

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 21.12.2020	Judgment Pronounced on 22.01.2021
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CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.R.C.No.24 of 2018

1. Mohanraj
2. Chandrababu @ Ramakrishnan
3. Raj ... Petitioners

..VS..

State rep. by
The Sub-Inspector of Police
W-2, All Women Police Station
Triplicane District
Anna Salai
Chennai -600 002.
(Cr. No.3 of 2007)

... Respondent

This Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., praying to set aside the conviction and sentence passed in the judgment in Crl.A.No.278 of 2016 dated 19.07.2017 on the file of the XVI Additional Sessions Judge, City Civil Court, Chennai, confirming the Judgment of Chief Metropolitan Magistrate at Egmore, Chennai on 03.11.2016 in C.C.No.5679 of

2007 and acquit them from all the charges.

For Petitioners : Mr.S.Madhusudanan

For Respondent : Mr.K.Madhan
Government Advocate (Crl. Side)

Order

This Criminal Revision Case is filed against the judgment of the learned XVI Additional Sessions Judge, City Civil Court, Chennai in Crl.A.No.278 of 2016 confirming the judgment of learned Chief Metropolitan Magistrate, Egmore at Chennai in C.C.No.5679 of 2007.

2. The respondent police filed a final report against the first petitioner under Sections 494, 498(A) and 506(ii) IPC and Section 4 of Dowry Prohibition Act and against the petitioners 2 and 3 under Sections 494 r/w. 109, 498(A) and 506(ii) IPC and Section 4 of Dowry Prohibition Act, alleging that the marriage between the defacto complainant and the first petitioner had

taken place on 12.01.1990 and thereafter the petitioners subjected the defacto complainant to cruelty demanding 5 sovereigns of gold jewels and thatched house, in which the defacto complainant was living. That apart second and third petitioners in collusion with the first petitioner performed second marriage to the first petitioner with another woman. All the three petitioners harassed the defacto complainant causing her physical and mental cruelty. They also criminally intimidated the defacto complainant to finish the family, if the dowry is not given.

3. On the appearance of the petitioners/accused, they were furnished with the copies of the documents relied on by the prosecution free of cost under Section 207 Cr.P.C. Finding that there are materials available to frame charges against the first petitioner under Sections 494, 498(A) and 506(ii) IPC and Section 4 of Dowry Prohibition Act and against the petitioners 2 and 3 under Sections 494 read with 109, 498(A) and 506(ii) IPC and

Section 4 of Dowry Prohibition Act, the learned trial Judge framed the charges accordingly and the accused were questioned about the charges framed against them. The petitioners denied the charges framed against them and demanded trial. During the trial, prosecution examined PWs.1 to 9 witnesses and marked Exs.P1 to P8. No evidence was produced on the side of the accused.

4. It is seen from the evidence of prosecution witnesses that marriage between the first petitioner and PW.1 Shanthi, the defacto complainant had taken place on 12.01.1990 and it was a love marriage against the wishes of their parents. After the marriage, the second and third petitioners scolded the defacto complainant in filthy language and fought with her for marrying the first petitioner, who is from different caste from the caste of the defacto complainant. Then they took the first petitioner along with them with a threat that he would not be given any property for the reason that he had married the defacto

complainant, who was from different caste. The defacto complainant went to their house and demanded that her husband should be sent along with her. The petitioners joined together and scolded her. The first petitioner informed her that he would not come to live with her unless she brought atleast 5 sovereigns of gold jewels from her sister and also house, in which she was residing, should be transferred in her name. Other petitioners had also joined the first petitioner in this demand. If she failed to bring jewellery and the property, she was informed by the second petitioner that he would conduct second marriage to first petitioner. He would also demolish her house, if she objected to the second marriage. Subsequently, the first petitioner was again married one Malathi. Petitioners and Malathi were living as a joint family. First petitioner was visiting PW.1 periodically and she gave birth to a female child in 1997 and another female child in 1999. After seven years, she did not know the whereabouts of the first petitioner and his second wife. She found them after much effort at Alandur. When she informed the first petitioner

