

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.12.2021

Pronounced on : **07.12.2021**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.333 of 2014

Nakkeeran @ JeroanPandy

... Petitioner

Versus

1.State rep.by,
The Inspector of Police,
All Women Police Station,
Arani, Thiruvannamalai District.

2.M.Thamarai Selvi

... Respondents

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the Judgment made in Crl.A.No.25 of 2011 on the file of the Sessions Judge, Tiruvannamalai dated 30.01.2014, confirming the Judgment made in C.C.No.373 of 2007, on the file of the Judicial Magistrate Court, Arani, dated 25.11.2011.

For Petitioner : Mr.B.M.Subash

For Respondent : Mr.L.Bhaskaran, (for R1)
Govt., Advocate (crl.side)

: Mr.Sri Ram (for R2)



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ORDER

This Criminal Revision Case is filed by the petitioner/accused No.1, against the Judgment of the Learned Judicial Magistrate, Arani, in C.C.No.373 of 2007, dated 25.11.2011, thereby convicting him for the offence under Section 498(A) of IPC., and imposing a sentence of two years Rigorous Imprisonment and a fine of Rs.3,000/-, in default of payment of fine to undergo three months Simple Imprisonment, even while acquitting the petitioner/accused of the offence under Section 406, 494 and 506(ii) of IPC., as also the other accused 2 to 6, in this case and the conviction and sentence being confirmed by the Learned Sessions Judge, Thiruvannamalai, by Judgment dated 30.01.2014 in Crl.A.No.25 of 2011.

2.On 17.02.2006, PW.1/Thamarai Selvi, lodged a complaint-Ex.P2, thereby alleging that she got married with the petitioner/accused on 02.03.2000 and after the marriage, the first accused was not maintaining a proper relationship with the complainant and the first accused always used to hit her and other accused also abused her physically and ill-treated her. Apart from mentioning specific incidents she also alleged that the first accused/petitioner herein committed bigamy and contracted a marriage

with one Datchayani and thereafter, he totally neglected her, hence, the complaint.

3.PW.10/Inspector of Police, All Women Police Station, registered a case in Crime No.2 of 2006 against the petitioner herein and his mother Joshvin, who is the second accused, his brother / Maran as the third accused, One Lakshmi, wife of Maran as the fourth accused, his sister Juliee as the fifth accused and Datchayani, the alleged lady, who married the petitioner at the second time, as the sixth accused, for the offences under Sections 498(A), 406, 494 and 506(ii) of IPC.,

4.After completing the investigation. On 10.03.2007 PW.10 laid a final report proposing all the above accused guilty of the above mentioned offenses, before the learned Judicial Magistrate, Arani, who took the case on file as C.C.No.373 of 2007 and issued summons to the accused. Upon being questioned, the accused denied the charges and stood trial. The prosecution examined the first informant / Thamarai Selvi as PW.1., her father / Chinnasamy as PW.2, one Venkatesan, who is the sister's husband as PW.3, the mother of PW.1/Ellammal as PW.4; One Vincent, the sister of PW.1 as PW.5; One Father Bathros of Kaanikkai

Madha Temple as PW.6; One Alex, who is the common friend of both the accused and PW.1, who witnessed the second marriage of the first accused/petitioner in Velanganni Temple as PW- 7; One Anbu, who is also known by both PW.1 and the first accused, who had also witnessed the second marriage of the petitioner with the sixth accused as PW.8; One Kalaiselvi, the Sub-Inspector of Police as PW.9; Another Kalaiselvi, wife of A.V.Chandiran, the Inspector of Police, the Investigating Officer, in this case as PW.10.

5.The prosecution marked the marriage invitation between the petitioner and PW.1 as Ex.P1; the complaint of PW.1 is Ex.P2; a letter that was given by PW.1 to keep the proceedings in abeyance pursuant to her complaint as Ex.P3; the CSR receipt for the counter claim by the father of the sixth accused as Ex.P4 and the First Information Report as Ex.P5 and the prosecution rested its case.

6.Upon being questioned under Section 313 of Cr.P.C., about the evidence let in against them and the incriminating circumstances against them, all the accused denied the same as false. On behalf of the defence, while cross-examining, the prosecution witnesses, the legal notice issued

by PW.1 to the petitioner /accused was marked as Ex.D1; the order passed in the Divorce petition filed by PW.1 in the Sub-Court, Arani, is marked as Ex.D2; and the Divorce petition filed by PW.1 before the District Court, Thiruvannamalai as Ex.D3. No oral evidence was let in on behalf of the defence.

