IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2024

PRONOUNCED ON : 09.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

Crl.RC.No.150 of 2022

Ponnazhagu Petitioner

Vs

The State represented by Sub Inspector of Police
All Women Police Station, Sirkazhi Respondent

Prayer:- This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 21.10.2021 made in CA.No.19 of 2016, by the Additional District Judge (FTMC), Mayiladudurai, confirming the judgement of conviction and sentence, dated 13.10.2016, made in CC.No.137 of 2004 by the Judicial Magistrate, Sirkazhi.

For Petitioner : Mr.R.Shanmugasundaram, SC for
Ms.A.G.Shakeena

For Respondent : Mr.A.Gopinath, GA(Crl.Side)

ORDER

1. This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 21.10.2021, passed in CA.No.19 of 2016, by the Additional District Judge (FTMC), Mayiladudurai, confirming the judgement of conviction and sentence, dated 13.10.2016, passed in CC.No.137 of 2004, by the Judicial Magistrate, Sirkazhi, thereby convicting and sentencing the Revision Petitioner /A1, Ponnazhagu for the

offences under Section 498A of IPC to undergo six months Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month imprisonment and acquitting him from the offences under Sections 506(ii) read with 34 of IPC and Sections 4 and 6 of the Dowry Prohibition Act.

2. The case of the Prosecution, arisen on the basis of the complaint, Ex.P1, First Information Report, given by the complainant, PW.1, Nagajayam, W/o.Ponnazhagu, against four persons, namely, (1) Ponnazhagu Perumal, (2) Maheswari Kannaiyan, (3) Padmavathy Kanniyan and (4) Kannaiyan Perumal, who were arrayed as A1, A2, A3 and A4, registered in Crime No.12 of 2003 at the All Women Police Station, Sirkazhi, on 08.10.2003, for the offences punishable under Sections 498A and 506(ii) read with 34 of IPC and Sections 4 and 6 of the Dowry Prohibition Act, is as follows:-

(a) The Revision Petitioner/A1 is the husband of the complainant, PW.1. A2 is the daughter of sister of A1. A3 is the sister of A1 and A4 is the husband of A3. The marriage between PW.1 and the Revision Petitioner, namely, Ponnazhugu was solemnized on 14.07.2002. At the time of marriage, 50 sovereigns of gold ornaments, house hold articles worth about Rs.1,50,000/-, a sum of Rs.50,000/- by way of cash for purchase of two wheeler and another sum of Rs.1,00,000/- in cash were given to the Revision Petitioner.

(b) Within three months from the date of the marriage, dispute arose between them. The Revision Petitioner/A1 used to threaten and torture

her to sign in blank papers, by saying that he is going to marry A2, as a second wife. In a Panchayat held on 13.04.2003 convened and presided by the President of Melaiyur Panchayat, the Revision Petitioner/A1 said that he would live with her peacefully. After the Panchayat, they were living peacefully for three months. On 23.09.2003 at 8.00 p.m. in the house of A1, all the accused have threatened her not to interfere with the second marriage of A1 with A2, failing which, they threatened to kill her by pouring kerosene on her. All the accused again demanded a sum of Rs.2,00,000/- to perform the marriage of A2, if PW.1 was not willing to give consent for the second marriage.

(c) On 27.09.2003 at 6.00 a.m., the Revision Petitioner again demanded a sum of Rs.2,00,000/- from the brother of PW.1, Bairavanathan and her elder brother's son, when they came to meet him. Thereafter, again all the accused demanded a sum of Rs.2,00,000/- from PW.1 to continue the matrimonial life with the Revision Petitioner/A1. Since she refused to pay the amount, A2 to A4 started to torture her. PW.1 was driven out of the matrimonial home and she was living in her mother's house.

(d) Hence, for such acts, the Respondent Police, after conducting investigation, had filed a charge sheet against the accused/A1 to A4 for the offences under Sections 498A and 506(ii) of IPC read with 34 and 4 and 6 of the Dowry Prohibition Act, before the Judicial Magistrate, Sirkazhi.

