



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.RC.No.911 of 2015

and

Crl.M.P.No.1 of 2015

1. S.Kanagaraj

2. Pushpaveni

3. Sivagami

4. Saranya

... Petitioners/Accused 1,3,4 & 5

Vs.

State Rep by
The Station House Officer,
All Women Police Station,
(Crime No.14/2011)

... Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C., to set aside the Judgment by the learned Chief Judicial Magistrate in C.C.No.13/2012 dated 20.04.2015 and to set aside the consequent Judgment confirming the above conviction passed by the learned III Additional Sessions Judge, Pondicherry in Crl.A.No.19/2015 dated 24.08.2015.



For Petitioners : Mr.J.Rajmohan
For Respondent : Mr.K.S.Mohandoss
Public Prosecutor (Pondicherry)
Assisted by
Mr.A.Alexander
Government Advocate (Pondicherry)

ORDER

This Criminal Revision has been filed to set aside the Judgment passed by the learned III Additional Sessions Judge, Pondicherry in CrI.A.No.19/2015 dated 24.08.2015 confirming the Judgment of the learned Chief Judicial Magistrate, Pudhucherry in C.C.No.13/2012 dated 20.04.2015.

2. The learned Counsel for the Revision Petitioners submitted that the marriage was an arranged marriage which was held on 12.09.2010. It is the submission of the learned Counsel for the Revision Petitioners that the wife as Complainant gave a Complaint on 15.06.2011 and that was a first Complaint. It was given after eight months of the marriage. After which, they were living as husband and wife. Subsequent to her giving the first Complaint on 15.06.2011, the husband gave a lawyer's notice dated 06.07.2011 seeking divorce. In the lawyer's notice, the



husband had stated that before marriage, the wife had a love affair and therefore, she had not joined him. For the said lawyer's notice, she had replied on 11.07.2011 in which she had made all these allegations. The contents of the reply notice was converted as Complaint which was given on 08.09.2011. For this Complaint, the Police had registered an FIR in Cr.No.14/2011 for the offence under Section 498 A of IPC r/w. 34 of IPC and Section 4 of Dowry Prohibition Act. This case was investigated and final report filed before the Court of the learned Chief Judicial Magistrate.

3. The learned Chief Judicial Magistrate had after hearing both parties viz., the Prosecution and the Defence, framed charges for the offences under Section 498 A r/w. 34 of IPC and Section 4 of Dowry Prohibition Act. Since the Accused denied the charges, the trial was ordered. In the trial, the Prosecution had examined the Witnesses P.W-1 to P.W-10 and marked documents under Ex.P-1 and Ex.P-2. On the side of the Defence, no witness was examined and documents were marked under Ex.D-1 to ExD-8. On appreciation of evidence, the learned Chief Judicial Magistrate had convicted the Accused for the offence under



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Section 498 A r/w. 34 of IPC and Section 4 of Dowry Prohibition Act.

4. The learned Counsel for the Revision Petitioners invited the attention of this Court to the evidence of P.W-1(her evidence in examination-in-chief) in which there is no incriminating evidence regarding ingredients of Section 498 A of IPC i.e., either mental or physical abuse of the Complainant/victim of crime. She had only stated that the mother-in-law and father-in-law demanded seven sovereigns of gold jewels whereas her father provided one sovereign of gold ring. In the concluding part of the examination-in-chief, she had only stated that she was taken to her parents house by the husband for Thala Deepavali. After that, the husband did not come to her parents house and take her back to the matrimonial home. Therefore, she alleges that the husband is having relationship with his niece and her(the victim's) life had become burden to her parents. Those facts will not attract the ingredients of Section 498 A of IPC, to convict the Accused for the offence under Section 498 A of IPC. Also, the learned Counsel for the Revision Petitioners submitted that after his conviction, the wife had filed HMOP.No.46/2017 before the learned Sub Judge, Cuddalore which was



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re-numbered as HMOP.No.17/2018 on the file of the Family Court, Cuddalore. The learned Counsel for the Petitioners relied on the evidence in HMOP which was a contested case where she had clearly admitted that there was no physical abuse on her. Also, the learned Counsel for the Revision Petitioners submitted that the wife was granted the decree of divorce in HMOP.No.17/2018 on appreciation of evidence on 25.06.2019.

5. In the case instituted by her, as it stands today, the Revision Petitioners had been convicted, when there is no evidence incriminating him regarding physical or mental abuse. The learned Chief Judicial Magistrate, Pondicherry in his Judgment in C.C.No.13/2012 had failed to appreciate the fact that there was no incriminating material attracting the offence under Section 498 A of IPC. Therefore, the conviction and sentence imposed on the Revision Petitioners by the learned Chief Judicial Magistrate, Pondicherry confirmed in Appeal by the learned III Additional District and Sessions Judge by Judgment in C.A.No.19/2015 dated 24.08.2015 is to be set aside as perverse and the Accused are to be acquitted from the charges.



