

THE HONOURABLE DR.JUSTICE G. RADHA RANI**CRIMINAL REVISION CASE No.1033 of 2016****ORDER:**

This Criminal Revision Case is filed by the petitioner – appellant – A1 aggrieved by the Order of the Judge, Family Court cum VIII Additional Sessions Judge, Mahabubnagar in Criminal Appeal No.43 of 2014 dated 06.04.2016 confirming the judgment of the Judicial Magistrate of I Class, Kodangal in C.C.No.23 of 2010, dated 17.04.2014.

2. The case of the prosecution in brief was that the complainant - victim lodged a private complaint before the Judicial Magistrate of I Class, Kodangal, stating that her marriage was performed with A1, Ramesh Naik at her parents' house at Ureniki Thanda. At the time of marriage, on demand, the parents of the complainant gave an amount of Rs.50,000/- towards dowry and presented 5 tulas of ornaments and domestic articles worth of Rs.30,000/- and spent marriage expenses of Rs.20,000/-. After marriage, the complainant joined A1. Since then, A1 to A4, the husband, the in-laws and the brother-in-law of the complainant used to harass the complainant for additional dowry of Rs.20,000/- and for her inability to meet the said demand, they used to beat and abuse her. Further, the accused persons also harassed her on account of not able to conceive children and forced the complainant to give consent for second

marriage with A5. Several panchayats were held in the said regard. The parents of the complainant tried to convince A1 to A4, but they refused to heed to their request and necked her out of the matrimonial home on 10.03.2009. On 18.03.2009, A1 contracted second marriage with A5, daughter of A7, resident of Kandanelli Thanda. A2 to A4 and A6 to A8 assisted A1 in performing the second marriage. On 21.04.2009, when the complainant visited the house of A1, she found A5 living along with A1 as his wife at the said house. A1 to A5 did not allow her to enter the house. They beat her and threatened to kill her. On 01.06.2009, the parents of the complainant held a panchayat and invited all the accused for settlement, but A1 to A8 refused to take back the complainant along with them. Though the complainant filed a report before PS, Bomraspet, as no action was taken by them, she filed the private complainant on 20.07.2009. The court referred the said complaint to Police, Bomraspet for investigation and the SI of Police, PS Bomraspet registered a case vide Crime No.63 of 2009 under Sections 498-A, 494 read with Section 109 of IPC and Sections 3 and 4 of Dowry Prohibition Act (for short "DP" Act). On investigation, he filed charge-sheet against A1 to A5 for the offences under Sections 498-A, 494 read with Section 109 of IPC and Sections 3 and 4 of DP Act. The names of A6 to A8 were deleted from the charge-sheet reporting that no offence was established against them.

3. The court took cognizance of the above offences against A1 to A5 and framed charges against A1 to A4 for the offences under Section 498-A of IPC and Sections 3 and 4 of DP Act. The court also framed a charge under Section 494 of IPC against A1 and a charge under Section 494 read with Section 109 of IPC against A2 to A5.

4. The Prosecution got examined PWs 1 to 4 and got marked Exs.P1 and P2.

5. No defence evidence was adduced by the accused.

6. A portion of 161 Cr.P.C. statement of PW.2 was marked as Ex.D.1 on behalf of the accused.

7. On considering the oral and documentary evidence on record, the trial court convicted A1 alone for the offence under Section 498-A of IPC and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.10,000/- for the said offence and in default of payment of fine to undergo simple imprisonment for a period of three months. Out of the fine amount of Rs.10,000/-, an amount of Rs.8,000/- was directed to be paid to the complainant. A1 was acquitted for the offences under Section 494 of IPC and Sections 3 and 4 of DP Act and A2 and A5 were acquitted for the offences under Sections 498-A and 494 of IPC read with Section 109 of IPC.

8. Aggrieved by the said conviction and sentence recorded against him, A1 preferred an appeal. The appeal was heard by the Judge, Family Court-cum-VIII Additional Sessions Judge, Mahabubnagar and vide Criminal Appeal No. 43 of 2014 dated 06.04.2016, dismissed the appeal confirming the conviction and sentence passed by the Judicial Magistrate of I Class, Kodangal against A1 for the offence under Section 498-A of IPC in C.C.No.23 of 2010 dated 17.10.2014.

