

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 7<sup>th</sup> day of June 2011

: B E F O R E :

HON'BLE MR.JUSTICE : V.JAGANNATHAN

CRIMINAL REVISION PETITION No. 1231 / 2007

BETWEEN :

Sharanappa S.Kallur,  
S/o Siddaramappa, Aged about 42 years,  
Occ: Employee of Wheel & Axle Plant,  
R/a No.259 'E',  
Wheel and Axle Factory Quarters,  
Yelahanka Satellite Town,  
Yelahanka Upanagara, Bangalore-64.

...Petitioner

( By Sri K.A.Chandrashekar, Advocate. )

A N D :

The State of Karnataka,  
by the Police of Yelahanka Upanagara  
Police Station, Bangalore City.  
rep. by State Public Prosecutor,  
High Court of Karnataka, Bangalore.

...Respondent

( By Sri P.Karunakar, H.C.G.P. )

Criminal Revision Petition filed under Sections 397  
& 401 of the Cr.P.C. praying to set aside the order of  
conviction and sentence dated 9.9.2004 passed by the  
C.M.M., Bangalore, in C.C.No. 177/2000 and the order  
dated 24.9.2007 passed by the F.T. (Session) Judge-V,  
Bangalore City, in CrI.A.No. 979/2004 for the offence

p/u/s 498-A of the I.P.C. and Section 4 of the D.P.Act and to acquit him.

This petition coming on for hearing this day, the court made the following :

### ORDER

This revision petition is by the accused, who was convicted for the offences punishable under Sections 498-A of the I.P.C. and Section 4 of the Dowry Prohibition Act, 1961. The trial court sentenced him to one year simple imprisonment and to pay a fine of Rs.10,000/- for the offence punishable under Section 498-A of the I.P.C. and to six months imprisonment and to pay a fine of Rs.5,000/- in respect of the offence punishable under Section 4 of the Dowry Prohibition Act, with default sentences.

2. The case of the prosecution in short is that, complainant Jayashree (P.W.1) was married to the petitioner herein on 26.8.1989 at Canara Union Kalyana Mantapa, Malleshwara, Bangalore, and at the time of the marriage, one Bajaj Scooter, one colour T.V., gold



chain and ring, watch and cash of Rs.50,000/- was given with other household articles. The couple lived happily for two years and, according to the prosecution and the complaint version, the petitioner-accused began to demand more dowry of Rs.20,000/- and wanted his wife to get her share in the property of her father in her name and apart from that, the accused gave cruel treatment to the complainant and she was forced to consume sleeping tablets. The harassment continued even upto the year 1999 and the accused also assaulted his wife on the head and sent her out of the house. Consequently, a complaint was lodged by the wife as per Ex.P-1 alleging cruelty and dowry harassment.

3. The complaint led to a case being registered against the petitioner and, after completion of the investigation which included recording of the statement of the neighbours as well as the brother, sister and mother of the complainant, statements of two doctors – P.Ws.7 and 8, were also recorded and finally, charge sheet was submitted against the accused.



4. Following the accused pleading not guilty, the prosecution examined eight witnesses and ten documents were marked. The accused denied the prosecution case when questioned under Section 313 of the Cr.P.C. and did not lead any evidence in his defence. The learned trial judge, after evidence appreciation, held that the prosecution had brought home the guilt of the accused beyond all reasonable doubt and accordingly, the petitioner was convicted and sentenced as aforesaid.

5. The learned counsel for the revision petitioner, questioning the judgment of conviction and sentence, took this court through the evidence of the witnesses to contend that, though the prosecution examined about eight witnesses, out of them, P.Ws.1, 2, 3 and 6 are the material witnesses and P.Ws.4 and 5, being the neighbours, have not supported the prosecution case. P.W.7 is the Radiologist who speaks to the examination of the complainant by him on 30.12.1991 and finding her to be 5-6 weeks pregnant. P.W.8 is another doctor who speaks to the factum of the complainant having



consumed sleeping tablets as she was suffering from epilepsy.