that she was struggling with her daughters even for having a square meal, she was beaten by the first petitioner and second wife. Therefore, she gave a complaint to the police and that is Ex.P1. She has also produced the birth certificates of her daughters Vinodhini and Priyanka as Exs.P2 and P3, the community certificates of Vinodhini and Priyanka as Exs.P4 and P5. Copy of the ration card and photo were produced as Exs.P6 and P7. PW.2 is the sister of defacto complainant. She corroborated PW.1 with regard to her marriage with first petitioner, the demand of dowry, the second marriage of the first petitioner with Malathi and the cruelty alleged to have been committed against the defacto complainant. PW.3, PW.4, PW.5, PW.6, PW.7 and PW.8 had also been examined in support of the case of PW.1 with regard to her marriage with the first petitioner, demand of dowry, second marriage of first petitioner and cruelty alleged to have been committed against PW.1. PW.9 was Sub-Inspector of All Women Police Station, W7, Anna Nagar Police Station. On the basis of Ex.P1 - complaint, she registered Ex.P8 -

First Information Report in Crime No.3 of 2017 under Sections 498 (A), 494 of IPC and Section 4 of Dowry Prohibition Act. During the course of investigation, she arrested accused and remanded them to judicial custody. She collected documents filed in this case and after completing the investigation, she filed final report against the petitioners/accused.

5. The petitioners were questioned with regard to the incriminating evidence available against them from the evidence of prosecution witnesses. They have denied the evidence as false and no evidence had been produced on the side of the petitioners/accused.

6. Considering the oral and documentary evidence produced in this case, the learned Chief Metropolitan Magistrate found that there was no evidence to record conviction under Sections 494 and 506(ii) IPC against the first petitioner and 494 read with 109 and 506(ii) IPC against the second and third

petitioners and acquitted the petitioners from the charges framed under these Sections. However, the learned Chief Metropolitan Magistrate found the petitioners guilty under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act and sentenced them to undergo six months Rigorous Imprisonment under Section 498 (A) IPC and six months Rigorous Imprisonment under Section 4 of Dowry Prohibition Act with a fine of Rs.1,000/- in default to pay a fine, to undergo simple imprisonment for one month. Against the said judgement, the petitioners preferred Crl.A.No.278 of 2016 on the file of XIV Additional City Civil Court, Chennai. The learned XIV Additional City Civil Court Judge found that there is no infirmity in the judgment of the learned Chief Metropolitan Magistrate, Egmore dismissed the Appeal by confirming the judgment of the learned Chief Metropolitan Magistrate. Against the said judgment, this Criminal Revision Case is filed.

7. The learned counsel for the petitioners submitted

that this case is a fabricated case with a view to harass the petitioners. There is no proof for the alleged marriage between the first petitioner and the defacto complainant. Assuming that there was a marriage as alleged by the prosecution between the first petitioner and the defacto complainant on 12.01.1990, the complaint in this case was given only on 24.07.2007 alleging bigamy, demand of dowry and cruelty. Except the interested testimony of PW.1 and PW.2, that too, without any details of the demand of dowry, the date of demand of dowry, the date of alleged cruelty, a complaint with bald allegations was given. Based on that bald and baseless complaint, the criminal case was registered and the petitioners were prosecuted. Even during the evidence neither PW.1 nor PW.2 and other witnesses had given any categorical and pinpointed evidence with regard to the alleged criminal acts said to have been committed by the petitioners. In fact, the petitioners were not given proper opportunity to cross examine PW.1. Even without the cross examination of PW.1, the evidence available on record would

show that the allegations against the petitioners are all bald, baseless allegations without any details with regard to material particulars. The fact that the complaint was given after a long delay establishes the fact that this is a false complaint. There is no material to show that PW.1 and her sister own a house and therefore, the allegation that the petitioners demanded the house from her is not true. The evidence of other witnesses shows that they have no personal knowledge about the alleged acts of cruelty, demand of dowry, criminal intimidation etc., by the petitioners against the defacto complainant. Both the courts below have not considered the aspects of delay, lack of material particulars in the evidence of material witnesses and wrongly convicted the petitioners under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act. Therefore, the learned counsel for the petitioners prayed for setting aside the judgments of Courts below and the acquittal of the petitioners.

