



Crl.R.C.No.1557 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.1557 of 2022

and

Crl.M.P.Nos.18847 & 18850 of 2022

N.Suresh

... Petitioner

/vs/

The State rep.by
The Sub Inspector of Police,
W-18, All Women Police Station
MKB Nagar, Chennai 600 039.

... Respondent

PRAYER : Criminal Revision Case has been filed under Section 397 & 401 Cr.P.C. to call for the entire records pertaining to the CA.No.8 of 2022 on the file of the learned XXI Additional Sessions Judge, Chennai and set aside the conviction imposed in the judgment dated 27.10.2022 made in C.A.No.8 of 2022 on the file of the learned XXI Additional Sessions Judge, Chennai modified the conviction imposed in judgment dated 04.01.2022 made in C.C.No.7615 of 2006 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai by allowing this Criminal Revision Case.

For Petitioner

... Mr.N.Baaskaran

For Respondent

... Mr.V.Meganathan
Government Advocate (Crl. Side)



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ORDER

This Criminal Revision Case has been filed to call for the records in CA.No.8 of 2022 on the file of the learned XXI Additional Sessions Judge, Chennai and set aside the conviction imposed in the judgment dated 27.10.2022 made in C.A.No.8 of 2022 on the file of the learned XXI Additional Sessions Judge, Chennai modified the conviction imposed in judgment dated 04.01.2022 made in C.C.No.7615 of 2006 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai

2. The prosecution case is that the *de facto* complainant and the petitioner (A1) herein got married on 09.02.2004. At the time of marriage, 30 sovereigns of gold jewellery, Rs.30,000/- worth about household articles and Rs.40,000/- was paid to the petitioner. Now the complaint is that the petitioner had spent all the money and also pledged the jewels given by the *de facto* complainant's parents during her marriage. Due to which, there was a wordy quarrel between the *de facto* complainant's family and the petitioner's family. Hence, the *de facto* complainant lodged a complaint against this petitioner and her in-laws. The respondent police



on receiving the complaint, registered a case in Crime No.1678 of 2005 for the offence under Sections 498 A, 406 I.P.C., and Sections 4 and 6 of Dowry Prohibition Act. In this case, Final Report has been filed, which has been taken on file in C.C.No.7615 of 2006.

3. Before the Trial Court, to prove the complaint, the complainant examined herself as PW.1 and six witnesses as PW.2 to PW.7 and marked 7 documents as Ex.P1 to Ex.P7. On the side of the accused, the petitioner (A1) examined himself as DW.1 and marked 2 documents as Ex.D1 and Ex.D2.

4. After the trial, the Trial Court found A1 and A2 guilty. Convicted A1 for the offences under Sections 406 I.P.C., and Section 4 of Dowry Prohibition Act and imposed sentence to undergo Simple Imprisonment for 2 years and to pay a fine of Rs.5,000/-, in default Simple imprisonment for 3 months for each offences, convicted A2 for an offence under Section 4 of Dowry Prohibition Act and imposed sentence to undergo Simple Imprisonment for 2 years and to pay a fine of Rs.5,000/-, in default Simple imprisonment for 3 months.



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5. Aggrieved by the said conviction and sentence, the accused A1 and A2 filed an appeal in C.A.No.8 of 2022. The Appellate Court allowed the said appeal partly and convicted the revision petitioner(A1) for the offence under Section 406 I.P.C., alone and sentence of imprisonment and fine as against the petitioner (A1) for offence under Section 406 I.P.C is modified and the petitioner is directed to undergo imprisonment till the rising of Court and pay a sum of Rs.5,00,000/- to PW.1/ *de facto* complainant by way of compensation within two months, in default to undergo Simple Imprisonment for 3 months and further directed to deposit 21.61 sovereign before the Trial Court. Aggrieved against the same, the present Criminal Revision Case has been filed.

6. The learned counsel for the petitioner contended that the petitioner being the husband, has no intention to pledge the gold jewels of the *de facto* complainant dishonestly. Only for family expenses, it was pledged and the same was redeemed and handed over to the *de facto* complainant on 02.11.2022 and also obtained acknowledgment to that effect. The petitioner has also paid compensation as directed by the



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Appellate Court, but imposing of sentence is unsustainable and the offence under Section 406 I.P.C., is not made out, thus pleaded to allow the Criminal Revision Case.