7.The Learned Judicial Magistrate proceeded to hear the arguments of the Learned Assistant Public Prosecutor and the learned counsel appearing for the accused. By Judgment dated 25.11.2011 it found that there is a valid marriage between PW.1 and the petitioner/first accused. As per the evidence of PW.1 coupled with PW.2, the accused had tortured PW.1, after getting her salary, to get more money from her parents and because of the vagabond life led by the first accused, he has been inflicting cruelty on PW.1. Therefore, PW.1 had to come out of the matrimonial home. PW.1 was harassed, by demands of more dowry and found that the accused had been committing cruelty from the years 2000 to 2005. The Trial Court found that the other offences including that of the bigamy as not proved beyond reasonable doubt and therefore acquitted accused 2 to 6 in toto and the petitioner/accused for the other offenses of 406, 494 and 506(ii) but, convicting the petitioner/accused for the offence

Section 498(A) of IPC and sentenced him as aforesaid.

8. Aggrieved by the findings and sentence, the petitioner herein filed an appeal in Crl.A.No.25 of 2011 before the learned Sessions Judge, Thiruvannamalai and by Judgment dated 30.01.2014, after considering the evidence on record in paragraph Nos.12 and 13, the Appellate Court confirmed the findings and conclusions reached by the Trial Court. As a matter of fact, in paragraphs Nos.15 & 16, the appellate court held that even A2 to A5 are liable to be punished, but the prosecution had not filed any Cross Appeal. Therefore the appellate court confirmed the conviction as well as the punishment against the petitioner. Thereupon, this Criminal Revision is laid before this Court.

9. Heard Mr.B.M.Subash, learned counsel for the petitioner. According to him, there are three sets of allegations, which are there on record to drive home the charge of cruelty. First, PW.1 alleged that she has been subjected to physical torture and torture of demanding more dowry between the years 2000 to 2005. Those allegations are to be negated because, she herself in Ex.D1/legal notice has said that Datchayani and her husband are living happily during the year 2000 to 2005. The second limb

of allegations is regarding the specific incident dated 16.11.2005 and upon cross-examination, she herself went back on the said allegations and admitted in the cross-examination that the incident on 16.11.2005 did not happen. Therefore, what remains is the third limb of allegations of cruelty on account of the extramarital relationship of the petitioner. According to the Learned Counsel, the mere allegation of having extramarital relationship will not amount to mental cruelty so as to constitute an offence under Section 498(A) of IPC. Therefore, according to the learned counsel for the petitioner, both the Trial Court as well as the First Appellate Court committed a grave error in considering the evidence in a perverse manner and therefore, this Court should interfere in exercise of revisional jurisdiction. He would further submit that the Lower Appellate Court, as a matter of fact, has not independently considered and applied its mind to the evidence relied and as in one sentence confirmed the Trial Court Judgment and therefore, the same is bad in law.

10. In support of his submissions, the learned counsel relied upon the Hon'ble Supreme Court Judgment in ***Jogi & Ors., Vs. The State of Madhya Pradesh¹ in Crl.A.No.1350 of 2021***, for the proposition, that the

Appellate Court erred in not giving detailed reasons. The learned counsel also relied upon ***Manju Ram Kalita Vs. State of Assam***² for the proposition that cruelty has to be understood and given a specific statutory meaning as provided under Section 498(A) of IPC., and gravity and seriousness of the act have to be weighed. The learned counsel relied upon another Judgment of ***K.V.Prakash Babu Vs. State of Karnataka***³ for the proposition that extramarital relationship *per se* would not be mental cruelty within the ambit of Section 498(A) of IPC. The learned counsel further relied upon a Judgment in ***Manikkam Vs. State of Tamil Nadu***⁴ for the proposition that mental cruelty for the purposes of Section 498-A has nothing to do with the demand of dowry. The learned also relied upon the Judgment of the Hon'ble Supreme Court of India in ***Tahsildar Singh And Another vs The State Of Uttar Pradesh***⁵ for the proposition when a document is shown to the witness in the cross-examination, and if the witness admits the document, it is not necessary to further question the witness on the contents of the document.

2 2009 (13) SCC 330

3 2017 (11) SCC 176

4 2018 (3) MWN (Cr) 560 : CDJ 2018 MHC 5719

11.Mr.L.Bhaskaran, learned Government Advocate (crl.side) appearing for the first respondent would submit that the evidence of PW.1, coupled with PW.2, PW.7 & PW.8 would conclusively prove that there was cruelty unleashed by the petitioner/accused against PW.1. Just because, the Trial Court acquitted the accused for the offence under Section 494 of IPC., the same would not be a reason for interfering with the finding of mental cruelty inflicted on PW.1 by the petitioner/accused having extramarital relationship. He would further submit that on 17.09.2006 itself through the sixth accused, the petitioner has begotten a child and placed a copy of the birth certificate before this Court. He would point out that the divorce proceedings between the PW-1 and the petitioner/first accused are still pending, he would impress upon this Court that there is no error in the finding by the Trial Court or the First Appellate Court, so as to interfere in revisional jurisdiction.