3. The case was taken on file in CC.No.137 of 2004 by the Judicial

Magistrate, Sirkazhi. After receipt of summons from the Trial Court, when the accused appeared in person before the Trial Court, copies of the documents were served on them under Section 207 of Cr.PC. After giving sufficient time to the accused and after hearing the accused and considering the documents, necessary charges were framed for the offences under Sections 498A and 506(ii) read with 34 of IPC and Sections 4 and 6 of the Dowry Prohibition Act. Since the accused had denied the charges and pleaded not guilty of the aforeaid charges and claimed to be tried, in order to bring home the charges against the accused, the Prosecution examined the following 11 witnesses, as PW.1 to PW.11 and marked 5 documents as Ex.P1 to Ex.P5.

1. PW.1 = Nagajeyan (Complainant)
2. PW.2 = Ganapathi Thevar
3. PW.3 = Bairavanathan
4. PW.4 = Veeraiyan
5. PW.5 = Manickavasagam
6. PW.6 = Nithyanandam
7. PW.7 = Vellaiyan
8. PW.8 = Maruthavanan
9. PW.9 = A.K.Murthy
10. PW.10 = Mullaikodi
11. PW.11 = Lakshmi Prabha, Sub Inspector of Police

1. Ex.P1 = Complaint given by PW.1
2. Ex.P2 = Resolution passed in the Panchayat held on 13.04.2003
3. Ex.P3 = Observation Mahazar
4. Ex.P4 = First Information Report in Cr.No.12 of 2003
5. Ex.P5 = Rough Sketch

4. On completion of the evidence on the side of the Prosecution, when the accused were questioned under Section 313 of Cr.PC, as to the incriminating circumstances found in the evidence of prosecution

witnesses against them, the accused had come with the version of total denial and stated that they had been falsely implicated in this case. On the side the accused, neither any witness was examined nor any document was marked.

5. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Revision Petitioner/A1 guilty and awarded punishments, as referred to above and acquitted A2 to A4 from all the charges levelled against them, by the impugned judgement of conviction and sentence. On the appeal, the lower appellate court had, by its impugned judgement of conviction and sentence, confirmed the judgement of conviction and sentence of the Trial Court. Aggrieved over the same, this Criminal Revision Case has been filed by the Revision Petitioner/A1.

6. This Court heard Mr.R.Shanmugasundaram, the learned senior counsel for the Revision Petitioner, assisted by Ms.A.G.Shakeena and Mr.A.Gopinath, the learned Government Advocate (Criminal Side) for the Respondent. Translated copies of the judgements and the other connected documents were supplied by learned counsel for the parties in the Court for consideration.

7. The learned senior counsel for the Revision Petitioner has submitted that the trial courts have not appreciated the facts and evidence in a proper and perspective manner and that though there is no valid, reliable and cogent evidence, both oral and documentary evidence, to base conviction

on the Revision Petitioner/A1 for the offence under Section 498A of IPC, the trial courts erred in convicting the Revision Petitioner/A1 only based on the evidence of the interested witnesses, who are only hearsay witnesses.

8. The learned senior counsel for the Revision Petitioner has further submitted that the impugned judgements of conviction and sentence of the trial courts are not sustainable on the following material contradictions, infirmities and discrepancies found in the case of the Prosecution:-

a) After the conciliation meeting in the Panchayat, PW.1 and the Revision Petitioner/A1 were living together in the matrimonial home peacefully and when PW.1 became three months pregnant, she went to her mother's house on her own. There is ***no presumption clause*** *for an* ***offence under Section 498A of IPC*** and the Prosecution has to prove its case beyond all reasonable doubt, by letting in valid and cogent evidence. However, the trial courts, ***presuming*** that if the Revision Petitioner/A1 really did not commit any cruelty or harassment on PW.1, why he did not go to bring PW.1 back to his house, ***erroneously held*** that the offence of 498A of IPC is made out against him.