8. In response, learned Government Advocate (Crl. Side)

submitted that the offences with which the petitioners are charged are liable to be punished with an imprisonment for more than three years. Therefore, there is no question of limitation in this case. The petitioners have failed to cross examine PW.1 and her evidence remains unchallenged. Other witnesses have also supported the evidence of PW.1 and therefore, the Courts below have rightly convicted and sentenced the petitioners. The learned Public Prosecutor prayed for confirming the judgments of Courts below and dismissal of this Criminal Revision Case.

9. The points for consideration in this case are:

(1) Whether the judgment of the Court below convicting the petitioners under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act is correct ?

(2) Whether the judgment of the Court below suffer from any incorrectness or illegality or impropriety requiring interference from this

Court ?

10. Point Nos. 1 and 2:

It is seen from the records that the first petitioner was charged under Sections 494, 498(A) and 506(ii) IPC and Section 4 of Dowry Prohibition Act and the petitioners 2 and 3 were charged under Sections 494 r/w 109, 498(A) and 506(ii) IPC and Section 4 of Dowry Prohibition Act. On appreciating the evidence available before the Court, the learned Chief Metropolitan Magistrate found that the marriage between the first petitioner and the defacto complainant is true and out of the wedlock, they have two female children named Vinodhini and Priyanka. However, the learned Chief Metropolitan Magistrate found that the prosecution had failed to produce any materials to show that the first petitioner married a woman named Malathi as his second wife and through her, the first petitioner had three children. Since the prosecution has failed to produce any material evidence to show the alleged second marriage between the first

petitioner and Malathi and the birth of three children, the learned Chief Metropolitan Magistrate found that the charges against the first petitioner under Section 494 IPC and second and third petitioners under Section 494 r/w.109 IPC have not been proved and acquitted them from this charge. Similarly, learned Chief Metropolitan Magistrate found that there is no evidence to prove the charges framed against the petitioners under Section 506 (ii) IPC and therefore, acquitted them from this charge. As already stated, the petitioners were convicted and sentenced for the offence under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act. Therefore, We are now concerned only with the maintainability of the conviction recorded and sentence imposed against the petitioners under Section 498(A) IPC and Section 4 of Dowry Prohibition Act.

11. Ex.P1-complaint set the law in motion. Therefore, it assumes importance. It is seen from Ex.P1-complaint, especially with regard to the alleged acts of demand of dowry, cruelty, it

was alleged that after the first petitioner married Malathi, PW.1 asked the first petitioner as to why he left her and two daughters. First petitioner told her that since PW.1 belong to different caste, his father and his brother demanded that she should get five sovereigns of gold jewels from her sister Saroja and they should transfer the house in which they are living in her name. All the three petitioners under the influence of alcohol had beaten her and this harassment continued. This is the allegation we found from Ex.P1 complaint with regard to the demand of dowry and cruelty. As rightly pointed out by the learned counsel for the petitioner, this complaint is bereft of material details like the dates on which the demand of dowry was made, the cruelty - physical or mental were committed against her. Without reference to any date, a bald allegation is made after 17 years of marriage.

12. Even in her evidence, PW.1 is not specific about the alleged acts of demand of dowry and cruelty. It is her evidence

that the petitioners demanded five sovereigns of gold jewels and also the house and if she did not bring the jewels and house, they told her that second marriage would be performed to the first petitioner. Subsequently, second marriage was also performed. When these incidents had happened ? ie., the date of demand of dowry, the date of second marriage of the petitioner, the dates of cruelty and harassment nothing had been stated in her evidence. The allegations are bald allegations without any corroborative evidence. If the alleged acts of cruelty, demand of dowry had continued for over a period, there is no reason why PW.1 had not resorted to criminal action against the petitioners immediately after these incidents. The case of prosecution that nearly 17 years after her marriage, petitioners demanded dowry and committed cruelty on her, is hard to believe. PW.2 to PW.8 had been examined to support the case of PW.1. Their evidence is also not useful and inspires the confidence of this Court to place reliance on their evidence.

