

D.Gowri Shankar vs State By Inspector Of Police on 22 December, 2023

Author: Sathi Kumar Sukumara Kurup

Bench: Sathi Kumar Sukumara Kurup

Crl.R

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	21.08.2023
Judgment Pronounced on	22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.215 of 2018

D.Gowri Shankar

... Petitioner/Appellant/Accused

Vs.

State by Inspector of Police,
W.21, All Women Police Station,
Guindy, Chennai
(Crime No.1 of 2009)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 Criminal Procedure Code, to call for the records of the learned VI Additional Sessions Judge, Chennai and set aside the judgment passed by him in C.A.No.134 of 2014 dated 07.02.2018 in confirming the conviction and sentence passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai-15 made in C.C.No.4556 of 2009 dated 28.04.2014 and dismissing the Appeal filed by him.

For Petitioner	: Mr.V.Karthick Senior Counsel for Mr.Adithya Varadarajan
----------------	-----------------------------------------------------------------

1/19

<https://www.mhc.tn.gov.in/judis>

Crl.

JUDGMENT

This Criminal Revision Case has been filed to call for the records of the learned VI Additional Sessions Judge and set aside the judgment passed by him in C.A.No.134 of 2014 dated 07.02.2018 in confirming the conviction and sentence passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai-15 made in C.C.No.4556 of 2009 dated 28.04.2014 and dismissing the Appeal.

2. The learned Counsel for the Revision Petitioner submits that in C.C.No. 4556 of 2009 the trial Court had framed the charges under Sections 498 (A), 406, 323 and 506 (ii) IPC. In support of the prosecution case, the prosecution examined P.W.1 to P.W.9 and marked Exhibits under Ex.P.1 to Ex.P.7. The learned Senior Counsel appearing for the Revision Petitioner invited the attention of this Court to the Judgment of the learned IX Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.4556 of 2009 and on assessment of evidence, the learned IX Metropolitan Magistrate, Saidapet, Chennai, had convicted the Accused for the offences under Sections 498 (A), <https://www.mhc.tn.gov.in/judis> 406, 326 & 506(ii) of IPC and imposed sentence of imprisonment 3 years for the offence under Section 498(A) of IPC and fine of Rs.2000/- in default to undergo 3 months imprisonment for the offence under Section 506 (ii) IPC, 1 year imprisonment for the offence under Section 323 IPC to undergo 3 months imprisonment, and for the offence under Section 506(ii) IPC for 6 months and the Accused was acquitted of the charge under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. Aggrieved by the judgment of conviction imposed on the Accused, he preferred an appeal before the learned VI Additional Sessions Judge, Chennai in Crl.A.No.134 of 2014. The learned VI Additional Sessions Judge, Chennai, by the judgment dated 07.02.2018 in Crl.A.No.134 of 2014, dismissed the appeal and confirmed the judgment of the learned IX Metropolitan Magistrate, Saidapet, Chennai. Aggrieved by the judgment of the learned VI Additional Sessions Judge, Chennai, this Criminal Revision Case has been filed.

3. It is the contention of the learned Senior Counsel for the Revision Petitioner that the prosecution witnesses, particularly, the De-facto Complainant/P.W.1 had in her deposition before the learned trial Judge, made improvements in the statements given by her to the Police, and inspite of it <https://www.mhc.tn.gov.in/judis> being brought to the notice of the Court in the cross examination by the learned Counsel for the Accused, the same was not considered by the learned IX Metropolitan Magistrate, Saidapet, Chennai. In the appeal, the grounds raised the said fact, which was also not considered by the learned VI Additional Sessions Judge, Chennai. Therefore, the learned Senior Counsel for the Revision Petitioner submits that the learned IX Metropolitan Magistrate, Saidapet, Chennai had not properly appreciated the evidence and convicted the Accused. The learned VI Additional Sessions Judge, Chennai has also not re-apprised the materials before the trial Court and had dismissed the appeal and the same is liable to be set aside.

4. The learned Senior Counsel for the Revision Petitioner submitted that FIR is embellished, it is lodged with delay. Further, he would submit that he admits the previous complaint for the very same offence.

5. The submission of the learned Senior Counsel for the Revision Petitioner is that P.W.1-Wife of the A1, had improved in her evidence i.e., in the statement given to the Police, she did not mention those facts which were mentioned only during the evidence before the trial Court, which is not <https://www.mhc.tn.gov.in/judis> considered by the trial Judge.