b) As per the oral evidence of PW.1, it is only A3 and A4, who demanded the alleged sum that too only to perform the marriage of A2. PW.1 has not stated anything about any demand of the alleged amount on the part of the Revision Petitioner/A1. **Hence,** ***on this ground also***, the trial courts, while acquitting A3 and A4 from the charges under Section 498A of IPC, ought to have acquitted the Revision Petitioner/A1 also for the said

charges under Section 498A of IPC, as the allegation is not proved against the Revision Petitioner/A1.

c) When the other co-accused, namely, A2 to A4, along with the Revision Petitioner/A1 were tried for the same set of similar and identical charges and when there are **similar and identical evidence** for all the accused, acquitting A2 to A4 alone from the same set of similar and identical evidence from all the charges ***would amount to discrimination***, that too when there is no concrete evidence against the Revision Petitioner/A1. Hence, the trial courts ought to have acquitted the Revision Petitioner/A1 also on the same set of similar and identical evidence.

d) All the Prosecution witnesses, namely, PW.1 to PW.5, who are relatives and PW.6 to PW.10 ***are not the direct eye witnesses and they are only hearsay witnesses.*** The evidence of PW.1 has not been **corroborated** by any other Prosecution witnesses. As per the evidence of PW.1, her father, mother and brothers have ***no personal or direct knowledge*** about any cruelty caused to her by the Revision Petitioner/A1 and only they came to know about the cruelty only on the information given by PW.1 and as such, the evidence of all the Prosecution witnesses are only hearsay evidence and hence, it cannot be taken into consideration. However, the trial courts **erred** in relying on the evidence of such ***hearsay witnesses*** to base conviction on the Revision Petitioner/A1 for the offence under Section 498A of IPC.

e) Though it is alleged that the demand of the amount was made on

23.09.2003 and 27.09.2003, the complaint was made only on 07.10.2003. Though it is alleged that the accused committed cruelty on those dates, ***there is no immediate complaint*** or at least on the next day of such alleged occurrence and hence, the alleged demand of the amount and cruelty meted out to PW.1 by the Revision Petitioner/A1 ***becomes doubtful.***

f) As per the evidence of PW.2, father of the PW.1, there was an **earlier complaint** given by PW.1 on 04.10.2003 and it has been suppressed.

g) PW.3, brother of PW.1, in his evidence, has stated that after lodging the complaint to the Police on 07.10.2003, PW.1 came to her own Village, but whereas PW.1 in her cross examination has deposed that after lodging of the complaint on 07.10.2003, PW.2, father of PW.1 stayed with her in the matrimonial house for 4 or 5 days. Hence, the evidence of PW.1 and PW.3 are ***contradictory with each other*** and cannot be relied upon.

h) The alleged demand of money on 23.09.2003 and 27.09.2003 for the marriage of A2 would ***not amount to unlawful demand and to cruelty.***

i) As per the evidence of PW.11, the Investigating Officer, Ex.P1, First Information Report was said to have been registered on 08.10.2003 and PW.11 had arrested two accused on 07.10.2003, which is prior to registration of Ex.P1. Though the neighbours of the Revision Petitioner/ A1 knew about the cruelty caused to PW.1, PW.11 did not examine any of such neighbours or Villagers, but only the relatives and interested

witnesses of PW.1. Hence, ***the investigation had not been done in a fair manner.***

j) Since the Revision Petitioner was a ***Government Servant, he could not have any intention for the second marriage,*** even with the consent of PW.1, since the allegation of second marriage will be against the Tamil Nadu Government Servants Conduct Rules, warranting disciplinary action under the Tamil Nadu Civil Services (D&A) Rules.

9. The learned senior counsel for the Revision Petitioner has ultimately submitted that in view of the above said grounds, the case of the Prosecution appears to be wholly unreliable and that the Prosecution has miserably failed to prove its case beyond the realm of reasonable doubts and that in view of the above said discrepancies, infirmities and material contradictions in the evidence of the Prosecution and in the absence of valid, convincing and cogent evidence against the Revision Petitioner/A1 for the offence under Section 498A of IPC, the impugned judgements of conviction and sentence are not sustainable.

