



Crl.R.C.No.984 of 2020

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DATED : 08.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.984 of 2020

A.Sekar

... Petitioner

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Ariyalur.
(Crime No.108/2013)

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the judgment and orders dated 31.07.2020 in Crl.A.No.09/2019 on the file of the Principal District and Sessions Court, Ariyalur, confirming the judgment and orders dated 29.11.2018 in C.C.No.278/2013 on the file of the Judicial Magistrate No.I, Ariyalur.

For Petitioner : Mr.S.Ambigapathi

For Respondent : Mr.S.Rajakumar, APP

Assisted by Ms.A.Shahana Fathima, GA (Crl. side)



Crl.R.C.No.984 of 2020

WEB COPY

ORDER

Challenging the conviction and sentence passed by the learned Principal District and Sessions Judge, Ariyalur in Crl.A.No.09/2019 confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Ariyalur, in C.C.No.278/2013, the present criminal revision case is filed.

2. The first accused / revision petitioner married one Jayanthi (PW.1), the defacto complainant on 16.09.2004 as per Hindu Rites and Customs. They are blessed with a male child. According to the defacto complainant, the first accused / revision petitioner used to come home consuming alcohol and also tortured her sexually. Since the defacto complainant was unable to meet out the torture at the hands of the first accused/revision petitioner, she left the matrimonial home. Subsequently on 24.08.2013, the defacto complainant along with her parents and relatives went to the house of the revision petitioner's parents and requested them to return 10 sovereigns of gold jewels and cash of



Crl.R.C.No.984 of 2020

WEB COPY

Rs.50,000/- presented to the defacto complainant at the time of her marriage. According to the defacto complainant, her husband and other accused, namely, her mother-in-law, father-in-law and brother-in-law abused her in filthy language and also threatened them with dire consequences. Therefore, she lodged a complaint with the Inspector of Police, All Women Police Station, Ariyalur against her husband (first accused/revision petitioner), Adhimoolam/father-in-law, Manonmani/mother-in-law and Kumar/brother-in-law.

3. Rajeswari (P.W.8), the Inspector of Police, All Women Police Station, Ariyalur on receipt of complaint from P.W.1 registered an FIR (Ex.P3) in Crime No.08/2013 for the offences under sections 498A, 294(b), 506(i) and 406 IPC against the revision petitioner and three others and took up investigation. She went to the scene of offence, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P4) in the presence of the witnesses Srinivasan (P.W.5) and Kamala (P.W.6) and arrested the revision petitioner and the other accused on 24.08.2013 and produced them before the Judicial Magistrate No.I, Ariyalur, who



Crl.R.C.No.984 of 2020

remanded them to judicial custody.

4. P.W.8 examined the witnesses and recorded their statements individually under Section 161 (3) Cr.P.C. After completing investigation, she laid a final report before the Judicial Magistrate No.I, Ariyalur in C.C.No.278/2013 against the revision petitioner / first accused and three others for the offences punishable under Sections 294(b), 506(i), 406, 498(A) IPC. The learned Judicial Magistrate No.I, Ariyalur took cognizance of the offences and issued summons to the accused and on their appearance, furnished copies of records under Section 207 Cr.P.C. Charges were framed by the learned Judicial Magistrate No.I, Ariyalur against the accused for the offences punishable under sections 498(A), 294(b), 506(i) and 406 IPC

5. In order to bring home the guilt of the accused, the prosecution examined P.W.1 to P.W.8 and marked Ex.P1 to Ex.P4.



Crl.R.C.No.984 of 2020

WEB COPY

6. The evidence of Jayanthi (P.W.1) is that she married the first accused Sekar on 16.09.2004 and at the time of their marriage 10 sovereigns of gold jewels and a cash of Rs.50,000/- were given to the revision petitioner and that they were living happily for about six months. Thereafter, the revision petitioner who was working as a videographer in a shop, used to come home at about 01.00 am after consuming alcohol. According to her, he insisted her to watch pornography and tortured her sexually. Since she was unable to bear the torture, she left the matrimonial home with her son Sanjay. Thereafter, she along with her parents requested the parents of the first accused to return all the articles and cash of Rs.50,000/- which were presented at the time of marriage. It was further deposed by her that all the accused abused her and her parents and others who accompanied her, in filthy language and also threatened all of them with dire consequences.

