



Bail Slip

Balamurugan, Male aged 42 Years, S/o.Veeranakannu and Erullammal Female aged 76 Years, W/o. Veeranakannu wre released in bail vide order dated 25/10/2017 in Crl.MP(MD)No.9544 of 2017 in Crl.R.C(MD)No.794 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.794 of 2017

1.Balamurugan
2.Erullammal

... Petitioners/
Appellants/Accused Nos.1 & 2
Vs.

The Sub-Inspector of Police,
All Women Police Station,
Thoothukudi.
(Crime No.13 of 2009).

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the learned II Additional District Sessions Judge, Thoothukudi in Crl.A.No.52 of 2016 by Judgment, dated 19.09.2017, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Thoothukudi in C.C.No.218 of 2009 by Judgment, dated 14.10.2016 and set aside the Judgments of the Court below and acquit the petitioners.

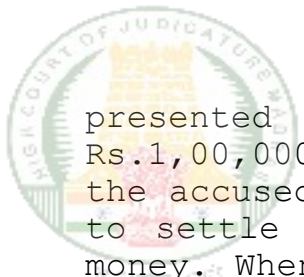
For Petitioners : Mr.Karuppasamy Pandian

For Respondent : Mr.M.Vaikkam karunanithi
Government Advocate (Crl. Side)

ORDER

This revision has been filed to set aside the Judgment made in Crl.A.No.52 of 2016, dated 19.09.2017, on the file of the learned II Additional District Sessions Judge, Thoothukudi, confirming the conviction and sentence imposed in C.C.No.218 of 2009, dated 14.10.2016, on the file of the learned Judicial Magistrate No.I, Thoothukudi.

2.The case of the prosecution is that the first accused got married to the victim on 25.01.2007. The second accused is the mother of the first accused. During the marriage, the victim was



presented with 60 sovereigns of gold ornaments and Rs.1,00,000/-. After a few days from the date of the marriage, both the accused received 30 sovereigns of gold ornaments from the victim to settle their private loan. Even thereafter, they demanded more money. When the victim refused to get money from her parents, they ill-treated her and also driven out from the matrimonial home. On 15.01.2008, the first accused also threatened the victim to bring more money. When the victim refused to do so, she was driven out from the matrimonial home. The victim lodged a complaint in Petition No.12 of 2009 before the All Women Police Station, Thoothukudi and on receipt of the same, the All Women Police Station forwarded the said complaint to the District Social Welfare Officer. The District Social Welfare Officer conducted a preliminary enquiry and found a prima facie case and send an enquiry report to the respondent. On receipt of the said report, the respondent registered the F.I.R in Crime No.13 of 2009 for the offences under Sections 498(A) and 406 of I.P.C as against the petitioners. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.218 of 2009, on the file of the learned Judicial Magistrate No.I, Thoothukudi.

3.On the side of the prosecution, they had examined P.W.1 to P.W.6 and marked Ex.P.1 and on the side of the petitioners, no one was examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the trial Court found both the accused guilty for the offences under Sections 498(A) and 406 of I.P.C and sentenced them to undergo one year Simple Imprisonment for the offence under Section 498(A) of I.P.C and sentenced them to undergo one year Simple Imprisonment for the offence under Section 406 of I.P.C. The sentence of imprisonment shall run concurrently. The trial Court also awarded compensation of Rs.1,00,000/- each to the victim and in default, to undergo six months Simple Imprisonment each. Aggrieved by the same, the petitioners preferred an appeal in Crl.A.No.52 of 2016 on the file of the learned II Additional District Sessions Judge, Thoothukudi and the Appellate Court dismissed the appeal confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