6. As far as the demand of dowry is concerned, it is argued that the evidence of the prosecution witnesses would go to show that there was no demand by the accused but, on the other hand, all the things that were given was as per the Hindu custom during the marriage. Therefore, the conviction under Section 4 of the D.P. Act cannot be sustained in law.

7. As far as the offence under Section 498-A of the I.P.C. is concerned, it is argued that the complaint was lodged almost after eleven years of the marriage and, therefore, the trial court could not have believed the evidence of the prosecution witnesses. Since the complainant was suffering from epilepsy and took sleeping tablets as deposed to by P.W.8, the question of the accused forcing the complainant to take sleeping tablets does not arise. There was no unlawful demand made by the accused and, as such, the conviction of the petitioner cannot be sustained in law. To support the



above submissions, reliance is placed on the decisions reported in 1990 CrL.L.J. 497, 1995 CrL.L.J. 2472 and 1991 CrL.L.J. 639.

8. On the other hand, the submission of the learned Government Pleader for the respondent-State is that, the trial court has properly appreciated the evidence on record and has found that the evidence of the prosecution witnesses, particularly P.Ws.1, 2, 3 and 6, has clearly established the offence under Section 498-A of the I.P.C. against the petitioner and, as far as the complainant consuming the sleeping tablets is concerned, the learned Government Pleader invited my attention to paragraph-30 of the trial court's judgment to contend that it was the accused who was suffering from epilepsy and not the complainant. Reliance was placed on Exs.P-8 and P-9 to contend that the wife was subjected to abortion by the husband on a couple of occasions in the past and, therefore, the evidence on record rightly led the trial court to convict the accused-petitioner both for the offences under Section 498-A of

  
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the I.P.C. and Section 4 of the D.P.Act and, therefore, he prayed that the petition be dismissed.

9. Having thus heard both sides and after going through the evidence on record, so far as the demand of dowry is concerned, it is deposed to by the material witnesses viz., P.Ws.1, 2, 3 and 6, in the course of their evidence that all the items viz., scooter, colour T.V., cash, etc, were given at the time of marriage as per the Hindu custom. Therefore, the question of the articles given at the time of marriage being the dowry given to the accused does not arise and P.W.1, who is the complainant, as well as the other witnesses, who are the close relatives viz., P.Ws.2, 3 and 6, all say in their evidence that the items were all given at the time of marriage and it was also as per the Hindu custom. Such being the evidence of these witnesses, the prosecution cannot be said to have proved that dowry was given at the time of marriage when all those items which were offered were at the instance of the complainant's family and not upon demand made by the accused and when the couple also lived for two years

  
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after the marriage happily and the trouble started only thereafter, the question of Section 4 of the D.P.Act getting attracted, therefore, does not arise.

10. Unless it is shown from reliable evidence that there was demand made directly or indirectly from the parents of the complainant, Section 4 of the D.P.Act does not get attracted. In the decision cited by the learned counsel for the petitioner in the case of *Sankar Prosad Shaw Vs. The State*, reported in 1991 CrI.L.J. 639, it has been held that, even mere demand is not sufficient but, it should be given or agreed to be given and at the most, mere demand may come under Section 498-A of the I.P.C. but not under Section 4 of the D.P.Act. For the above reason, conviction under Section 4 of the D.P.Act cannot be sustained in law.

11. As far as the offence under Section 498-A of the I.P.C. is concerned, the prosecution will have to establish that the accused treated his wife with cruelty and the nature of the cruel treatment given must be such that it falls either under explanation (a) or (b) of





Section 498-A. Explanation (b) to the said Section 498-A is as under:

“(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

12. In the instant case, the evidence of P.Ws.1, 2, 3 and 6 reveals that two years after the marriage, the accused started harassing his wife demanding more dowry and even wanted his wife to get the house in her name and apart from that, the accused was insulting his wife because, she could not conceive and twice the complainant had the misfortune of undergoing abortion. It is also in her evidence that, in the year 1999, the accused, after ill-treating her, sent her out of the house by beating her and she sustained contusion injuries on her head.