7. Selvaraj (P.W.2) and Renuka (P.W.3) are the parents of Jayanthi (P.W.1) and Umashankar (P.W.4) is the brother of P.W.1. All of



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them corroborated the versions of P.W.1 in all material particulars.

8. Amudha (P.W.7) is related to P.W.1. she had deposed that P.W.1 had confided in her that she was tortured by the first accused/revision petitioner by insisting her to watch pornography every night. According to her, P.W.1 used to leave the matrimonial home on account of this and subsequently would be sent back after a temporary truce. On 24.08.2013, she had accompanied P.W.1 to P.W.4 to the house of the revision petitioner where they were also abused in filthy language by the revision petitioner his parents and his brother. According to her, they were also threatened with dire consequences.

9. When the accused including the present revision petitioner were questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them they denied of having committed any offence. The revision petitioner examined himself as D.W.2 and one another witness as D.W.1 and marked Ex.D1 and Ex.D2.



Crl.R.C.No.984 of 2020

WEB COPY

10. Jayapal (D.W.1) – is the Manager of Indian Overseas Bank, Manachanallur Branch in which the accused is having a Savings Bank Account. The evidence of DW.1 is that a sum of Rs.93,000/- on 11.01.2012 and a sum of Rs.72,500/- on 08.02.2012 were transferred to the Account No.167801000001682 of one Jayapal from the account of the revision petitioner. He marked statement of accounts of D.W.2 (Ex.D1).

11. Sekar (D.W.2) is the first accused / revision petitioner. His evidence is that he did not receive any amount from the defacto complainant's parents towards dowry and further submitted that he lent a sum of Rs.93,000/- and Rs.72,500/- (totalling to Rs.1,65,000/-) to one Jayapal who is his wife's sister's husband. When he requested Jayapal and his wife Sushila to repay the said amount, his wife (P.W.1) was upset and left the matrimonial home. He had also deposed with regard to pendency of HMOP 84/2013 filed by him before the Subordinate Court, Ariyalur for restitution of conjugal rights against his wife. A copy of the



Crl.R.C.No.984 of 2020

WEB COPY

petition filed in HMOP 84/2013 was marked as Ex.D2. He also pointed out that his wife filed a petition in H.M.O.P.No.114/2017 before the Subordinate Court, Kumbakonam for divorce.

12. The learned Judicial Magistrate No.I, Ariyalur after analysing the oral and documentary evidence acquitted the accused 2 to 4 for the offences punishable under Sections 294(b), 406, 506(i) of IPC. However, the present revision petitioner was convicted for the offence punishable under Sections 498A IPC and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for seven days. He was acquitted for the offences punishable under Sections 294(b), 406, 506(i) IPC.

13. Aggrieved over the conviction and sentence passed by the trial court judge, the first accused / revision petitioner filed an appeal in Crl.A.No.09/2019 before the Principal District and Sessions Court, Ariyalur. The learned Principal District and Sessions Judge, Ariyalur



Crl.R.C.No.984 of 2020

WEB COPY

confirmed the conviction and sentence passed by the trial court judge, as against which, the present criminal revision case is filed.

14. Mr.S.Ambigapathi, learned counsel for the revision petitioner would contend that the wife of the revision petitioner during the pendency of the divorce petition married one Devendran and also gave birth to a child on 17.09.2022. His further contention is that the revision petitioner did not treat his wife cruelly as alleged by the defacto complainant and that since the first accused requested his wife's sister and her husband to repay the amount of Rs.1,65,000/- lent by him, the defacto complainant left the matrimonial home. It is also his contention that the accused had examined the Manager, Indian Overseas Bank, Manachanallur Branch in which the first accused had a savings bank account to show that he had lent a sum of Rs.1,65,000/- to his wife's sister's husband. According to the learned counsel, these aspects were not taken into account by both the Courts below while convicting the accused for the offence punishable under Section 498A IPC. It is also his contention that the divorce petition filed by his wife in



Crl.R.C.No.984 of 2020

WEB COPY

H.M.O.P.No.114/2017 was allowed on 04.10.2023 by the learned Subordinate Judge, Kumbakonam and in these circumstances, he prayed for acquitting the accused.