9. Aggrieved further, A1 preferred this revision contending that when all the other accused persons were acquitted for the offence under Section 498-A of IPC, the courts below committed error in not giving the same benefit to the petitioner. The complainant made omnibus allegations without specific instances and dates of harassment. The courts went wrong in not applying the same principle to the petitioner and convicting him just because he was the husband of the de-facto complainant. The court committed an error in considering the offer given by the petitioner for settlement of the matter as harassment. There was no cogent evidence on record for convicting the petitioner. The courts below recorded their findings basing on assumptions and presumptions and prayed to set aside the orders of the courts below.

10. Heard the learned counsel for the revision petitioner and the learned Additional Public Prosecutor.

11. The learned counsel for the revision petitioner submitted that there were several contradictions in the evidence of witnesses, while PW.1 stated that she lived happily with A1 for a period of six (06) months, PW.2 stated that the complainant and A1 lived happily for a period of six (06) years after their marriage, which were contradictory to each other. There were also contradictions in the evidence of witnesses as to where panchayats were conducted. No specific instance of harassment was stated by the witnesses. No neighbours at the matrimonial home of PW.1 were examined by the investigating officer. LW.4, Chandra Naik, the panchayat elder was not examined and relied upon the judgment of the Karnataka High Court in **Shashidhar Subbanna v. State of Karnataka and Another**¹, wherein it was held that:

"46. Both the trial court and the Sessions Judge's court appears to have carried away with the self-serving testimony of the complainant by ignoring the fact that all those statements of not only the complainant, but, also of PW.2, PW.3 and PW.4, remained very bald, vague, without any clear details of the alleged several incidents. The trial court also did not notice the fact that, even according to PW.1, if she was unable to contact her family members and could only communicate with her younger sister Susheela through e-mails, then the competent witness to speak about those details was said Susheela, who for the reasons best known to the prosecution, was not examined. Further, even the e-mails from Exs.P.5 to P.19 also, as analysed above, could not be able to show that the acts alleged therein would attract cruelty as mentioned in Section 498-A of IPC. Thus, the impugned judgments warrants interference and the prosecution case would not sustain."

¹2022 CrI. L.J.3939

12. The learned Additional Public Prosecutor on the other hand contended that the evidence of PWs.1 to 3 is cogent and consistent with each other. The trial court and the lower appellate court, on considering the evidence only, recorded the conviction against A1 for the offence under Section 498-A of IPC. The said findings need not be disturbed by this Court in the revision and prayed to dismiss the revision.

13. Perused the record.

14. Before proceeding to discuss the facts of the case, it is considered necessary to understand the scope of revision. Section 397 of Cr.P.C., gives the High Courts or the Sessions Court jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. The court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of the evidence.

15. By keeping these principles in mind, when the judgments of the courts below are observed, the trial court on an analysis of evidence of PWs.1 to 3,

opined that PW.1 stated in her evidence that after six (06) months of marriage, all the accused started harassing her for want of additional dowry of Rs.20,000/- and on failure to pay such amount, they beat her and necked her out from the house, several panchayats were held in the said regard. After conducting panchayats, the accused had taken her back but they used to taunt and abuse her for not giving birth to children and beat her to give consent for the second marriage of A1 with A5 Susheela Bai and necked her out of the house. She stated that about 3 panchayats were held at Juntupalli Village and 2 at Wadicherla Village.

16. The trial court on observing the evidence of PW.2, recorded that his evidence with regard to the marriage expenses and worth of household articles was not corroborating with PW.1 as he deposed that he had spent an amount of Rs.20,000/- for marriage expenses and gave articles worth of Rs.30,000/- and that it did not reveal any demand for additional dowry of Rs.20,000/-. PW.2 stated that A1 necked his daughter out of the house and married another lady at Kandaneli Thanda and that he conducted a panchayat at Yalal Mandal and recorded that conducting of panchayat at Yalal was elicited as an omission in the evidence of PW.2.

17. The trial court also observed that the evidence of PW.3, who was a relative of PWs 1 and 2, who participated in the panchayat was corroborating with their evidence, PW.3 stated that a panchayat was held before caste elders at

Ureniki Thanda, Wadicherla Village and elders suggested to the accused, to take care of PW.1 and sent her back. For some days, the accused took good care of PW.1 but again started harassing PW.1 for additional dowry of Rs.20,000/-. After sending PW.1 out, A1 contracted second marriage with one Susheela Bai.