7. The learned Government Advocate (Crl.Side) for the respondent submitted that admittedly, they are the husband and wife. The petitioner/1st accused pledged the jewels belonging to the *de facto* complainant and only after registering the criminal case, he redeemed the jewels and handed them over to the *de facto* complainant. Thus, the offence under Section 406 I.P.C., has been made out at the time of appeal. The Trial Court and the Appellate Court have rightly found the 1st accused guilty under Section 406 I.P.C., Therefore, this Court has no reason to interfere with the findings of the Courts below. Hence, seeks dismissal of the Criminal Revision Case.

8. I have considered the submissions of the learned counsel for the parties and perused the materials on record.



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9. On a perusal of the records, the fact reveals that the petitioner is the husband and the *de facto* complainant is the wife. The marriage between them took place on 09.02.2004. Subsequently, there was a difference of opinion, the *de facto* complainant left her matrimonial house and living separately. In pursuant to the complaint, the case has been registered against the petitioner and 2 others in Crime No.1678 of 2004 for the offences under Sections 498 A r/w. Sections 4 & 6 of D.P. Act. After investigation, Final Report has been filed, which has been taken on file in C.C.No.7615 of 2006. Before the Trial Court, to prove the complaint, the complainant examined herself as PW.1 and six witnesses as PW.2 to PW.7 and marked 7 documents as Ex.P1 to Ex.P7. On the side of the accused, the petitioner (A1) examined himself as DW.1 and marked 2 documents as Ex.D1 and Ex.D2. After the trial, the Trial Court found A1 and A2 guilty. Convicted A1 for the offences under Sections 406 I.P.C., and Section 4 of Dowry Prohibition Act and imposed sentence to undergo Simple Imprisonment for 2 years and to pay a fine of Rs.5,000/-, in default Simple imprisonment for 3 months for each offences, convicted A2 for an offence



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under Section 4 of Dowry Prohibition Act and imposed sentence to undergo Simple Imprisonment for 2 years and to pay a fine of Rs.5,000/-, in default Simple imprisonment for 3 months. Aggrieved against the judgment of the Trial Court, the appeal in C.A.No.8 of 2022 has been filed. On an appeal, the Appellate Court allowed the said appeal partly and convicted the revision petitioner (A1) for the offence under Section 406 I.P.C., alone and sentence of imprisonment and fine as against the petitioner (A1) for offence under Section 406 I.P.C is modified and the petitioner is directed to undergo imprisonment till the rising of Court and pay a sum of Rs.5,00,000/- to PW.1/ *de facto* complainant by way of compensation within two months, in default to undergo Simple Imprisonment for 3 months and further directed to deposit 21.61 sovereign before the Trial Court.

10. For attracting penal provision under Section 406 I.P.C, the ingredients required for criminal breach of trust has to be fulfilled in this case. The wife/*de facto* complainant gave her jewels for pledge. There is no evidence that the husband/petitioner dishonestly misappropriated or



converted the same for his own use and for purchasing the property and there is no evidence to that effect.

11. Further, on constituting the criminal breach of trust, there is no material to support the case that the petitioner had dishonestly pledged the jewels of his wife in order to make loss to her. Further, he redeemed the jewels and it was handed over to the defacto complainant and she has also received it and there is no dishonest intention on the part of the petitioner to cheat the defacto complainant. There is no sufficient material evidence available to fulfill the required ingredients to make out the offence under Section 406 of I.P.C., namely the breach of trust. Therefore, there is no case made out and sufficient evidence to hold the charge against the petitioner under Section 406 of I.P.C., The Trial Court as well as the Appellate Court had failed to consider this aspect and also not properly appreciated the evidence adduced by the parties. Therefore, the order of the Trial Court as well as the Appellate Court is hereby set aside. The petitioner (A1) is hereby acquitted from the charge under Section 406 I.P.C.



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WEB COPY 12. Accordingly, the Criminal Revision Case is allowed.

Consequently, the connected Criminal Miscellaneous Petitions are closed.

Index : Yes/No

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Internet : Yes/No

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To

1.The Chief Metropolitan Magistrate, Egmore, Chennai.

2.The XXI Additional Sessions Judge, Chennai.

3.The Sub Inspector of Police,
W-18, All Women Police Station
MKB Nagar, Chennai 600 039.

4.The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

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