

(2010) 07 KAR CK 0077

In the Karnataka High Court

Case No : Criminal Revision Petition No. 2515 of 2009

Dr. Sharnappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 498A

Citation : (2011) 6 KarLJ 282

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : Ishwar Raj S. Chowdapur, for the Appellant; Sharanabassappa K. Babshetty, HCGP, for the Respondent

Judgement

B.V. Pinto, J.—This revision petition is filed challenging the order of conviction passed by the II Addl. Civil Judge (Jr. Dn.) and JMFC. Gulbarga in C.C. No. 2318/04 by his judgment dated 5.4.2007 convicting the Petitioner for offence u/s 498(A) and 323 Indian Penal Code and sentencing him to simple imprisonment for four months and to pay a fine of Rs. 10,000/- for the offence u/s 498A and further sentencing him to undergo S.I. for ten days and to pay a fine of Rs. 500/- for the offence u/s 323 Indian Penal Code which is modified by the judgment of the II Addl. Sessions Judge, Gulbarga, in Criminal Appeal No. 42/07 by judgment dated 4.2.2009 whereunder while confirming the order of conviction, sentence of imprisonment imposed on the Petitioner on both counts is deleted and the sentence of fine is retained for the said offences.

2. The complainant Smt. Seema had filed a complaint before the Mahila police, Gulbarga, on 25.2.2004 alleging that the Appellant and three others have committed offences u/s 498(A), 504 R/w. Section 34 Indian Penal Code and 323 R/w Section 34 Indian Penal Code on the ground that the Petitioner married the complainant on 10.7.1988 and subsequently took to drinking alcohol, incurred loan due to his bad habits and thereafter started demanding her to bring money from her parents and ill treating her, abusing her and assaulting her, thus

causing physical and mental harassment to her. It is further alleged by her in the complaint that on 21.1.2004 at about 5.00 p.m. in furtherance of their common intention the Petitioner and three other accused abused the complainant with filthy language and thus caused criminal act punishable u/s 504 R/w. Section 34 Indian Penal Code. It is further alleged that on the same date, time and place Petitioner and three others have also assaulted her with hands causing her pain and thereby committed offence u/s 323 R/w. Section 34 Indian Penal Code. After investigation the police filed a charge-sheet against the Petitioner and three others whereafter, after securing the presence of the Petitioner the learned Magistrate framed charge against the Petitioner and other accused. Thereafter prosecution in order to prove the case examined in all P. Ws. 1 to 7 and got marked Exs. P. 1 to P. 4. After hearing the prosecution and the defence the learned Magistrate was pleased to convict the Petitioner while acquitting the other accused in the said case. The Petitioner filed an appeal before the Sessions Court, Gulbarga and by judgment dated 4.2.2009 the learned Sessions Judge confirmed the order of conviction and deleted the order of sentence of imprisonment. It is this order which is under challenge now.

3. In so far as the evidence on record is concerned, the evidence of P.W. 1 Seema regarding the conduct of the Petitioner in drinking alcohol and coming late to the house, not paying the rent and electric bills, etc., and attempting to assault her has been spoken very clearly by the complainant P.W. 1 before the Court. This evidence of P.W. 1 has been corroborated by the evidence of P.W. 2 who is the brother of P.W. 1. P.W. 7 is a neighbour who has also stated regarding the frequent quarrels between the husband and wife and the arrival of the persons who gave loan to him and also his drinking habits. P.W. 1 has stated that being a neighbour on many occasions he had gone to separate the husband and wife when they were quarreling. Further both P.W. 1 and P.W. 7 have stated that in January, 2004 the Petitioner had quarreled with his wife and by sending them out of the house, locked the house and went away.

4. The learned Magistrate has discussed the evidence in detail and has come to a conclusion that the offence u/s 498(A) is made out very clearly. The learned Sessions Judge has also on a reappreciation of evidence on record has come to the same conclusion and has confirmed the order of conviction against the Petitioner.

5. In a revision petition the High Court need not go into the venture of appreciating the evidence on record, which is the exercise of an appellate court, however, in an anxiety to find out regarding the correctness and propriety of the order and sentence passed by the learned Magistrate and confirmed by the appellate court, I have gone through the evidence on record in detail. After going through the evidence on record as mentioned above and also the other materials on record, I am of the opinion that the conclusions arrived at by the learned Magistrate as confirmed by the learned Sessions Judge in so far as the ill-treatment and harassment meted out to P.W. 1 is concerned are cogent and are

based on the evidence on record.

6. Sri. Ishwar Raj S. Chowdapur, Learned Counsel for the Petitioner submits that the behaviour of the husband of Petitioner does not amount to cruelty within the meaning of Section 498(A) of the Indian Penal Code. He submits that in view of the fact there is no evidence regarding the injury caused on the person of the injured P.W. I, the learned Magistrate ought not to have convicted him for offence u/s 323 Indian Penal Code. He further submits that the act. of the Petitioner does not come within the definition of cruelty and hence he submits that the Petitioner is entitled for an order of acquittal.

7. In so far as the sentence is concerned he submits that Section 498(A) is punishable with imprisonment for three years and a fine and therefore since the imprisonment has been set aside by the learned Sessions Judge the said Court could not have imposed sentence of fine also and hence he submits that the order of sentence is also bad in law.

8. The learned HCGP submits that both the order of the learned Magistrate and the learned Sessions Judge in so far as the finding of fact is concerned are based on the evidence on record and are proper. Hence he submits that the order of conviction cannot be interfered with. So far as the sentence is concerned the courts below have been too much lenient in so far as sentence is concerned and therefore there is no scope for further deduction of sentence imposed on the Petitioner.

9. The term "cruelty" has been defined u/s 498A(a) as follows:

498A(a): Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman."

10. It is seen that the Petitioner was coming late to the house and was not paying the necessary bills regarding rent or electricity bill and was further abusing his wife. Further it is in the evidence of both P.W. I and P.W. 7 that the persons who had given loan were frequently coming to the house and were harassing her to give money which was advanced to her husband. Further in the month of January the Petitioner had willfully put P.W. I and her children outside the house and locked and went away. In my considered opinion this conduct of the Petitioner would come within the meaning of "willful conduct" as defined u/s 498A. In that view of the mater, I am of the opinion that the prosecution has brought the materials on record to attract Section 498A Indian Penal Code. Hence I confirm the order of conviction and sentence so far as Section 498A is concerned. In so far as the conviction u/s 323 Indian Penal Code is concerned, since there is no medical evidence to show that the injury has been caused to P.W. I, I am inclined to give benefit of doubt to the Petitioner so far as the said offence is concerned. In the result, I pass the following order.

ORDER

Criminal Revision Petition is allowed in part. The order of conviction and sentence for the offence u/s 198 Indian Penal Code is hereby confirmed. The order of conviction and sentence passed against the Petitioner for offence under Section 323 Indian Penal Code is hereby set aside and he is acquitted of the said offence. The bail bonds executed by the Petitioner is directed to be cancelled. The fine amount if paid in excess of what is due shall be refunded to him.