



Crl.RC.No.471 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.471 of 2020

S.Hari Krishnan

... Petitioner

Vs.

State rep. by
The Sub Inspector of Police
All Women Police Station
Thiruvannamalai

...Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records and set aside the order in C.C.No.125 of 2016 passed by the learned Judicial Magistrate-1, Tiruvannamalai, dated 25.06.2019 and order passed in Crl.A.No.26 of 2019 dated 22.01.2020 on the file of learned Principal District Judge at Tiruvannamalai.

For Petitioner : M.Krishnamoorthy

For Respondent : Mr.R.Murthi
Government Advocate (Crl. Side)



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ORDER

This Criminal Revision Case has been filed seeking to set aside the order in C.C.No.125 of 2016 passed by the learned Judicial Magistrate-1, Tiruvannamalai, dated 25.06.2019 and order passed in Crl.A.No.26 of 2019 dated 22.01.2020 on the file of learned Principal District Judge at Tiruvannamalai.

2. The respondent police registered a case against the petitioner in Crime No.11 of 2016 for the offences under Sections 498A, 294(b) 506(1) IPC and after investigation, laid charge sheet before the Judicial Magistrate-1, Tiruvannamalai. The learned Magistrate taken the case on file in C.C.No.125 of 2016 and after trial, found the accused not guilty for the charges under Sections 294(b) and 506(1) IPC and thereby, acquitted him from the said charges. However, found him guilty for the offence under Section 498A IPC and convicted and sentenced him to undergo one year simple imprisonment and to pay fine of Rs.1,000/- in default to undergo simple imprisonment for a further period of one



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month. Challenging the Judgment of conviction and sentence, the accused filed appeal before the Principal District and Session Judge, Tiruvannamalai, in Crl.A.No.26 of 2019. The learned Sessions Judge after hearing the arguments, dismissed the appeal and confirmed the Judgment of the trial Court. Challenging the said Judgment of dismissal of appeal, the accused has filed the present revision before this Court.

3. The specific case of the prosecution is that the revision petitioner married the defacto complainant on 11.06.2000 in the presence of elders. They got no issues and the petitioner did not involve in the conjugal relationship properly. Therefore, they both took medical test and the report showed that there was a deficiency with the petitioner to have child. Hence, the petitioner told the defacto complainant that if the same was known to others, they would tease him and therefore, asked her to tell others that she was having deficiency or else he would die and he harassed her mentally. Further, he wanted to adopt the son of his brother and since the defacto complainant refused the same, he driven her out



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from the matrimonial house by scolding the defacto complainant as not fit to give birth to a child and also with filthy language and asked her to die or else he would kill her. Therefore, the complaint was given to the respondent police and after registering the case, the respondent police investigated the matter and filed charge sheet before the Court concern.

4. The learned counsel for the petitioner would submit that the marriage between the petitioner and the defacto complainant was solemnized on 11.06.2000, whereas the complaint came to be lodged only in the year 2016 which is after 16 years of their marriage life. He would further submit that the defacto complainant used to spend money lavishly to her parental house and since the petitioner was not co-operating for the same, she foisted the false case against the petitioner. Even as per the defacto complainant, the deficiency was only with the petitioner and not with the defacto complainant. But the prosecution has not produced any medical records to show that there was a medical test and the test report reveals that the petitioner is having deficiency to have



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child. The non production of the medical records is fatal to the case of the prosecution and the prosecution has not proved its case as projected by them. Further all the witnesses viz., P.W.1 to P.W.5 are relatives and interested witnesses and even then, they have stated that the petitioner and the defacto complainant were living together happily for 16 years. Therefore, there is no question of harassment. Further, the petitioner has no brother and sister and therefore, the allegation of the defacto complainant itself is falsifying the prosecution case. The trial Court rightly appreciated the evidence and found that the defacto complainant has not revealed the actual facts and therefore, acquitted the petitioner from the charges under Sections 294(b) and 506(1) IPC. However, erroneously convicted the petitioner for the offence under Section 498A IPC from the very same materials and evidence which is against law. Both the trial Court and the appellate Court have failed to appreciate and re-appreciate the evidence and erroneously convicted the petitioner. Therefore, the Judgments of both the Courts below are liable to be set aside and the petitioner has to be acquitted.



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5. The learned Government Advocate (Crl. Side) appearing for the respondent police would submit that the marriage between the petitioner and the defacto complainant was solemnized by the elders of the family and due to not having child, there were frequent quarrels between them. Therefore, they took medical test and the medical test showed that the problem was with the petitioner and not with the defacto complainant. In order to suppress his defect, the petitioner made wrong propagation with the relatives as if, the defacto complainant is not fit to give birth to a child and scolded her with filthy language and also threatened her with dire consequences and driven her out from the matrimonial home. Therefore, the defacto complainant lodged the complaint before the respondent police. The investigation also revealed that the petitioner harassed the defacto complainant. He would submit that before the trial Court, the defacto complainant was examined as P.W.1 and she has clearly narrated the incidents. P.W.2 and P.W.3 are the parents of the defacto complainant and they have also clearly spoken about the



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deficiency of the revision petitioner and due to that, there were frequent quarrels between the petitioner and the defacto complainant. Even P.W.6/Village Head has also clearly stated that there was a Panachayath and they tried to compromise the issue. Though there is no specific evidence for scolding the defacto complainant with filthy language and threatening her with dire consequences, there is a material evidence to prove that the petitioner caused mental cruelty to the defacto complainant and the problem is not on the part of the defacot complainant and due to fault on the part of the petitioner. Therefore, the prosecution proved its case beyond reasonable doubt and both the trial Court and the appellate Court rightly appreciated the evidence and convicted the petitioner. Therefore, there is no merit in the revision and the revision is liable to be set aside.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent police and perused the materials available on record.