13. PW.2 is the own sister of PW.1. Her evidence also lacks material details like dates of alleged demand of dowry and cruelty. It is seen from the evidence of PW.2, there is no documents to show that the house which was demanded by the petitioners belong to them. When there is no evidence to show that the house in which PW.1 and PW.2 were living belong to them, where is the question of asking them to transfer the house in the name of PW.1. It is seen from the evidence of other witnesses that they knew about the allegations made against the petitioners only through hearsay, either through PW.1 or PW.2. Therefore, their evidence is also not useful to support the case of prosecution. Analysis of the oral and documentary evidences produced in this case shows that though there are some misunderstanding and bickering between PW.1 and petitioners, there is nothing to conclusively establish that the petitioners demanded dowry 17 years after the marriage and committed cruelty on PW.1.

14. To convict a person under Section 498(A) IPC, there must be evidence to prove that wilful conduct of the person drove a woman to commit suicide or to cause grave injury or danger to life, limb or health (mental or physical). Absolutely there is no evidence in this case to prove that PW.1 suffered any of these due to the wilful conduct of the petitioners. As already stated, the alleged demand of property or valuable security has not been proved to establish the case of cruelty under Section 498(A) of IPC. Similarly there is no convincing evidence to prove that the petitioners demanded dowry from PW.1 or her sister. This Court is of the considered view that there is no legally acceptable evidence available to convict the petitioners for the offence under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act. However, this Court finds that the Courts below approached this case emotionally and convicted the petitioners under Section 498 (A) IPC and Section 4 of Dowry Prohibition Act without there being any legal evidence to sustain the conviction.

15. In this view of the matter, this Court is of the considered view that the judgments of the Courts below especially the judgment of the learned XVI Additional Sessions Judge, Chennai in Crl.A.No.278 of 2016 confirming the judgment of the learned Chief Metropolitan Magistrate, Egmore at Chennai in C.C.No.5679 of 2007 is liable to be set aside and accordingly, set aside. This Criminal Revision Petition is allowed. The petitioners are not found guilty under Section 498(A) IPC and Section 4 of Dowry Prohibition Act and they are acquitted. Fine amount, if any, paid by the petitioners is ordered to be refunded to the petitioners.