10. In support of his contentions, the learned senior counsel for the Revision Petitioner/A1 has relied on the following decisions:-

a) **2023 9 SCC 164 (Javed Shaukat Ali Qureshi Vs. State of Gujarat)**
b) **2024 4 SCC 208 (Ram Singh Vs. State of UP)**
c) **2024 SCC Online SC 2609 (Yogarani Vs. State)**
d) **2024 SCC Online SC 3682 (Dara Lakshmi Narayana and others Vs. State of Telungana)**

11. Per contra, the learned Government Advocate (Criminal Side) for the Respondent has, while supporting the impugned judgements of conviction

and sentence of the trial courts, submitted that the Prosecution has proved its case beyond all reasonable doubts, by letting in valid and cogent evidence and that though the Prosecution witnesses are interested witnesses, their evidence is sufficient to base conviction on the Revision Petitioner/A1 for the offence under Section 498A of IPC and that therefore, the impugned judgements of conviction and sentence need not be interfered with.

12. I have given my careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgements of conviction and sentence, including the various decisions referred to by the learned counsel for the parties.

13. In the present case, there are four accused persons, namely, A1 to A4. The Revision Petitioner herein is A1. The case of the Prosecution mainly rests on the evidence of PW.1 to PW.5.

14. PW.1, Complainant, is the wife of the Revision Petitioner/ A1. A2 is the daughter of sister of A1. A3 is the sister of A1 and A4 is the husband of A3.

15. PW.2 is the father of PW.1. PW.3 is the brother of PW.1. PW.4 and PW.5 are the relatives of PW.1. PW.6 is a participant of the Panchayat. PW.7 is the President of the Panchayat concerned. PW.8 and PW.9 are the Panchayatars. PW.10 is a witness to the charge sheet. PW.11 is the Investigating Officer.

16. The charges against A1 to A4 are under Sections 498A and 506(ii) read with Section 34 of IPC and Sections 4 and 6 of the Dowry Prohibition Act. A2 to A4 stood acquitted of all the charges by the trial courts. Both the trial courts convicted and sentenced the Revision Petitioner/A1 alone for the offence under Section 498A of IPC, while acquitting him from the other charges, as stated above.

17. Now, the question is whether the impugned judgements of conviction and sentence of the trial courts, convicting and sentencing the Revision Petitioner/A1 alone under Section 498A of IPC are justifiable or not?

18. In the present case, in order to come to a conclusion as to whether the Prosecution has proved its case against the Revision Petitioner/A1 under the provisions of Section 498A of IPC by valid and cogent evidence and whether the trial courts are right in coming to the conclusion that the Revision Petitioner/A1 is guilty of the offence under Section 498A of IPC, it has become necessary for this Court to analyse the entire evidence, both oral and documentary evidence, in a proper and perspective manner.

19. Sections 498A of IPC reads as under:-

> **"498A. Husband or relative of husband of a woman subjecting her to cruelty.—**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation.— For the purpose of this section, "cruelty" means—
>
> (a) any wilful 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; or

(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.

20. It is also pertinent to state that in order to attract the provisions of Section 498A of IPC, the Prosecution has to prove ***the essential ingredients of Section 498A of IPC***, by letting in valid and cogent evidence that the cruelty or harassment meted out to the wife by her husband or relatives of her husband should be to the extent that it became unbearable and that cruelty must be of the nature of harassment of such woman, with a view to coerce her to meet unlawful demand for property or valuable security.

21. As contended by the learned senior counsel for the Revision Petitioner, there is ***no presumption under Section 498A of IPC***. It is seen from the evidence that after the conciliation meeting in the Panchayat, PW.1 and the Revision Petitioner/A1 were living together in the matrimonial home peacefully and when PW.1 became three months pregnant, she went to her mother's house on her own. ***The only ground***, on which the trial courts convicted and sentenced the Revision Petitioner/A1, ***is presumption of 498A of IPC,*** thereby meaning that there is no convincing and cogent evidence, against the Revision Petitioner/A1 for the offence under Section 498A of IPC. As stated above, ***there is no presumption clause for an offence punishable under Section 498A of IPC.*** The Prosecution has to prove its case beyond all reasonable doubts, by letting in valid and cogent evidence and ***not by presumptions and assumptions.*** However, the trial

courts **have erroneously presuming that** if the Revision Petitioner/A1 really did not cause any harassment or cruelty on PW.1, PW.1 would have returned to the matrimonial home and no reason was adduced as to why A1 did not go to bring PW.1 back to his house, held that the offence of 498A of IPC is made out against the Revision Petitioner/A1, ***which is not justifiable.***