15. Per contra, Mr.S.Raja Kumar, the learned Additional Public Prosecutor would contend that both the Courts below had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Revision Case.

16. At the outset, it may be observed that this Court while exercising jurisdiction under Section 397 Cr.P.C. cannot act as a second appellate court unless it is convinced that the conviction and sentence passed by both the Courts below are perverse.

17. In the instant case, both the Courts below had come to the conclusion that the revision petitioner / first accused had committed an offence punishable under Section 498A IPC. The specific allegation of



Crl.R.C.No.984 of 2020

WEB COPY

Jayanthi (P.W.1) is that her husband / revision petitioner used to come home late in the night after consuming alcohol, insisted her to watch pornography and tortured her sexually. She confided this to her maternal aunt Amudha (P.W.7). P.W.7 corroborated the versions of P.W.1. According to P.W.7, she used to pacify her. On 24.08.2013, P.W.1 to P.W.4 & P.W.7 had gone over to the house of the in-laws of the defacto complainant. Jayanthi (P.W.1) requested them to handover the jewels and cash received by them at the time of her marriage. Her deposition is that all the accused abused her and her parents and relatives in filthy language and also threatened them with dire consequences.

18. This incident that took place on 24.08.2013 was not accepted by both the Courts below. However, both the Courts below based on the evidence of P.W.1 had convicted the accused for the offence under Section 498A IPC. In fact, the appellate court, namely, the Principal District and Sessions Judge, Ariyalur vide his judgment dated 31.07.2020 had observed that P.W.1 had left her matrimonial home because she was unable to bear the torture at the hands of her husband,



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the first accused / revision petitioner. In fact nothing useful was suggested to P.W.1 during the course of cross examination to discredit or disbelieve her versions.

19. Both the Courts below by their well reasoned orders had come to the conclusion that the accused had committed the offence punishable under Section 498A of Cr.P.C. The contention of the learned counsel for the revision petitioner / first accused is that the defacto complainant was upset over the demand made by the revision petitioner to her sister and her husband for the repayment of the money borrowed by them from the revision petitioner. Though transfer of a sum of Rs.1,65,000/- from the account of the revision petitioner to the account of Jayapal is proved, it is not known as to why the revision petitioner did not issue any legal notice to Jayapal, to repay the amount even after filing of the FIR against him by P.W.1. Mere transfer of a sum of Rs.1,65,000/- from the account of the accused to the account of Jayapal (brother-in-law of P.W.1), would not be a conclusive proof that Jayapal borrowed a sum of Rs.1,65,000/- from the revision petitioner. Moreover, no civil suit was



Crl.R.C.No.984 of 2020

filed against Jayapal for recovery of money till date.

20. All the observations made by both the Courts below are perfectly in order and therefore, I do not find any reason to interfere with the same. Hence, the conviction passed by both the Courts below against the revision petitioner/ first accused for the offence punishable under Section 498A IPC is hereby confirmed.

21. As regards the sentence, it is seen from the records that the complaint was lodged in the year 2013 and the accused had already undergone the ordeal of trial. In these circumstances, the sentence passed by the trial court judge is modified as under "simple imprisonment for a period of two months and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for seven days".

22. In the result,

- i. This Criminal Revision Case is partly allowed.
- ii. The conviction under Section 498(A) IPC is confirmed.



Crl.R.C.No.984 of 2020

WEB COPY

- iii. The sentence is modified as "simple imprisonment for a period of two months and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for seven days". The period of sentence already undergone by him is set off under Section 428 Cr.P.C.
- iv. The revision petitioner/ first accused shall surrender before the Judicial Magistrate No.I, Ariyalur, within 15 days from the date of receipt of copy of this order / uploading of the order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

08.04.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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CrI.R.C.No.984 of 2020

To

- 1.The Principal District and Sessions Judge, Ariyalur.
- 2.The Judicial Magistrate No.I, Ariyalur.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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Crl.R.C.No.984 of 2020

R. HEMALATHA, J.
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Crl.R.C.No.984 of 2020

08.04.2024