12.Mr.B.Sri Ram, learned counsel appearing for the victim / second respondent/PW.1 would submit that on a careful consideration of evidence of PW.1, it would be clear that she has categorically deposed in detail about the various physical and mental torture meted out to her by the first accused. As a matter of fact, the evidence of other witnesses would

corroborate the said facts. The contents in the legal notice were not specifically put to her in the cross-examination and therefore, the allegations cannot be negated, on the strength of Ex.D1 alone. He would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Munna Devi Vs. State of Rajasthan and another***⁶ and in ***D.Stephens Vs. Nosibolla***⁷ for the proposition finding of the Trial Court and the Lower Appellate Court cannot be lightly interfered with by the revisional Court and nature of the revisional jurisdiction is one of limited judicial review and re-appreciation of the entire evidence in revision is impermissible.

13.I have considered the material evidence on records and the submissions of the learned counsel on either side. As far as the first set of allegations of physical torture and mental cruelty during the period 2000-2005 is concerned when the petitioner herself has caused Ex.D1/legal notice, wherein it is specifically avered that PW-1 and the petitioner/accused were living happily during 2000-2005. Ex-D1, is caused by the PW-1 and therefore, once she admits in the cross-examination that the notice is given on her instructions and the same being marked, it throws doubt on the allegations leveled.

⁶ (2001) 9 SCC 631

⁷ 1951 SCR 284 : AIR 1951 SC 196 : (1951) 52 Cri LJ 510s

14. Secondly, I am also in agreement with the learned counsel for the petitioner that as far as the alleged incident occurred on 16.05.2012 is concerned PW.1 has categorically admitted in her cross-examination that the incident did not happen.

15. Be that as it may, PW-1, categorically stated that the petitioner/husband was having extramarital relationship with one Datchayani, who was also prosecuted as accused/A6 for the offence under Section 494 of IPC., but, however, the Trial Court acquitted the said Datchayani as well as the petitioner for the offence of Section 494 of IPC. In this regard, the evidence cannot be looked into in piecemeal. This Court has to read the evidence of PW.1, PW.7 & PW.8 as a whole and a proper reading would convey the essence that cruelty, predominantly mental cruelty, was unleashed on PW.1, on account of the extramarital affairs developed by the petitioner herein. To this, the learned counsel would rely on paragraph No.15 of the Judgment of the Hon'ble Supreme Court in **K.V.Prakash Babu** case mentioned supra. Which is extracted hereunder:

"15.The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult

to generalise but certainly, it can be appreciated in a set of established facts. Extra marital relationship, per se, or as such would not come within the ambit of Section 498(A) of IPC. It would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 of IPC."

But the perusal of the above dictum would itself make it clear that the Court has to take into consideration the said abnormal behaviour with the facts and circumstances of the case and it has to be decided whether the conduct amounted to cruelty. Therefore, looking at the evidence of PW.1, PW.7 & PW.8, which is on record, it is clear that there was extramarital relationship. It has caused such an effect on the mental health of PW.1, which resulted in serious domestic discord and her leaving the matrimonial home. As a matter of fact, as per the evidence on record, PW.1 went out of the matrimonial home on 16.11.2005.

16. During the course of the hearing of the learned Government Advocate (crl.side) appearing for the first respondent, also produced the Birth certificate, evidencing the birth of a child for the petitioner/accused and the said A6/ Datchayani, which was born on 17.09.2006 itself. Therefore, the Court cannot close its eyes to the hard evidence and the facts of this case. It is pertinent to point out even the Appellate Court has taken an exception to the prosecution in non-filing of Cross Appeal as against the acquittal of A2 to A6, in this case.

17. Considering all the factors cumulatively, I hold that the action of the petitioner/accused in having extramarital relationship, which has further caused grave mental trauma and affected the mental health of PW.1, leading to serious circumstances, in conjunction with the act of PW.1 being forced to leave the matrimonial home, would amount to cruelty to her within Section 498(A) of IPC.

18. During his arguments, the Learned Counsel replied by pointing out that PW.1 was also in an extramarital relationship with one Ramu and that they have cross-examined her. Except throwing allegations on PW.1 in the cross-examination, the defence has not done anything

towards the proof of allegations and under the said circumstances, I reject the said submission without merits.

19. In view of my aforesaid findings, there is no any illegality or any error in the conclusion of the Trial Court and the Lower Appellate Court that the petitioner is guilty of the offence under Section 498(A) of IPC.

20. However, considering the facts and circumstances of the case I am inclined to modify the sentence of imprisonment alone imposed on the petitioner/accused by reducing it as six months imprisonment from that of one year.

21. The Criminal Revision Case is accordingly partly allowed.

07.12.2021

Index : Yes
Speaking order

klr

- 1.The learned Sessions Judge, Tiruvannamalai.
- 2.The Judicial Magistrate Court, Arani.
- 3.The Public Prosecutor, High Court of Madras.

D.BHARATHA CHAKRAVARTHY. J.,

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Pre- Delivery Order in

Crl.R.C.No.333 of 2014

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