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6. The learned Public Prosecutor vehemently objected to the submission of the learned Counsel for the Revision Petitioners stating that there are materials available in the evidence of P.W-1. The evidence of P.W-1 alone will be sufficient to convict the Accused. The trial Court had assessed the evidence and the Appellate Court had re-assessed the evidence. This Court as Revision Court cannot re-appreciate the evidence. Therefore, the learned Public Prosecutor submitted that there is no merit in this case. The Judgment of the learned Chief Judicial Magistrate is a well-reasoned Judgment confirmed by the learned III Additional District and Sessions Judge. Therefore, this Revision lacks merit. When there are concurrent finding of fact, this Court cannot re-appreciate the evidence.

7. Point for Consideration

Whether the Judgment of Conviction recorded by the learned Chief Judicial Magistrate, Pondicherry in C.C.No.13/2012 dated 20.04.2015 and confirmed by the learned III Additional District and Sessions Judge in C.A.No.19/2015 dated 24.08.2015 is to be set aside as perverse?



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8. Heard the learned Counsel for the Revision Petitioners and the learned Public Prosecutor for Pondicherry. Perused the deposition of P.W-1 to P.W-10, Documents under Ex.P-1 and Ex.P-2 and the Judgment of the learned Chief Judicial Magistrate and the Judgment of the learned III Additional District and Sessions Judge, this Court need not re-appreciate the evidence as it is a Court of Revision. It is sufficient to consider whether the trial Court had convicted the Accused based on the materials available before the learned Chief Judicial Magistrate to attract the Provision of Section 498 A of IPC which is a question of application of law. Therefore, the Revision regarding the application of law, technicalities of law are valid ground to be considered by this Court. It is true that on the facts, the Judgment of the learned Chief Judicial Magistrate in C.C.No.13/2012 dated 20.04.2015 which was confirmed in C.A.No.19/2015 dated 24.08.2015 by the learned III Additional District and Sessions Judge. That does not mean this Court shall not consider the evidence. For the limited purpose, whether there was ingredient of Section 498 A of IPC as per the evidence of the Complainant as P.W-1, the Court can consider her evidence and the Complaint under Ex.P-1



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whether it attracts under Section 498 A of IPC. On perusal of the materials, the evidence of P.W-1 and the Complaint under Ex.P-1, it only claims that her husband and his parents demanded seven sovereigns of gold jewels for Thalai Deepavali, whereas parents of the Complainant/P.W-1 had expressed their difficulties and had provided one sovereign of gold ring to the husband/Accused in this case. As per the evidence, the husband had accompanied the wife to her parents house. After Deepavali, the husband did not come and take her back to the matrimonial home. Further, her evidence stated that the husband returned home at 11 p.m., daily and she had seen her husband taking his niece on the pillion of the two wheeler which made her to pick up quarrel with him and she understands that after Thala Deepavali, he is living with his niece.

9. Nowhere in her examination-in-chief, she had stated that because her parents had provided only one sovereign of gold ring to the husband, instead of fulfilling the demand of seven sovereigns of gold jewels, there was physical and mental abuse against the wife by the husband as well as in-laws. When there is no evidence regarding



physical or mental abuse caused to her on the pretext of dowry or Thalai Deepavali demand, the Court convicting the Accused for the offence under Section 498 A of IPC and Section 4 of Dowry Prohibition Act are not found proper. Therefore, the same has to be set aside as perverse. The learned Judge had failed to appreciate the facts that the ingredient of Section 498 A of IPC was not attracted in this case. Just because, there was demand and the demand was not met does not create any circumstances attracting the ingredients of offence under Section 498 A r/w. 34 of IPC. Therefore, the Judgment of conviction recorded by the learned Chief Judicial Magistrate, Pondicherry in C.C.No.13/2012 dated 20.04.2015 and confirmed in C.A.No.19/2015, dated 24.08.2015, by the learned III Additional District and Sessions Judge, Pondicherry is also found perverse. Therefore, the same had to be set aside.

In the result, this ***Criminal Revision Petition is allowed.*** The Judgment of conviction recorded by the learned Chief Judicial Magistrate, Pondicherry in C.C.No.13/2012 dated 20.04.2015 confirmed in Appeal by the learned III Additional Sessions Judge, Pondicherry in C.A.No.19/2015 dated 24.08.2015 is also set aside as perverse.



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The bail bond already executed by the Revision Petitioners/Accused before the learned Chief Judicial Magistrate, Pondicherry shall be cancelled. The fine amount already collected from the Accused is to be refunded to the Accused. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The III Additional Sessions Judge,
Pondicherry.
2. The Chief Judicial Magistrate,
Pondicherry.
3. The Station House Officer,
All Women Police Station,
Pondicherry.
4. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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