



BAIL SLIP

The appellant /Accused namely Mr.Mariappan S/o Duraian was directed to be released on bail as for order of this Court dated 30/04/2014 in Crl MP.No.1 and 2 of 2014 in Crl Rc464 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C. No.464 of 2014

Mariappan

... Petitioner/Appellant/ A1

Versus

State Rep by
Inspector of Police,
All Women Police Station,
Pollachi Sub Division,
In crime No.17 of 2009,
Coimbatore District.

... Respondent/Respondent/Complainant

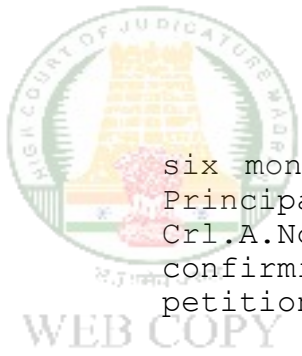
Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for records and to set aside the Judgment in C.A.No.26 of 2013 dated 06.11.2013 on the file of the Principal Sessions Judge, Coimbatore, Coimbatore Division and conformed by the Judicial Magistrate No.1 at Pollachi Coimbatore Division in C.C.No.49 of 2010 dated 22.01.2013 and allow the above Criminal Revision petition.

For Petitioner : Mr.P.Kalimuthu

For Respondent : Mr.L.Baskaran,
Government Advocate (Crl.side)

ORDER

This Criminal Revision is filed by the petitioner/accused no.1, aggrieved by the Judgment of the Learned Judicial Magistrate No.I, Pollachi, dated 22.01.2013 in C.C.No.49 of 2008, whereby, the petitioner/accused was found guilty of the offence under Section 498 (A) of Indian Penal Code and was sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default of payment of fine, to undergo



six months Simple Imprisonment and the Judgment of the Learned Principal Sessions Judge, Coimbatore, dated 05.11.2013 in CrI.A.No.26 of 2013, thereby dismissing the appeal and confirming the conviction and sentence imposed against the petitioner / accused.

2.On 07.08.2009, P.W.1 appeared before P.W.7, the Sub-Inspector of Police of All Women Police Station, Pollachi, lodged a complaint, stating that the first accused viz., Mariappan, is a relative and believing his promise that he will marry her, both of them engaged in a physical relationship and while so, the first accused/Mariappan, after making her pregnant was refusing to live with her. Therefore, with the help of a political association and common friends, a Panchayat was conducted, whereunder the accused/petitioner accepted the relationship and married her at the party premises on 28.02.2007. However, he was living with her for only three days and thereafter, he went to Tiruppur. Thereafter, he telephonically asked for dowry, and when the complainant's family members refused to give the same, the accused refused to live together stating that the child itself was not born to him. Therefore, P.W.1 requested action to be taken against the first accused/Mariappan, the second accused/ Duraiyan, his father and the third accused/ Subbammal his mother. Upon such complaint P.W.7 registered a case in Crime No.17 of 2009, for the alleged offences under Sections 498(A), 506(i) of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. After investigation, on 07.04.2010, P.W.7 filed a final report against all the three accused, proposing them guilty of the offences under Section 498 (A) & 506(i) of Indian Penal Code.

3.The Learned Judicial Magistrate, No.1, Pollachi, took the case on file in C.C.No.49 of 2010, and upon summoning and furnishing the copies as per Section 207 of Code of Criminal Procedure, all the three accused denied the charges and stood trial. Thereafter, the prosecution examined P.W.1 to P.W.7 and marked Ex.P-1 to Ex.P-6 and material object M.O-1 series was produced. Upon being questioned about the adverse evidence and circumstances on record, as per Section 313 of the Code of Criminal Procedure, the accused denied the same as false.

4.The Trial Court, thereafter, proceeded to hear the Learned Assistant Public Prosecutor Grade-II, appearing for the State and the Learned Counsel appearing on behalf of the accused and by Judgment dated 22.01.2013, considering the evidence on record, came to the conclusion that the charge under Section 506 (i) of IPC., and Section 498(A) against the accused no.2 & 3 were not proved and acquitted them. As far as the first accused is concerned, the Trial Court found that the evidence of P.W.1 read with declaration form given by him in Ex.P-5 and the marriage document Ex.P-6 clearly shows that after getting

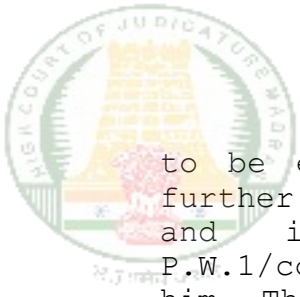


married, without any basis, whatsoever, he has disowned the paternity of the child as not having born to him, besides denying the very factum of marriage itself. Considering the same as amounting to cruelty within the meaning of Section 498(A) of IPC., the Trial Court convicted the first accused and sentenced him as aforesaid.

5. Aggrieved by the Judgment of the Trial Court, the petitioner/accused filed an appeal in CrI.A.No.26 of 2013, whereby, after independently appraising the evidence on record, the Learned Principal Sessions Judge, Coimbatore, considered the effect of Ex.P-6 being a document, which recorded the actual factum of marriage and after considering the Section 7-A of the Hindu Marriage Act, concluded that it does not require any particular form to be a valid marriage. The Appellate Court also held that once the defence that there is no marriage goes, and the marriage is established and thereby, the conduct of the petitioner automatically exposed himself to the offence of cruelty and therefore, confirmed the conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present revision is laid before this Court.

6. Heard Mr.P.Kalimuthu, Learned Counsel appearing on behalf of the petitioner/accused and Mr.L.Baskaran, Learned Government Advocate (criminal side), appearing on behalf of the prosecution.