6. The submission of the learned Senior Counsel for the Revision Petitioner that already, P.W.1 had given a complaint to the Police and this FIR is belated after discussion was not considered by the trial Judge or by the Appellate Judge, also which does not hold good. It is to be noted that in the trial Court the witnesses as victims of crime are allowed to narrate the facts which prompted them to set the criminal law in motion, and the narrated facts voluntarily. In cross examination of the deposition of each of the witnesses before the trial Court is to test, as to whether the witnesses are speaking only the truth. If the witnesses withstand cross examination, it gives a hint to the trial Judge that the witnesses have spoken the truth. The trial Judge can appreciate the evidence and reject the improvements. The statement, which were stated earlier, were not stated in the Court. All these are appreciated by the trial Judge and just because of a few facts had been improved during the examination in chief, it does not mean that the witnesses were not speaking the truth. The subsequent fact that are in two complaints and therefore, the complaint that was registered as FIR, cannot be accepted and it will not hold good in cases of matrimonial dispute, particularly in the light of the decision <https://www.mhc.tn.gov.in/judis> case of Lalitha Kumari Vs. Government of Uttar Pradesh where matrimonial disputes ought to be considered for counselling, instead of immediately registering the FIR. Therefore, if the earlier complaint was to be treated, and it was referred to counselling and FIR was not registered, subsequently, if a fresh complaint is filed, the All Women Police concerned can register an FIR. The crimes affecting the matrimonial life of women stands on a different footing from the other crimes. Therefore, the sort of technical plea now raised by the learned Counsel for the Revision Petitioner/Accused is not acceptable.

7. The submission of the learned Senior Counsel appearing for the Revision Petitioner/Accused that the wife had not invited the husband/father of the child for the ear piercing ceremony of their child, was admitted by P.W.1 in her cross-examination, which shows animosity. Therefore, with the vengeance, she has deposed false evidence, which was considered by the Court to record a finding of guilt against the Accused. Therefore it has to be set aside. This argument of the learned Senior Counsel for the Revision Petitioner will not hold good. A woman as wife was tortured in the absence of her near and dear ones by the husband treating her as a slave or as a caged <https://www.mhc.tn.gov.in/judis> bird. Therefore, it has affected her mentally and physically. It is natural for a woman who had been victim of such cruelty to wreck vengeance when the chance comes on their way to show her condemnation for this sort of a husband and father. Therefore, it is natural that she had not invited the husband, father of the child for the ear piercing ceremony.

8. The learned Government Advocate (Crl. side) appearing for the Respondent also vehemently objected to the line of the argument made by the learned Counsel for the Revision Petitioner, stating that the learned trial judge had, on proper appreciation of evidence, arrived at a finding recording the guilt of the Accused. The learned VI Additional Sessions Judge, Chennai, on re-appreciating the same evidence, had confirmed the finding of guilt recorded by the learned IX Metropolitan Magistrate, Saidapet, Chennai and prayed to dismiss this revision Petition.

Point for consideration Whether the judgment dated 28.04.2014 of the learned IX Metropolitan Magistrate, Chennai, in C.C.No.4556 of 2009, which was confirmed by the learned VI Additional Sessions Judge, Chennai, in C.A.No.134 of 2014 dated 07.02.2018 is to be set aside <https://www.mhc.tn.gov.in/judis> as perverse?

9. Heard Thiru.V.Karthick, learned Senior Counsel for the Revision Petitioner and Thiru.V.Meganathan, learned Government Advocate (Crl.Side).

10. Perused the judgment of the learned IX Metropolitan Magistrate, Saidapet, in C.C.No.4556 of 2009 dated 28.04.2014 and the judgment of the learned VI Additional Sessions Judge, Chennai, in Crl.A.No.134 of 2014 dated 07.02.2018.

11. The submission of the learned Senior Counsel for the Revision Petitioner cannot at all be considered under the provisions of Sections 397 & 401 of Criminal Procedure Code.

12. The Revision Court does not have the power to re-assess the evidence just like the Appellate Court. The Revision Court has powers only to set right the defect error apparent on the part of either by the Trial Court or by the Appellate Court.

<https://www.mhc.tn.gov.in/judis>

13. The learned trial Judge had properly discussed the evidence and arrived at a conclusion based on the evidence of the witnesses P.Ws.1 to

9. Cross examination is a method of verifying the statement made by each of the witnesses, whether it is true, except that, the other contention regarding contradictions or improvements need not be considered by the trial Judge. The right of the Accused to challenge the witnesses does not mean that whatever is spoken to in cross examination, shall be considered as a contradiction affecting the case of the prosecution or weakening the case of the prosecution. It is for the trial judge to appreciate as to whether the contradictions are minor or having affected the prosecution case. The learned trial Judge had properly appreciated the evidence. The victim of crime in this case is P.W-1, the wife of the Appellant/Accused. She had withstood cross- examination. The other witnesses are parents.

