, except the first petitioner, no allegations are made out as against the other petitioners. No one had spoken about the overt-act of other petitioners.

6. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent Police would submit that though the victim is not a legally wedded wife, she can very well maintain the complaint under Section 498(A) of IPC. D.W.1 categorically admitted that he got second marriage with the victim



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and was living together. Through the first petitioner, the victim gave birth to a male child. Thereafter, all the family members demanded huge dowry and harassed her. Due to cruelty and harassment by the petitioners, the victim was driven out from the matrimonial home. Therefore, the Courts below rightly convicted the petitioners and it does not warrant interference by this Court.

7. Heard, Mr.R.Karthikeyan, learned counsel appearing for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent.

8. The only ground raised by the learned counsel for the petitioners is that the victim is not a legally wedded wife. She had full knowledge about the marriage between the first petitioner and the 6th petitioner herein. In fact, the victim and the 6th petitioner herein are cousins. In other words, the fathers of the victim and the 6th petitioner herein are brothers. Therefore, she cannot maintain the complaint for the offence under Section 498(A) of IPC, when she is not a legally wedded wife. Admittedly, the first petitioner got married with the 6th petitioner herein and they had no issues for 11 years. Therefore, the family members i.e., A2 to A5 arranged a marriage between the victim and the



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first petitioner. Thereafter, the victim got pregnant and she went to her parents' house for delivery and she gave birth to a male child. After a period of three months from the birth of a male child, the 6th petitioner gave birth to a male child. Hence, the first petitioner categorically admitted that he got married with the victim as second wife and also gave birth to a male child. After the birth of male child, the petitioners refused to take the victim to matrimonial home.

9. The grand father of the victim was examined as P.W.7. He deposed that the victim was married to the first petitioner herein. Only after their marriage, he came to know about the first petitioner's first marriage. During the marriage, on demand they presented the jewels and other house hold articles as dowry. Thereafter, the accused compelled him to settle some extent of property in favour of the victim. He refused to settle the said property in favour of the victim. Thereafter, the victim got pregnant and she was taken to her parents' house. Thereafter, the accused refused to take her back to the matrimonial home and they also stated that only if the property is settled in her favour, she will be taken to the matrimonial home. Therefore, the prosecution proved the case for the offence under Section 498(A) of IPC as against the first petitioner. Insofar as other petitioners are concerned, there were no specific allegations to make



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out the charges for the offence under Section 498(A) of IPC. Insofar as other offences are concerned i.e. Sections 342 and 506(ii) of IPC, there were no allegations and no one had spoken about the allegations to attract the offences under Sections 342 and 506(ii) of IPC as against the petitioners.

10. In view of the above, the conviction and sentences for the offences under Sections 342 and 506(ii) of IPC as against all the petitioners are hereby set aside. Insofar as the offence under Section 498(A) of IPC is concerned, the conviction as against the first petitioner alone is confirmed and the conviction and sentence as against other petitioners are hereby set aside. The sentence for the offence under Section 498(A) of IPC as against the first petitioner is concerned, it is reduced from six months to two months. The fine amount, if any, paid by the petitioners shall be refunded to them. The bail bond, if any, executed by the petitioners 2 to 6 shall stand cancelled.

11. Accordingly, this Criminal Revision case is partly allowed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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G.K.ILANTHIRAIYAN, J

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To

1. The Additional District Judge, Hosur.
2. The District Munsif and Judicial Magistrate, Dhenkanikottai.
3. The Sub-Inspector of Police,
Thali Police Station.
4. The Public Prosecutor,
High Court, Madras.

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