22. Further, as regards the other infirmities and the discrepancies in the case of the Prosecution, as contended by the learned senior counsel for the Revision Petitioner, it is seen that the case of the Prosecution is that the money was demanded by the Revision Petitioner/A1 to continue the matrimonial life with PW.1, thereby causing cruelty on PW.1. But, it is seen from the entire evidence, particularly, the oral evidence of PW.1, it is seen that nowhere, the Revision Petitioner/A1 demanded money and threatened and tortured PW.1. **It is only A3 and A4, who demanded the alleged sum** that too only to perform the marriage of A2 with someone else and threatened and caused mental cruelty to PW.1, by saying that if PW.1 did not give the money, they would kill her by pouring kerosene on her. In her evidence, PW.1 has not stated anything about any demand of the alleged amount on the part of he Revision Petitioner/A1 or he caused cruelty on her. Thus, the oral evidence of PW.1 and other Prosecution witnesses and the case of the Prosecution are totally **contradictory with each other.** Hence, the trial courts, while acquitting A2 to A4 on such evidence, ought to have acquitted the Revision Petitioner/A1 also for the

said charges, but the trial courts erroneously convicted the Revision Petitioner/A1 under Section 498A of IPC, ***which is illegal.***

23. It is seen from the records that in this case, the other co-accused, namely, A2 to A4, along with the Revision Petitioner/A1 were tried for the same set of similar and identical charges, namely, offences under Sections 498A, 506(ii) read with 34 of IPC and Section 4 and 6 of the Dowry Prohibition Act. The other co-accused, namely, A2 to A4 were acquitted from all the charges levelled against them, on the same set of similar and identical evidence and that the Revision Petitioner/A1 alone was convicted for the offence under Section 498A of IPC and acquitted from the other charges, on the same and identical evidence. Hence, this Court is of the view that acquitting the other co-accused and convicting the Revision Petitioner/A1 alone ***on the same set of similar and identical evidence would amount to disparity and discrimination***. Hence, on this ground alone, the trial courts ought to have acquitted the Revision Petitioner/A1 for the offence under Section 498A of IPC and accordingly, the impugned judgements of conviction and sentence of the trial courts are not sustainable.

24. The Honourable Supreme Court, in the case of **Javed Shaukat Ali Qureshi Vs. State of Gujarat; 2023 9 SCC 164, which was relied on by the** Honourable Supreme Court **in its subsequent decisions reported in the case of Ram Singh Vs. State of UP; 2024 4 SCC 208 and Yogarani Vs. State; 2024 SCC Online SC 2609,** was pleased to observe as under:-

"15. When there is similar or identical evidence of eyewitnesses

against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination."

25. Insofar as the ground of **hearsay evidence** is concerned, as stated above, the trial courts mainly relied on the evidence of the Prosecution witnesses, namely, PW.2 to PW.5, who are the relatives of PW.1. PW.2 is the father of PW.1. PW.3 is the brother of PW.1. PW.4 and PW.5 are the relatives of PW.1. PW.6 is a participant of the Panchayat. PW.7 is the President of the Panchayat concerned. PW.8 and PW.9 are the Panchayatars. PW.10 is a witness to the charge sheet. PW.11 is the Investigating Officer.

26. PW.1 has stated in her cross examination that her father, mother and brother did not know directly about the alleged acts of cruelty and demand, on the part of the Revision Petitioner/A1 and that only on her information, they came to know about the same.