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Internet: Yes

Index : Yes/No

Speaking/Non speaking order

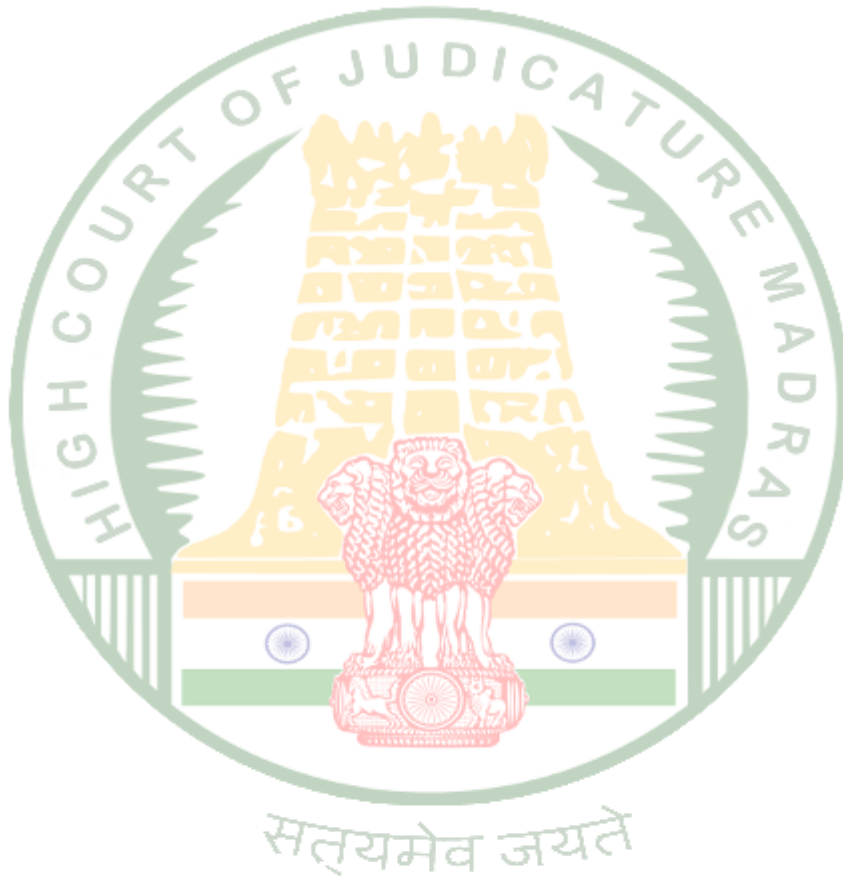
22.01.2021

To

1. The XVI Additional Sessions Judge,

City Civil Court, Chennai.

2. The Chief Metropolitan Magistrate,
Egmore.

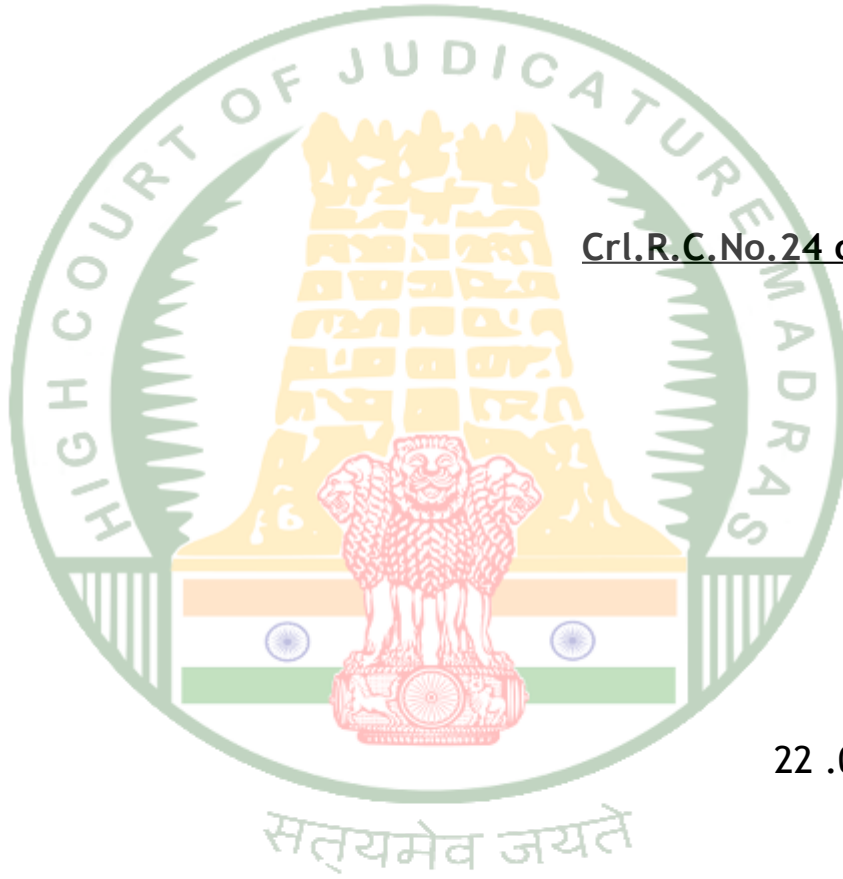


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G.CHANDRASEKHARAN, J.,

Crl.R.C.No.24 of 2018

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Order
in
Crl.R.C.No.24 of 2018

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