5.The learned counsel appearing for the petitioners would submit that all the allegations are vague and bald. No specific allegations were made as against the petitioners. The victim lodged a complaint only because the first petitioner filed a petition for divorce in H.M.O.P.No.78 of 2009 on the file of the Sub Court, Thoothukudi, on the ground of cruelty. On receipt of the summons from the Said Court, the victim lodged the complaint. Thereafter, the victim also filed a petition for maintenance in M.C.No.14 of 2009 on the file of the Sub Court, Thoothukudi. Therefore, no offence is proved as against the petitioners. Hence, he prayed for setting aside the conviction and sentence imposed on the



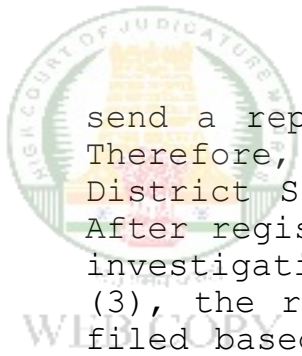
petitioners.

6.Per contra, the learned Government Advocate (Criminal Side) would submit that both the petitioners are arraigned as Accused Nos.1 and 2. Immediately after marriage, both the petitioners received 30 sovereigns of gold jewels from the victim and thereafter refused to return back the same. That apart, they also harassed her to get more money from her parents' house. The victim was deposed cogently and made a specific allegation as against both the accused persons. It is also corroborated by the evidence of P.W.2 and P.W.3, who is the mother and brother of the victim. The independent witnesses were also examined by the prosecution as P.W.4 and P.W.5. They also corroborated the evidence of P.W.1 to P.W.3. Therefore, the prosecution categorically proved its case beyond any reasonable doubt. Therefore, both the Courts below rightly convicted the petitioners for the offences under Sections 498(A) and 406 of I.P.C and it does not warrant any interference by this Court.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.Admittedly, the first petitioner got married to the victim on 25.01.2007. They had no issues. According to P.W.1, during their marriage, the parents of the victim presented 60 sovereigns of jewels and cash of Rs.1,00,000/-. In order to repay the loan amount, which was borrowed by both the petitioners, insisted the victim to give 30 sovereigns of gold jewels. Those jewels were pledged by the petitioners, who repaid the loan amount. Thereafter, the petitioners failed to return the jewels of P.W.1. That apart, they also demanded more from her parents. Therefore, she was driven out from the matrimonial home on 15.01.2008. Immediately, the first petitioner filed a petition for divorce in H.M.O.P.No.78 of 2009 on the file of the Sub Court, Thoothukudi, on the ground of cruelty. Thereafter, the victim lodged the complaint. Initially, the said complaint was referred to the District Social Welfare Officer for enquiry. The District Social Welfare Officer conducted a detailed enquiry and filed a report. The report made out a *prima facie* case to register the F.I.R. On the strength of the report, the respondent registered the F.I.R in Crime No.13 of 2009 for the offences under Sections 498 (A) and 406 of I.P.C.

9.The learned counsel appearing for the petitioners vehemently contended that the report submitted by the District Social Welfare Officer was not marked by the prosecution and it was also not served to the petitioners. Before registering the F.I.R., the complaint lodged by P.W.1 was referred to the District Social Welfare Officer in order to conduct enquiry. On receipt of the said complaint, the District Social Welfare Officer conducted a detailed enquiry after calling upon the petitioners and P.W.1. On the enquiry, the District Social Welfare Officer found allegations and



send a report. It made a prima facie case to register the F.I.R. Therefore, only for the purpose of registering the F.I.R, the District Social Welfare Officer conducted the preliminary enquiry. After registration of the F.I.R, the respondent conducted a detailed investigation and after recording the statement under Section 161 (3), the respondent filed a final report. The final report was not filed based on the report submitted by the District Social Welfare Officer. The report submitted by the District Social Welfare Officer does not have value in filing a final report. If relying upon the enquiry report filed a final report, then the enquiry report has value, and it has to be served to the petitioners. Therefore, the contention of the petitioners cannot be accepted.