27. It is established from the above evidence of PW.1 that her father (PW.2), mother and brother (PW.3) ***have no personal knowledge about any cruelty*** caused to her by the Revision Petitioner/A1 and only they came to know about the cruelty only on the information given by PW.1. Thus, as stated above, all the Prosecution witnesses are not the direct eye witnesses to the alleged demand of money and cruelty and they are only hearsay witnesses and interested witnesses. Hence, it is unsafe to rely solely on the deposition of PW.1 alone and in the absence of sufficient corroboration

to the evidence of PW.1, to base conviction on the Revision Petitioner/A1. However, the trial courts grossly erred in considering the hearsay evidences to base conviction on the Revision Petitioner/A1 under Section 498A of IPC, by the impugned judgements of conviction and sentence, which are unsustainable.

28. Witnesses may be categorized into three distinct categories. They may be wholly reliable. Similarly there may be witnesses, who can be considered wholly unreliable. There is no difficulty in placing reliance or disbelieving his evidence when an evidence is wholly reliable or wholly un-reliable, but difficulty arises in case of third category i.e. where witness is neither wholly reliable nor wholly unreliable. Hostile witness ordinarily falls in category of those witnesses who are neither wholly reliable nor wholly un-reliable. The Honourable Supreme Court, in **Khujji @ Surendra Tiwari Vs. State of M.P; AIR 1991 SC page 1853,** was pleased to observe as under:-

> "The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

29. The term **"hostile witness"** does not find a place in the Evidence Act 1872 (herein after referred to as the Act of 1872 for brevity). It is a term borrowed from the English Law. Though in the English Law to allow a party to contradict its own witness was not acceptable view. The theory of contradicting its own witness was resisted on the ground that party should be permitted to discard or contradict his own witness, which turns

unfavorable to the party calling him, however, this rigidity of rule was sought to be relaxed by evolving a term **"hostile" or "unfavourable witness"** in common law.

30. It is relevant to quote Section 154 (1) of the Act of 1872, as under:-

> ""the Court may, in its discretion, permit the person, who calls a witness to put any question to him, which might be put in cross examination by the adverse party".

31. Sub-Section (2) of Section 154 of Act of 1872, further provides as under:-

> "Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of evidence of such witness".

32. Thus, discretion is vested in Court to permit a person to put such question, which may be put by an adverse party, if Court deems it appropriate. Thus, the term "hostile witness" has been borrowed from the English Law and developed in through case Laws.

33. The principle of **"falsus in uno falsus in omnibus"** (false in one thing, false in everything) has no application in India. It is the duty of the Court to separate grain from chaff. Keeping in view the above principles, the Honourable Supreme Court, in the case of **Sucha Singh v. State of Punjab; AIR 2003 SC 3617,** was pleased to observe as under :-

> "even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus (false in one thing, false in everything) has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, truth is the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court

considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well."

34. Though the alleged demand of the amount was made on 23.09.2003 and 27.09.2003, the complaint was made only on 07.10.2003. Though it is alleged that the accused committed cruelty on those dates, **there is no immediate complaint** or at least on the next day of such alleged occurrence and hence, the alleged demand of the amount and cruelty meted out to PW.1 by the Revision Petitioner/A1 **become doubtfu**l.

35. As per the evidence of PW.2, father of the PW.1, there was an earlier complaint given by PW.1 on 04.10.2003 and it has been suppressed and it is not known as to what had happened after that complaint and nothing has been stated further by PW.1 in this regard.

36. Another glaring infirmity in the evidence of the Prosecution witnesses, brought to the notice of this Court by the learned senior counsel for the Revision Petitioner/A1, regarding the whereabouts of PW.1 after lodging the complaint on 07.10.2003, is the material contradiction in the evidence of PW.1 and PW.3, namely, PW.3, brother of PW.1, in his evidence, has stated that after lodging the complaint to the Police on 07.10.2003, PW.1 came to her own Village, but whereas PW.1 in her cross examination has deposed that after lodging the complaint on 07.10.2003, PW.2, father of PW.1 stayed with her in the matrimonial house for about 4 or 5 days. Thus**, the evidence of PW.1 and PW.3 are contradictory with each other.** Even PW.1 contradicts her own evidence, which also creates doubt on the

Prosecution's case.