7. The contention of Mr.P.Kalimuthu, learned Counsel for the petitioner/accused is that so as to constitute an offence under Section 498(A) of IPC, the petitioner and P.W.1, ought to have lived as husband and wife, at least for some period of time, but in the instant case, admittedly, they lived only for three days, and even in the three days, the petitioner/accused, came home only in the night and there is no allegation of any cruelty whatsoever being committed by him in the said three days. After the said three days, because the marriage was performed in an atmosphere of duress, the petitioner had gone away and started leading his life in his own way. It is P.W.1, who had been chasing the petitioner and lodging the complaints. Therefore, when the complaint proceedings are being lodged, taking a defence that there is no valid marriage and that the child was not born to him would never amount to committing cruelty on P.W.1. Therefore, both the Trial Court as well as the First Appellate Court omitted to consider this crucial aspect, which has resulted in grave injustice to the petitioner/accused. It is his further submission that the marriage was completely not proved and further steps were also not taken to prove paternity of the accused on the child. Under such circumstances, fully based on the illegal act of performing of marriage in the political party office, the entire complaint is premised, and therefore, he would submit that it is the bounden duty of the prosecution, to first establish the factum of marriage and then after the establishment of marriage, the factum of cruelty has



to be established, which is missing in this case. He would further submit that there is no clear-cut evidence as to when and in what manner the petitioner/accused harassed P.W.1/complainant, by claiming that the child was not born to him. Therefore, in the absence of the same, he would urge this Court to interfere with the orders passed by the Courts below in exercise of the revisional jurisdiction and to acquit the petitioner/accused.

8.Per contra, Mr.L.Baskaran, learned Government Advocate (Criminal Side) would submit that the reading of the evidence of PW.1 would clearly prove the allegations raised by the prosecution. PW.1 has deposed that when she had actually went to lodge a complaint for counseling, the accused appeared before the appropriate authority and denied that the child did not born to him and therefore, that would by itself amount to cruelty. Apart from this, even in the Court, P.W.1 has been specifically cross examined on behalf of the petitioner that the child was not born to him, which would show his intention and stand that the child is not born to him. Further, he would submit that the evidence of P.W.1 would clearly established that willingly the accused performed the marriage, and the marriage photographs, which were marked as M.O-1 series would fortify the same. This was also corroborated by the person, who was examined as P.W.5, who conducted the marriage and coupled with the documents Ex.P-5 declaration form and Ex.P-6 marriage document. He would further submit that the Lower Appellate Court has correctly appraised the legal position by considering Section 7-A of the Hindu Marriage Act and has held that there was a valid marriage and once there is a valid marriage, the accused, who immediately deserted P.W.1 and thereafter, caused the gravest amount of mental cruelty by questioning the validity of the marriage itself as well as by questioning the paternity of the child, had committed cruelty. Therefore, he would submit that the conviction and sentence of the Courts below does not call for any interference whatsoever.

9.I have considered the rival submissions. I have gone through the materials on record.

10.In this case, though the counsel for the petitioner has made a valiant effort to establish the fact that there was no cruelty at all and all the other allegations already being disbelieved by the Trial Court and there was nothing left for the Courts below to convict the petitioner/accused. I am afraid, I am able to agree with the contention of the learned counsel of the petitioner. The only piece of evidence standing against the petitioner is the evidence of P.W.1, whereby she states that " பின்பு அங்கிருந்து பொள்ளாச்சி அனைத்து மகளிர் காவல் நிலையத்திற்கு அந்த மனுவை அனுப்பிவைத்தார்கள். அதன் பின்பு அனைத்து மகளிர் காவல் நிலையத்தில் விசாரித்து என்னை கவுன்சிலிங் கேட்டு 1 வது எதிரியிடம் கேட்டபொழுது குழந்தை என்னுடையது அல்ல எனக் கூறிவிட்டார்" Therefore, whenever P.W.1



gave a petition to the authorities to join together in life, the same has been stoutly refused by the petitioner/accused, by stating that the child was not born to him. This by itself amounts to mental cruelty and already, I myself by the Judgment in Crl.R.C.No.333 of 2014, Nakkeeran @ Jeroanpandy -Vs- State (Judgment dated 07/12/2021), by following the Judgment of the Hon'ble Supreme Court of India in K.V.Prakash Babu -Vs- State of Karnataka¹, have held that even mental cruelty in appropriate cases, if the abnormal behaviour affects the mental wellbeing of the wife in a grave manner can be held as cruelty within the definition of Section 498(A) of IPC. This is only piece of evidence is against the petitioner/accused, but, however, the same is enough for confirming the finding of the guilt by the Trial Court as well as the First Appellate Court and I, accordingly, reject the submissions made on behalf of the petitioner/accused.

11. But, however, considering that the occurrence had happened in the year 2009; the fact that P.W.1 is no more and there is no possibility of re-approachment on account thereof; Considering the efflux of time, and the age of the petitioner/accused, who was 25 years as on date of the commission of the offence and now, he being 38 years old; I am inclined to reduce the punishment from one year rigorous imprisonment to that of six months simple imprisonment. The fine amount shall remain unaltered.

12. Accordingly, the Criminal Revision Case is partly allowed as indicated above.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Principal Sessions Judge,
Coimbatore, Coimbatore Division.

2. The Judicial Magistrate No.1 at Pollachi Coimbatore Division.

3. -DO Throw The Chief Judicial Magistrate Coimbatore.

¹ (2017) 11 SCC 176



4. The Inspector of Police,
All Women Police Station, Pollachi Sub Division,
Coimbatore District.

5. The Public Prosecutor, High Court of Madras.

COPY TO
The Section Officer,
Criminal Section,
High Court, Madras-104.

Crl.R.C. No.464 of 2014

SRA (CO)
CT 14/02/2022