10. On perusal of the evidence of P.W.1, categorically corroborated by P.W.2 and P.W.3. In fact, independent witnesses were examined as P.W.4 and P.W.5. They also categorically deposed that the petitioners committed cruelty on the victim. That apart, the petitioners also failed to return the jewels which were pledged by them in order to repay the loan amount which was borrowed by them. Therefore, both the Courts below rightly convicted the petitioners for the offences under Section 498(A) and 406 of I.P.C. Though the first petitioner was granted divorce on the ground of cruelty, which is challenged by way of an appeal by P.W.1 and it is pending, however, the petitioners also failed to pay compensation so far, as awarded by the Courts below, since they failed to return the jewels which were pledged by them, the learned counsel appearing for the petitioners would submit that the petitioners are ready and willing to pay permanent alimony apart from the compensation ordered by the Courts below.

11. Considering the above facts and circumstances, this Court is inclined to modify the sentence alone.

12. Accordingly, the conviction imposed as against the petitioners for the offences under Sections 498(A) and 406 of I.P.C is hereby confirmed. In so far as the sentence awarded by the Courts below is hereby set aside as against the petitioners, on condition that the petitioners shall pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) by way of Demand Draft as permanent alimony in favour of P.W.1 on or before 10.06.2023 directly to P.W.1 and produce the acknowledgment before the respondent. It is also made clear that the compensation of Rs.2,00,000/- (Rupees Two Lakhs Only) as awarded by the Courts below shall also be paid to P.W.1 by way of Demand Draft on or before 10.06.2023 and produce the acknowledgment before the respondent. If the petitioners failed to pay the permanent alimony as well as the compensation to P.W.1-victim, the sentence imposed by the Courts below shall stand restored without further reference to this Court and the respondent is directed to secure them to serve the remaining period of the sentence.

13. Accordingly, this Criminal Revision Case is partly



allowed.

sd/-

21.04.2023

WEB COPY This Criminal Revision petition has been posted on Thursday, the Fifteenth day of June Two Thousand and Twenty Three under the caption "FOR Being Mentioned". In Pursuance to the order of this Court dated 21/04/2023 and made herein the presence of the above said Advocates. This Court made the following order;

Today, the matter is taken up for hearing under the caption "For Being Mentioned" at the instance of the learned Counsel for the petitioners stating that as per the order of this Court, dated 21.04.2023, the petitioners have taken a Demand Draft for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) in favour of P.W.1, however P.W.1 refused to receive the Demand Draft taken in her favour by the petitioners.

2. In view of the same, the petitioners are directed to deposit a sum of Rs.2,00,000/- to the credit of C.C.No.218 of 2009 on the file of the Judicial Magistrate No.I, Thoothukudi on or before 27.06.2023 and on such deposit, P.W. 1 is permitted to withdraw the amount.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

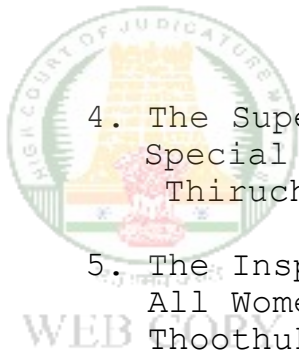
/06/2023

Sub Assistant Registrar(CS)

AAV

To

- 1.The II Additional District Sessions Judge,
Thoothukudi.
2. The Judicial Magistrate No.I,
Thoothukudi.
- 3.-do-Through The Chief Judicial Magistrate,
Thoothukudi District.



4. The Superintendent,
Special Prison for Women,
Thiruchirappalli.

5. The Inspector of Police,
All Women Police Station,
Thoothukudi.

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

Copy to:

1.The Registrar Judicial
Madurai Bench of Madras High Court,
Madurai.

2. The Section officer, Criminal Section,
Madurai Bench Of Madras High Court, Madurai. (2 COPIES)

+1CC to M/S K.Muthuvai Ilayaraja, SR No.28583, dated 16/06/2023

**CrI.R.C(MD)No.794 of 2017
21.04.2023**

RD (15/05/2023) 6P 9C
DL/(26.06.2023)/ 6P/11C