37. Even assuming that there was an alleged demand of money on 23.09.2003 and 27.09.2003 by A3 and A4 for the marriage of A2, that would **not amount to unlawful demand and to cruelty or harassment.** In this regard, the evidence is completely lacking that for that demand, the ill treatment was made to PW.1 by the Revision Petitioner/A1.

38. As per the evidence of PW.11, Investigating Officer, Ex.P1, First Information Report was said to have been registered on 08.10.2003 and PW.11 had arrested two accused on 07.10.2003, which is prior to registration of Ex.P1. Though it is stated by PW.11 in her deposition that the neighbours of the Revision Petitioner/A1 knew about the cruelty caused to PW.1, PW.11 did not examine any of such neighbours or Villagers, but only the relatives and interested witnesses of PW.1. Hence, this Court is of the view that the investigation had not been done in a fair manner and that **non-examination of the neighbours** of the Revision Petitioner/A1, who are the proper persons to speak about the alleged acts, **would be fatal** to the case of the Prosecution.

39. Since the Revision Petitioner was a **Government Servant,** he could not most probably have any intention for the second marriage, even with the consent of PW.1, since the allegation of second marriage will be against the Tamil Nadu Government Servants Conduct Rules, warranting disciplinary action under the Tamil Nadu Civil Services (D&A) Rules. If such being the case, PW.1 would have definitely made a complaint to the

Employer of the Revision Petitioner/A1, but, it is not done so in this case. Hence, the case of PW.1 becomes unreliable.

40. At this juncture, this Court is of the view that through out the web of the Criminal Jurisprudence, one golden thread is always seen that it is the duty of the Prosecution to prove the guilt of the accused beyond all reasonable doubts, by letting in valid, convincing and cogent evidence. This burden of proof on the Prosecution to prove guilt is also known as presumption of innocence. The presumption of innocence, some times refer to by the latin expression *"ei incumbit probatio qui dicit, non qui negat"* (the burden of proof is on one who declares, not to one who denies) is the principle that one is considered innocence unless proven guilt. In criminal jurisprudence, every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. The Prosecution may obtain a criminal conviction only when the evidence proves the guilt of accused beyond reasonable doubt.

41. The Honourable Supreme Court, in the case of **Dara Lakshmi Narayana and others Vs. State of Telungana; 2024 SCC Online SC 3682,** was pleased to observe as under:-

> "28. The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section

> 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them."

42. It is not the intention of the legislature that any women, who has suffered cruelty in terms of what has been contemplated under Section 498A of IPC, should remain silent and forbear herself from making a complaint or initiating criminal proceedings. In fact, insertion of the said provision is meant mainly for the protection of a woman, who is subjected to cruelty in the matrimonial home primarily due to unlawful demand for any property or valuable property. However, in the present case, this Court is of the view that it has been **misused**, in the absence of a clear prima facie case being made out against the Revision Petitioner/A1 under Section 498A of IPC, as discussed above.

43. In sum and substance, in the present case, this Court is of the view that surmises and conjectures or presumptions and assumptions would not take the place of proof. Further, the learned Government Advocate for the Respondent has not been able to point out any evidence on record to prove the charges under Section 498A of IPC against the Revision Petitioner/A1. In other words, exfacie no case has been made out under Section 498A of IPC against the Revision Petitioner/A1. There is absolutely no evidence to show any harassment or cruelty meted out to

PW.1 by the Revision Petitioner/A1. The evidence of PW.1 is unreliable. As stated above, there is a disparity between the charges framed and the evidence of PW.1, which is also contradictory to the evidence of the other Prosecution witnesses, which has caused prejudice to the Revision Petitioner/A1. When the trial courts acquitted A2 to A4 from the offence under Section 498A of IPC on the same set of similar and identical evidence, they committed a grave error in convicting the Revision Petitioner/A1 alone on the same set of similar and identical evidence under Section 498A of IPC.