18. Thus, the trial court observing that the evidence of PWs.1 to 3 was consistent with regard to the accused harassing PW.1 and was beating her for want of Rs.20,000/- and forcing her to give consent for second marriage of A1, held that, the prosecution proved the case against A1 for the offence under Section 498-A of IPC. The trial court relied upon the judgment of the High Court of Andhra Pradesh in **Thota Sambasiva Rao and Others v. State of Andhra Pradesh**², wherein it was held that:

"Harassment need not always be in the form of physical assault, even mental harassment would also come within purview of Section 498-A. Such harassment, when meted out with a view to coerce complainant to meet unlawful demand for any property or valuable security or on account of her failure to meet such demand, amounts to cruelty. Conduct of husband in having illicit intimacy with another woman, deserting wife demanding her to bring additional dowry or asking her to agree for divorce in the event of her failure to meet such demand would constitute acts of ill treatment and harassment within the meaning of Section 498-A."

19. The trial court rightly pointed out that in the matters of family disputes, obviously the evidence available would be of family members and by not examining any other independent witnesses, the case of the prosecution could not be thrown out, based its conclusions on the evidence of PWs. 1 to 3.

² 2009 (1) ALD (CrL.) 948 (AP)

20. However, considering that as the prosecution failed to file any photographs or temple receipts and PW.4, the investigating officer had not examined any purohit for the second marriage between A1 and A5, observed that the offence under Section 494 of IPC was not established and abetment of such offence by others was also not proved. As there were no specific allegations against A2 to A4 for the allegations of harassment by them, the trial court acquitted A2 to A4 for the offence under Section 498-A of IPC. As the prosecution also failed to adduce any documentary evidence in proof of payment of dowry and there were inconsistencies in the evidence of PWs.1 and 2 with regard to the payment of dowry, the trial court also acquitted all the accused persons for the offences under Section 3 and 4 of DP Act.

21. The lower appellate court on re-appreciating the evidence, observed that the contradiction marked as Ex.D.1 in the evidence of PW.2 to the effect that he stated about PW.1 and A1 living together happily for six (06) years and PW.1 stating that they lived happily for six (06) months was not a material contradiction. The lower appellate court observed that the evidence of PW.3 corroborated with the evidence of PW.1 with regard to the harassment by A1 for additional dowry of Rs.20,000/- and necking her out of the house, due to which, a panchayat was conducted by them and after panchayat, PW.1 joined A1 and there was again harassment. The lower appellate court also observed that since PWs. 2 and 3 were the relatives and interested witnesses, their evidence could

not be discarded. Non-examination of any other independent witnesses would not affect the prosecution case, as the relatives were only the best witnesses to speak the real facts. It was also observed that the evidence of PWs.1 and 2 was corroborating with each other with regard to A1 subjecting PW.1 to cruelty for not begetting the children and forcing her to give consent for the second marriage of A1, which would be nothing but cruelty, attracting the offence under Section 498-A of IPC.

22. Thus, both the trial court and the lower appellate court observed that the evidence of PWs.1 to 3 was cogent, consistent and trustworthy with regard to the harassment of PW.1 by A1 and as such found him guilty for the offence under Section 498-A of IPC.

23. Hence, this Court does not find any illegality or impropriety in the observations of the courts below for setting aside the same. The contradictions pointed out by the learned counsel for the revision petitioner as to where the panchayats were conducted or as to the length of the period for which the PW.1 and A1 lived happily were not material to disbelieve their evidence. There need not be any specific instance of harassment, as the harassment in the marital life would be continuous.

24. Hence, this Court does not find any reasons to set aside the judgment of the courts below.

25. In the result, the Criminal Revision Case is dismissed confirming the orders of the Judge, Family Court - cum - VIII Additional Sessions Judge, Mahabubnagar in Crl.Appeal No.43 of 2014 dated 06.04.2016. The sentence recorded by the trial court also appears to be appropriate and commensurate with the offence committed by A1. As such, this Court does not find any reason to interfere with the same also.

Miscellaneous petitions pending, if any, shall stand closed.

Dr.G. RADHA RANI, J

06th February, 2023.
nsk.