14. The same fact which was agitated before the trial Court, was raised as appeal grounds before the learned Appellate Judge, i.e., the learned VI Additional Sessions Judge, Chennai, in C.A.No.134 of 2014. Therefore, in the judgment in Criminal Appeal in paragraphs Nos.17 to 22 the appellate <https://www.mhc.tn.gov.in/judis> Court had properly analysed the grounds of appeal and rejected the contention raised in the appeal grounds and confirmed the judgment of the learned trial Judge. Therefore, in exercising of power of revision, this Court cannot travel beyond the revision powers by usurping the powers of the Appellate Court. The Appellate Court has the powers to re-assess the evidence as the trial Court and the only difference is that the Appellate Court does not have the advantage of observing demeanour of the witness, which advantage is available only before the trial Court. In appreciation of the evidence by the Appellate Court, even if, on the same set of evidence, a

different opinion is available to the Appellate Court, the Appellate Court shall not disturb the findings recorded by the learned trial Judge. The learned trial Judge had arrived at a conclusion based on proper appreciation evidence.

15. On appreciation of evidence, it is found that the husband/Accused was always suspicious. Merely on suspicion he had tortured her on allegations of pre-marital relationship or extra marital relationship and these have wounded the psyche of the wife. It is to be noted that immediately after the delivery of the child, he wanted the child to be tested for DNA Test, implying that he is not the father of the child. When that <https://www.mhc.tn.gov.in/judis> much cruelty is shown to the wife, it is natural for the wife to discard her husband who is the father of the child. Therefore, she need not invite him for the ear piercing ceremony. She had responded to such cruelty.

16. The attempt of the Accused in the guise of an amicable settlement, was scuttled by P.W.1, stating that there cannot be an amicable settlement. This Court had granted ample time for reporting settlement, but the wife did not come forward.

17. This Court also had sought remarks of the Investigation Officer in this case through the learned Government Advocate (Crl. Side) regarding the claim of settlement. The learned Government Advocate (Crl. Side) on instruction of Investigation Officer vehemently denied such claim of settlement. Also, the learned Government Advocate (Crl. Side) stated that it is a ploy by the Revision Petitioner who had suffered conviction on concurrent finding by the Trial Court and Appellate Court is wantonly protracting the proceeding. After having suffered punishment, the learned Counsel for the Revision Petitioner submitted that the amicable settlement arrived at there was a snag in the settlement as the wife demanded purchase <https://www.mhc.tn.gov.in/judis> of land near the place of her residence, which was not amenable.

18. The learned counsel for the petitioner was warned that if he does not argue the case, the Criminal Revision will be dismissed with a direction to the trial Judge to issue a warrant for the Accused to undergo a sentence of imprisonment. At that stage, the learned Counsel for the Revision Petitioner engaged Senior Counsel.

19. The learned Senior Counsel engaged by the learned counsel on record for the Revision Petitioner submitted that there had been a settlement and this Court recorded the submission, which was denied by the Prosecution directing the learned Senior Counsel to argue the case on merits. It is to be noted that the Husband/Accused was convicted for the offences under Sections 498 (A), 406, 323 and 506 (ii) of IPC. Therefore, after having suffered conviction and sentence of imprisonment by the trial Court and confirmed in appeal by the Appellate Court, learned VI Additional Sessions Judge, City Civil Court, Chennai, there cannot be any settlement in a case of this nature.

<https://www.mhc.tn.gov.in/judis>

20. As per the submission made by the learned Senior Counsel for the Revision Petitioner in this Revision Petition with respect to the decision of the Hon'ble Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh, the case of matrimonial dispute has to be considered for amicable

settlement and it can even result in the quashing of the FIR and charge sheet. That does not include the cases under Section 498(A) of IPC and the matrimonial disputes that had ended in conviction before the trial Court and confirmed by the Appellate Court. Therefore, the submission of the learned Senior Counsel for the Petitioner seeking to set aside the finding recorded by the learned trial Judge as well as the learned appellate Judge, does not hold good. Hence the same is rejected. The learned IX Metropolitan Magistrate, Saidapet, Chennai, is directed to issue a warrant and secure the Accused to undergo the remaining imprisonment, if any. The Criminal Revision Case is accordingly dismissed. The Judgment of both the Courts below are confirmed.