44. The Honourable Supreme Court, in the case of **Vadivelu Thevar v. State of Madras; 1957 SCR 981: AIR 1957 SC 614,** was pleased to observe at para 11 & 12 as under:-

> "11.....it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:
>
> (1) Wholly reliable,
> (2) Wholly unreliable
> (3) Neither wholly reliable nor wholly unreliable.
>
> 12. In the first category of proof the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness if it is found to be above reproach or suspicion of interestedness, incompetence, or subornation. In the second category the court equally has no difficulty to its conclusion. It is in the third category of cases that the court has to be circumspect and has to look for corroboration in the material particulars by reliable testimony direct or circumstantial....."

45. In the present case, after a careful perusal of all the testimonies of the Prosecution witnesses as well as the defence witnesses, this Court finds

that the trial courts had failed to circumspect the material on record carefully.

46. Further, a Division Bench of the Allahabad High Court, in the case of **Suresh Narain Tripathi and others Vs. State of UP and Others; 2005 Cril LJ 2479**, granted acquittal for the offence under Section 436 of IPC, where the star witnesses were unreliable and was pleased to observe at para 13 as under:-

> "13. Certainly, it is the primary principle that the accused must be and not merely may be guilty before a court can convict and a mental distinction between 'may be' and 'must be' is long and divided vague conjectures from sure conclusions."

47. It feels pain to observe that in our present system of trial despite having sufficient power to the Judge to ask questions to the witnesses in order to find out truth, most of them do not ask questions to the witnesses to shift the grain from the chaff. Practice of leaving witnesses to the Advocates, when a witness becomes hostile, is not un-common in the trial courts. Time and again the Honourable Supreme Court has reminded that a Judge does not preside over a criminal trial merely to see that no innocent man is punished, but a Judge also presides to see that a guilty man does not escape. Both are public duties, which the Judge has to perform. Therefore, the trial Court must shed their inertia and must intervene in all those cases where intervention is necessary for the ends of justice.

48. In the present case, in the absence of any concrete and convincing evidence to show that PW.1 was subjected to cruelty or she was put to harassment or torture either mentally or physically, this Court is of the

view that no offence under Section 498A of IPC has been proved against the Revision Petitioner/A1. Therefore, it is difficult to sustain the impugned conviction and sentence imposed on the Revision Petitioner/A1 under Section 498A of IPC merely on the unreliable testimony of the Prosecution witnesses, whose evidence is not worthy of credence, as they are hearsay witnesses. Hence, the impugned judgements of conviction and sentence recorded by the trial courts under Section 498A of IPC against the Revision Petitioner/A1 cannot be sustained and accordingly, are liable to be set aside.

49. In the result, in the light of the above said observations and the decisions of the Honourable Supreme Court and after analysis of the circumstances of the present case in the light of the aforesaid settled legal principles and in view of the above said infirmities, discrepancies and material contradictions in the case of the Prosecution, as discussed above, this Criminal Revision Case is **allowed**. In respect of the Revision Petitioner, Ponnazhagu alone and insofar as the imposition of conviction and sentence under Section 498A of IPC on the Revision Petitioner, Ponnazhagu alone is concerned, the impugned judgements of conviction and sentence, dated 21.10.2021 passed in CA.No.19 of 2016, by the Additional District Judge (FTMC), Mayiladudurai and dated 13.10.2016, passed in CC.No.137 of 2004 by the Judicial Magistrate, Sirkazhi **are set aside and reversed**. The Revision Petitioner, Ponnazhagu, is **acquitted** of all the charges levelled against him. The personal bonds and surety

bonds, if any executed by the Revision Petitioner, shall stand cancelled and the **sureties are discharged**. No order as to costs.

50. Let record of the Trial Court be sent back to the Court concerned along with copy of judgement and order for information.

09.01.2025

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
Srcm

To

1. The Additional District Judge (FTMC), Mayiladudurai
2. The Judicial Magistrate, Sirkazhi
3. The Public Prosecutor, Madras High Court

SHAMIM AHMED, J.

Srcm

Pre-Delivery Order in
Crl.RC.No.150 of 2022

09.01.2025