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7. Admittedly, the marriage between the petitioner and the defacto complainant was solemnized on 11.06.2000 and out of their wedlock there was no issues and therefore, there were frequent quarrels between them. Thereafter, in the year 2016, the defacto complainant gave a complaint before the respondent police against the petitioner for harassment. The respondent police after registering the FIR, investigated the matter and laid charge sheet before the trial Court and the trial Court, framed the charges against the petitioner for the offences under Sections 498A, 294(b), 506(1) IPC. On completion of trial, the learned Magistrate found the petitioner guilty for the offence under Section 498A IPC alone and acquitted him from the other two charges.

8. Now the question is that whether the prosecution has proved that the petitioner caused cruelty on the defacto complainant in order to attract the offence under Section 498A IPC. The relationship between the parties is not in dispute. Admittedly, there were frequent quarrels between the parties and also there was a Panchayath. The defacto complainant was examined as P.W.1 and she has clearly stated that the



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petitioner herein has got some medical deficiency and due to which, she could not give birth to a child. When they both went for medical test, the doctor confirmed that the defacto complainant is fit to give birth to a child and only the petitioner has got some deficiency and medically he is not fit to give birth to a child. Therefore, the petitioner told the defacto complainant not to reveal the same to anyone and asked her to tell others that she has got deficiency in giving birth to a child. Further he wrongly propagated with his family members and relatives that the defacto complainant has got some deficiency and therefore, she could not give birth to a child and also scolded in front of the relatives. Hence, they used to ashame her. Though P.W.2 and P.W.3, the parents of the defacto complainant admitted the relationship and stated that the petitioner and the defacto complainant were living happily for more than 10 years, the defacto complainant has clearly stated that from the beginning, the petitioner has not acted as a dutiful husband towards matrimonial relationship. Though the prosecution has not examined the doctor who conducted medical examination on the petitioner and the defacto



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complainant or produced the medical records, the defect in investigation may not be a ground for the accused to get acquittal. Normally the prosecution has to prove its case beyond reasonable doubt. In this case, from the evidence of the prosecution witnesses, the prosecution proved its case beyond all reasonable doubt. However, when the petitioner takes the stand that there is no such dispute regarding matrimonial relationship and fitness of giving birth to a child, it is very easy for the petitioner to subject himself for medical examination and to prove that he is a fit person to give birth to a child. In this case, the defacto complainant has clearly stated that the petitioner herein caused cruelty on her pointing out that she is not fit to give birth to a child despite she is not having any disqualification or deficiency in giving birth to a child and in order to suppress the deficiency of the petitioner, he wrongly propagated with their relatives and caused mental cruelty to the defacto complainant. The same was also corroborated by the evidence of the prosecution witnesses. Both the trial Court as well as appellate Court, rightly appreciated the entire oral and documentary evidence and gave findings that there was



cruelty caused by the revision petitioner on the defacto complainant.

9. Though the learned counsel for the petitioner pointed out that all the witnesses are relatives and interested witness, just because all the witnesses are relatives, the Court cannot reject their evidence in toto. Especially, in the matrimonial matters, the witnesses always would be relatives as no other independent witnesses will unnecessarily pose their nose in the family matters. Since because the witnesses are relatives, it cannot be stated that they are all interested witnesses. Further, in this case, they have only stated about the marriage of the petitioner and the defacto complainant and the manner of living of the spouse.

10. As a revisional Court, this Court has got only a limited jurisdiction to interfere with the Judgments of the trial Court and the appellate Court. The revisional Court cannot sit in the arm chair of the appellate Court and re-appreciate the entire evidence and substitute its own views with the findings given by the final Court of fact finding namely the appellate Court. Unless the Court finds perversity in the



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appreciation and re-appreciation of evidence or illegality in the findings of the Courts below, the revisional Court cannot interfere.

11. A reading of the entire materials, this Court does not find any perversity in the appreciation and re-appreciation of evidence by the Courts below. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

12. Accordingly, this Criminal Revision Case is dismissed.

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To
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1. The Judicial Magistrate-1,
Tiruvannamalai
2. The Principal District and Sessions Judge
Tiruvannamalai.
3. The Sub Inspector of Police
All Women Police Station
Thiruvannamalai
4. The Public Prosecutor
High Court, Madras



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P.VELMURUGAN,J.

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