21. In the light of the above discussion, this Court arrives at the conclusion that the Trial Court had properly appreciated the evidence and arrived at the conclusion that the Accused had committed the offence as per <https://www.mhc.tn.gov.in/judis> the charges framed by the Trial Court and recorded the finding of guilt for the offences under Section 498-A, 406, 323 and 506(ii) of IPC and was sentenced for each of the offences.

22. The learned VI Additional Sessions Judge, Chennai, as Appellate Court had re-assessed the evidence and had arrived at the same conclusion that the Accused/Appellant is guilty for the offences framed by the Trial Court. The Appellate Court had independently on the same set of materials, arrived at the same conclusion, thereby confirming the guilt of the Accused. As rightly contended by the learned Government Advocate (Crl. Side), the Revision Court has no power to re-assess the evidence. It can only set right the defence that had crept either before the Trial Court or before the Appellate Court. The two Courts had concurrently given a finding of fact and law. The Revision Court cannot interfere in such a finding. The submission of the learned Government Advocate (Crl.Side) is found applicable to the facts and circumstances of this case from the materials available before the Revision Court.

23. The submission of the learned Senior Counsel for the Revision <https://www.mhc.tn.gov.in/judis> Petitioner that there is a possibility of an amicable settlement. The Revision Court can even record a compromise and set right the judgment of conviction, which is not found applicable to the facts of this case.

24. The citation relied on by the learned Senior Counsel for the Revision Petitioner in Lalitha Kumari Vs. Government of Uttar Pradesh regarding matrimonial dispute and the guidelines of the Hon'ble Supreme Court cannot be invoked in this case as the victim of crime, the wife of the Accused/Appellant/Revision Petitioner, was not amenable as she had faced much torture both physical and mental in the hands of the Accused, and she is not ready to ignore and forget the pain and suffering inflicted on her by the Accused.

25. The learned Senior Counsel for the Revision Petitioner in the course of the argument submitted that there had been an offer of settlement but the wife was not amenable, which indicates the mind of the victim, who was treated badly by the Accused. She went to live with him as his wife and it was continuous. Therefore, she was not ready to forget and forgive. <https://www.mhc.tn.gov.in/judis> Therefore, the submission of the learned Senior Counsel for the Revision Petitioner is rejected. As rightly pointed out by the learned Government Advocate (Crl.Side), the Revision Petition had been

filed with all motives to protract the proceedings and to avoid the sentence of imprisonment imposed on the Accused by the Trial Court and confirmed in Appeal by the Appellate Court. Only after the Court had insisted the learned Counsel on record for the Revision Petitioner that if he does not proceed with the argument, the bail granted to the Revision Petitioner/Accused will be cancelled and he will be detained in prison. The learned Counsel had engaged a learned Senior Counsel and proceeded with the argument.

26. The point for consideration is answered in favour of the Prosecution and against the Revision Petitioner. The judgment of conviction recorded by the learned IX Metropolitan Magistrate, Saidapet, in C.C.No.4596 of 2009 and confirmed by the judgment of the learned VI Additional Sessions Judge, dismissing the CrI.A.No.134 of 2014, are found well-reasoned judgment that does not warrant interference by this Court. Therefore, the same is set aside as perverse and the same is confirmed in Revision.

<https://www.mhc.tn.gov.in/judis> In the result, this Criminal Revision Case is dismissed as having no merits.

The learned IX Metropolitan Magistrate, Saidapet, is directed to issue warrant in continuation of the judgment of conviction recorded by the learned IX Metropolitan Magistrate, Saidapet, as per judgment in C.C.No.4596 of 2009 dated 28.04.2014, and detained the Accused in prison to undergo the period sentence of imprisonment as per the judgment.

The Inspector of Police of All Women Police Station, Guindy, Chennai, is directed to secure the Accused.

If the Accused absconds, the Prosecution has to file appropriate Petition to declare the absconding Accused as Proclaimed Offender so that his movable and immovable assets are attached by the Court and brought to sale by public auction. The learned IX Metropolitan Magistrate, Saidapet, is directed to act accordingly.

22.12.2023 <https://www.mhc.tn.gov.in/judis> vsn/cda To

1. The IX Metropolitan Magistrate, Saidapet, Chennai-15
2. The VI Additional Sessions Judge, Chennai.
3. The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> SATHI KUMAR SUKUMARA KURUP,J.

vsn/cda Order made in 22.12.2023 <https://www.mhc.tn.gov.in/judis>