

THE HON'BLE SMT.JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.1493 OF 2006

ORDER:

1 Challenging the judgment dated 01.09.2006 passed in Criminal Appeal No.97 of 2005 on the file of the Court of the II Additional Sessions Judge, Warangal, wherein and whereby the conviction and sentence imposed against the petitioner by the learned I Additional Judicial Magistrate of I Class, Warangal, vide judgment dated 14.09.2005 in C.C.No.309 of 2002 for the offence punishable under Sections 498-A of IPC was confirmed, the petitioner filed the present Criminal Revision Case under Sections 397 and 401 Cr.P.C.

2 The facts leading to filing of the present Criminal Revision Case in nutshell are that the petitioner and P.W.1 fell in love with each other and that the petitioner married P.W.1 on 09.06.2001 by tying *pasupu thadu* and approached P.Ws.5 to 7 to perform their marriage. Both petitioner and P.W.1 exchanged garlands and photographs were also taken. Petitioner and P.W.1 lived in the house of one Suguna on rent for a period of five months. Thereafter, petitioner started harassing P.W.1 to bring dowry of Rs.1.00 lakh and since P.W.1 expressed her inability, petitioner necked her out of the house.

3 Basing on the complaint of P.W.1 a case was registered against the petitioner for the offences punishable under Sections 498-A IPC and Section 4 of the Dowry Prohibition Act. After completion of

investigation, the investigating officer laid charge sheet against the petitioner for the offences punishable under Sections 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act and the same was taken on file by the learned Magistrate for the above offences and numbered the same as C.C.No.309 of 2002. The learned Magistrate framed charges against the petitioner under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act, read over and explained to him in vernacular language (Telugu) for which he pleaded not guilty and claimed to be tried.

4 Before the trial Court, to bring home the guilt of the petitioner, on behalf of the prosecution P.Ws.1 to 10 were examined and Exs.P.1 and P.2 were marked. On behalf of the defence, no oral or documentary evidence was adduced.

5 After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the learned Magistrate arrived at a conclusion that the petitioner was found guilty of the offence punishable under Section 498-A of IPC and convicted and sentenced him to suffer simple imprisonment for two years and also to pay fine of Rs.3,000/-, in default, to suffer simple imprisonment for three months. However, the petitioner was not found guilty of the offence punishable under Section 4 of the Dowry Prohibition Act and was acquitted of the said offence.

6 Aggrieved by the said conviction and sentence, the petitioner
preferred Criminal Appeal No.97 of 2005 on the file of the Court of the
II Additional Sessions Judge, Warangal and the same was dismissed.
Hence the present Criminal Revision Case.

7 Heard Sri P.Prabhakar Reddy, learned counsel for the petitioner
and Sri A.Venkateswara Rao, learned Assistant Public Prosecutor
appearing for the State and perused the record.

8 The learned counsel for the petitioner submitted that the
petitioner is aged about 18 years and P.W.1 was aged 34 years and
hence the marriage between them is unbelievable. P.W.1 was the wife
of one S.Prasad. She has not taken divorce from the said Prasad.
Therefore, there cannot be a valid marriage between the petitioner and
P.W.1. It is his further contention that though the petitioner and P.W.1
belong to Christian community, their evidence is that the marriage was
performed in a Hindu temple, which also goes to show that there is no
valid marriage. When marriage itself is not legal and valid, question of
harassing and demanding dowry does not arise and the ingredients of
the offence under Section 498-A IPC are not attracted.

9 On the other hand, the learned Assistant Public Prosecutor
supported the concurrent finding of the Courts below and submitted
that in view of the ample evidence available on record, interference of
this Court is not warranted in exercise of revisional jurisdiction.

10 According to P.W.1, petitioner tied thali around her neck and that sapthapathi and homam were performed. According to P.Ws.6 and 7 they performed the marriage of P.W.1 and the petitioner at Raja Rajeswari Temple. On the other hand P.W.5, who is a member of inter caste association, stated that he got the marriage of the petitioner and P.W.1 performed through a priest-P.W.8. But P.W.8 stated that petitioner and P.W.1 exchanged garlands and went away.

11 Both petitioner and P.W.1 claim to be Christians. In such circumstances, their marriage ought to have been performed under Special Marriage Act in a Church but not in a Hindu temple. So the evidence of P.Ws.1, 5, 6 and 7 is inconsistent with the evidence of P.W.8; rather contradictory to each other, which goes to show that there is no valid marriage being performed between P.W.1 and the petitioner. Moreover, as per the evidence of P.W.8 himself that he has not performed the marriage of P.W.1 and the petitioner and that they simply exchanged garlands and went away, an inference has to be drawn that there is no valid marriage between P.W.1 and the petitioner. In the absence of customary rites and ceremonies, the marriage cannot be said to be legal and valid because the parties must have undergone some sort of ceremonies with the object of getting married.

12 It is an admitted fact that P.W.1 was wife of one S.Prasad. There is no evidence, either oral or documentary, available on record to show that P.W.1 took divorce from the said Prasad either customarily or

legally. Though P.Ws.3 to 7 stated that P.W.1 is a divorcee, in the absence of any such documentary evidence, it cannot be presumed that P.W.1 took divorce from the said Prasad.

13 In **Shivcharan Lal Verma Vs. State of Madhya Pradesh**¹ the three Judge Bench held that for a prosecution under Section 498-A IPC, there must be a valid marital relationship between the accused and the victim. Therefore, only a legally wedded wife can claim the protection under Section 498-A IPC and that in the absence of such a legal relationship as husband and wife, there cannot be a conviction under Section 498-A IPC. In the present case the relationship between the petitioner and P.W.1 was only a live-in relationship.

14 For the foregoing discussion and having regard to the facts and circumstances of the case, I am of the opinion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt and that both the Courts below erred in convicting the petitioner for the offence punishable under Section 498-A of IPC and accordingly the said findings are liable to be set aside.

15 In the result, the Criminal Revision Case is allowed, setting aside the judgment dated 01.09.2006 passed in Criminal Appeal No.97 of 2005 on the file of the Court of the II Additional Sessions Judge, Warangal, and also the judgment dated 14.09.2005 passed in C.C.No.309 of 2002 on the file of the Court of I Additional Judicial

¹ JT 2002 (2) SC 641

Magistrate of I Class, Warangal. Bail bonds of the accused shall stand cancelled. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

JUVVADI SRIDEVI, J.

Date: 07.07.2022

Kvsn