

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)Nos.718 & 743 of 2016

Crl.R.C.(MD)No.718 of 2016

1.Justus

2.Elesammal

... Petitioners

Vs.

State Rep by
The Inspector of Police,
All Women Police Station,
Kanyakumari District.
(Cr.No.09 of 2004)

... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records in judgment passed in C.C.No.100/2008 dated 27.07.2011 by the learned Judicial Magistrate No.II, Nagercoil and which was confirmed by the Sessions, Kanniyakumari Nagercoil in C.A.No.69/2016 on 16.06.2016 and revise the same.

Crl.R.C.(MD)No.743 of 2016

1.Bennet

2.Justin

3.Viji

... Petitioners

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For Petitioners : Mr.N.Mohideen Basha
(in both Crl.RCs.)

For Respondent : Mr.K.Sanjai Gandhi,
(in both Crl.RCs.) Government Advocate (Crl. Side)

COMMON ORDER

This Criminal Revision Case has been filed to call for the records in judgment passed in C.C.No.100 of 2008 dated 27.07.2011 by the learned Judicial Magistrate No.II, Nagercoil and which was confirmed by the Sessions, Kanniyakumari Nagercoil in C.A.Nos.65 & 69 of 2016 on 16.06.2016 and revise the same.

2.The case of the prosecution is that the victim got married to the son of the first accused on 01.05.2000. After marriage, they lived together in matrimonial home. Even before the marriage, all the accused persons demanded jewels and cash as dowry for the marriage. On 03.03.2000, her husband received jewels and A1 was received a sum of Rs.50,000/- and other accused persons received Rs.75,000/- from the victim's parents. That apart, at the time of marriage, jewels were presented to her and also to her husband. After 15 days of their marriage, her husband and the defacto complainant went to her parents house. Thereafter, her husband started harassment and also demanded additional dowry of Rs.2,00,000/- for his business development. Thereafter, all the accused persons demanded huge dowry. Hence, the defacto complainant lodged a complaint and based on the same, FIR was registered in Cr.No.9 of 2004 for the offence punishable under Sections 498(A) and 406 IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act. There were totally six accused in this case. Since the husband of the defacto complainant absconded, case was split up and taken cognizance against the petitioners herein alone in C.C.No.100 of 2008 by

the trial Court. In order to prove the charges, the prosecution had examined P.W.1 to P.W.15 and marked Ex.P.1 to Ex.P17. On the side of the petitioners, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court convicted the petitioners for offence punishable under Sections 498(A) and 406 IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act and sentenced to undergo one year rigorous imprisonment for the offence under Sections 498(A) and 406 IPC and sentenced to undergo one year each for the offence under Section 3, 4 and 5 of the Dowry Prohibition Act and awarded compensation of Rs.2,25,000/- under Section 357(3) Cr.P.C to the defacto complainant. Aggrieved over same, the petitioners preferred appeals and the appellate Court dismissed the appeals by confirming the orders passed by the trial Court. Hence, the present revisions.

3.The learned counsel appearing for the petitioners would submit that as far as A1 and A2 are concerned, they are not aged persons and bed ridden. Insofar as A5 is concerned, there is absolutely no specific allegations against A5 and no charge is made out as alleged by the prosecution for the offence punishable under Section 498(A) and 406

IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act. Insofar as A3 and A4 are concerned, they are ready and willing to pay compensation as imposed by the Courts below.

4.The learned Government Advocate (Crl.side) appearing for the respondent police would submit that all the accused are having specific overt act and the prosecution categorically proved its case and both the Courts below rightly convicted the petitioners and it does not warrant any interference by this Court.

5.Heard both sides and perused the materials available in the record.

6.On perusal of evidence of P.W.14, it revealed that after marriage, the defacto complainant's husband demanded Rs.2,00,000/- for his business purpose. In pursuant to the same, A1 and A2 also demanded dowry and they have treated the defacto complainant cheaply. It is seen that even before the marriage, they demanded jewels and the same was also presented. The alleged occurrence took place on 27.01.2002,

whereas, complaint was lodged only in the year 2004. There is no evidence that there was some mediation between both family members. That apart, the main accused is still absconded and as such, case was split up by the trial Court. All the allegations are bald and vague as against the petitioners. They had been implicated as accused only to wreck vengeance. That apart, A1 and A2 are aged persons and now they are bed ridden. Therefore, they are only in-laws and they are nothing to do with allegations as alleged by the defacto complainant. Therefore, the conviction and sentence imposed on the petitioners cannot be sustained and its liable to be set aside. However, the learned counsel appearing for the petitioners would submit that they are ready and willing to pay compensation of Rs.2,25,000/- imposed by the Courts below.

7.Considering the above facts and circumstances, the conviction and sentence imposed under Section 498(A) and 406 IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act is hereby confirmed as against A1 and A2 alone. Conviction and sentence as against A3 to A5 is hereby set aside and they are acquitted from all the charges. Insofar as the conviction and sentence as against A1 and A2 is concerned, the sentence

imposed for the offence punishable under Section 498(A) and 406 IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act is reduced to the period already undergone by them, on condition that they shall deposit a sum of Rs.2,25,000/- to the credit of Cr.No.9 of 2004 before the learned Judicial Magistrate, No.II, Nagercoil on or before 10.04.2023, failing which, the sentence imposed by the Courts below will be restored. On such deposit, the defacto complainant is permitted to withdraw the same.

8.In the result, these criminal revision cases are partly allowed

20.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Judicial Magistrate No.II, Nagercoil.

2.The Sessions, Kanniyakumari Nagercoil.

3.The Inspector of Police,
All Women Police Station, Kanyakumari District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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G.K.ILANTHIRAIYAN,J.

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