13. It is also in the evidence of P.W.1 that the accused made allegations against her to the effect that she had illicit relationship with one Ravikumar. P.W.2 Srinivas, who is the brother of the complainant, and P.W.3, another brother of the complainant, have deposed in similar fashion and finally, P.W.6, who is the mother of the complainant, has deposed in her evidence that the accused began to demand more dowry and wanted the share of P.W.1 to be transferred from her parents in the name of the accused and unable to bear the harassment, her daughter consumed sleeping tablets and became unconscious.

14. P.W.7 Dr.B.S.Ramamurthy speaks to the fact of finding the complainant being pregnant in the year 1991 and issuing the report as per Ex.P-8. P.W.8 Dr.Krishna Rao has deposed in his evidence that he examined complainant Jayashree, who had come with the history of consuming 20 to 25 Mazetol tablets and on examining her, he found that she was an epilepsy patient and was taking tablets for the said disease. It is also in his evidence that the complainant had attempted to commit



suicide by consuming the above mentioned tablets and the doctor, after examining her, issued the report as per Ex.P-9.

15. This being the nature of the evidence on record, although the prosecution, for the reasons best known to it, has not examined any of the police officers, yet the evidence of the material witnesses had given an indication of the wife being subjected to cruelty by her husband. The very allegation of the wife having illicit relationship with one Ravikumar being put to the wife itself is sufficient to hold that the wife was subjected to mental cruelty apart from the physical cruelty which she has deposed in her evidence. The two decisions referred to by the learned counsel for the petitioner do not apply to the instant case as the facts and circumstances in those cases are entirely different.

16. Therefore, after having analyzed the evidence on record, I do not find any error being committed by the trial court insofar as convicting the petitioner for the offence under Section 498-A of the I.P.C. is concerned,



though the same cannot be said as regards conviction under Section 4 of the D.P.Act. The lower appellate court also committed an error in confirming the judgment of the trial court in respect of the offence under Section 4 of the D.P.Act. In my view, the petitioner will have to be given the benefit of doubt insofar as Section 4 of the D.P.Act is concerned as the evidence is not very convincing to show that the accused was given all the articles at the time of marriage on his demanding the said articles viz., colour T.V., Bajaj Scooter, etc. Therefore, the conviction of the petitioner under Section 498-A of the I.P.C. alone will have to be sustained.

17. As far as the sentence is concerned, the learned counsel for the petitioner argued that the petitioner is residing separately and so is the complainant and the marriage took place more than twenty years back and, therefore, the sentence of imprisonment be set aside. Moreover, the petitioner is working in Wheel & Axle Plant and, therefore, the petitioner's career also will be jeopardized if he is sent to imprisonment at this length

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of time, almost after twenty years of the marriage. On the other hand, the submission of the learned Government Pleader is that, the sentence of imprisonment imposed by the trial court be maintained.

18. Having thus heard both sides, in my view, having regard to the nature of the evidence on record and the complaint having been filed almost eleven years after the marriage and taking note of the submission made that the petitioner and his wife are residing separately for several years and the petitioner is also working in Wheel & Axle Plant, the sentence of imprisonment, therefore, can be substituted by imposing more fine and the fine amount can be ordered to be paid to the complainant as compensation.

19. For the above reasons, the following order is passed:

The conviction of the petitioner under Section 498-A of the I.P.C. is sustained. The sentence imposed by the trial court is modified and the petitioner is sentenced to pay fine of Rs.20,000/-, which amount



shall be paid to the wife i.e., P.W.1, and in the event of default of payment of fine, the petitioner shall undergo S.I. for a period of three months.

The conviction of the petitioner in respect of Section 4 of the D.P.Act and the consequent sentence passed are set aside, *and he is acquitted of the said offence.*

The fine amount already deposited by the petitioner shall be adjusted towards the fine now imposed and the balance shall be deposited by the petitioner within four weeks after receipt of this judgment.

The revision petition, therefore, stands allowed in part to the above extent. Since the petitioner is said to be on bail, his bail bond shall stand cancelled. It is also made clear that the sentence imposed by this court upon the petitioner shall not in any way affect his future career.

Sd/-  
JUDGE

ckc/-