

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE K.SOMASHEKAR

CRIMINAL REVISION PETITION NO. 558 OF 2011

Dated:17-12-2019

Sri Nagalingappa vs. State of Karnataka

ORDER

Heard the learned counsel Sri. P. Nataraju for the petitioner and the learned HCGP Shri Thejesh for the State.

2. This Criminal Revision Petition is directed against the judgment passed by the Appellate Court in CrI.A.No.107/2006 dated 07.03.2011 allowing the appeal in part and modifying the impugned judgment of conviction and sentence passed by the Trial Court in C.C.No.504/2002 dated 27.04.2006. The Trial Court had convicted accused No.1 - petitioner herein for offences under Sections 498-A and 506 of IPC and Section 4 of the Dowry Prohibition Act and had sentenced him to undergo simple imprisonment for one year and to pay fine of Rs.2,000/- for the offence under Section 498-A IPC; sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- for the offence under Section 506 IPC; sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.2,000/- for the offence under Section 4 of the DP Act, which sentences were to run

concurrently. However, the Appellate Court, by its order dated 7.3.2011 had modified the said judgment rendered by the Trial Court and had reduced the sentence of simple imprisonment to six months and to pay a fine of Rs.500/- for each of the offence under Sections 498-A IPC and Section 4 of the DP Act and set aside the conviction under Section 506 read with Section 34 IPC.

3. The factual matrix of the petition as per the case put forth by the prosecution is as follows:

The petitioner Nagalingappa arraigned as Accused No.1 is the husband of the complainant Bhagyamma. A complaint was lodged by Bhagyamma against Accused no.1 / husband, accused nos.2 and 3 / parents-in-law and accused nos.4 and 5 / brothers-in-law stating that accused no.1 married her as on 3.7.1994. At the time of marriage, one golden neck chain weighing 10 grams and one pair of clothes were given as dowry to the petitioner and after their marriage, both of them lived with her in-laws and brothers-in-law. After one month, it is stated that all of the accused started ill-treating CW-1 Bhagyamma asking her to get a sewing machine, almirah and gold jewels from her parental home. Unable to bear their ill-treatment, the complainant started living with her husband – petitioner herein in a separate house in Vinayaka Nagar, Mysore. It is stated

that they used to frequently visit the complainant at Vinayaka Nagar and continue the ill-treatment. It is alleged that as on 13.02.2002 at about 11.30 a.m. all the accused, namely Accused Nos.1 to 5 assaulted the complainant with hands and abused her in filthy language and also threatened to take away her life since she did not bring the sewing machine, almirah, golden jewels and cash of Rs.10,000/- by way of dowry. Thus CW-1 had lodged a complaint against accused persons to take legal action against them.

As a result of the complaint being lodged, a case was registered and the Investigating Officer filed a charge sheet. Charges were framed against the accused and they pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined eight witnesses as PW-1 to PW-8 and got marked Exhibits P1 to P6. After the closure of the prosecution side, incriminating statement as contemplated under Section 313 Cr.P.C. was recorded. The Trial Court, after recording the evidence and hearing the arguments on both sides, convicted accused no.1 for offences punishable under Sections 498A and 506 read with Section 34 IPC and Section 4 of the Dowry Prohibition Act but however, acquitted Accused Nos.2 to 5 as there

was no evidence against them.

Being aggrieved by the judgment of conviction and sentence of the Trial Court, the accused no.1 challenged the said judgment by way of Crl.A.No.107/2006. The Appellate Court on a re-appreciation of the evidence on record, proceeded to allow the appeal in part thereby acquitting the accused for offence under Section 506 IPC and reducing the sentence whereby the accused was directed to undergo simple imprisonment for six months and to pay fine of Rs.500/- for each offence under Sections 498A IPC and Section 4 of the DP Act, which sentences were to run concurrently. It is this order which is under challenge in this petition urging various grounds.

4. The learned counsel for the petitioner contends that both the courts below erred in holding the petitioner guilty of the offences alleged even when the same had not been proved beyond all reasonable doubt. It is the contention of the learned counsel that the prosecution had not at all placed cogent and consistent evidence in respect of the charges under Sections 498-A and 506 of the IPC as well as under Section 4 of the DP Act. Further, that the petitioner has been convicted based

on inconsistent and uncorroborative evidence of the prosecution witnesses. It is to be noticed that PW-8 Mangamma who was the house owner of the rented premises where the first accused and the complainant were residing from the past three years prior to the incident, has deposed to the effect that she did not know anything about the quarrel between the husband and wife nor regarding that accused no.1 had been demanding dowry from her and harassing her. Hence, the evidence of PW-8 runs contrary to the evidence of PW-1 Bhagyamma, the complainant wherein she has deposed to the effect that Accused No.1 was giving physical and mental harassment to her by asking her to get a tailoring machine, almirah, gold jewellery as well as Rs.10,000/- from her parental home or else that he would contract a second marriage. PW-1 has stated that Accused No.1 was frequently quarrelling with her and also harassing her physically. It is strange that PW-8, owner of the rented house who was residing in the neighbouring house did not know anything about the ill-treatment meted out to PW-1, which creates a doubt in the case projected by the prosecution. There are also inconsistencies in the evidence of all the witnesses and both the Trial Court as well as the Appellate Court have not appreciated the evidence of all the witnesses in a proper perspective. Though all other accused, namely Accused Nos.2 to 5 were residing very much away from Accused No.1 and the complainant, PW-1 complainant had falsely alleged that all of the accused were ill-treating her. The Trial Court rightly noticing the fact that the allegation of the complainant was not true, has

acquitted Accused Nos.2 to 5 of the alleged offences, which judgment has also been affirmed by the Appellate Court. Since the complainant has not come to the court with clean hands and has projected a case falsely against all the accused persons, the courts below ought to have acquitted Accused No.1 as well of the alleged offences.

Further, all the witnesses who have supported the case of the prosecution are all interested witnesses who were related to the complainant PW-1. Hence, the courts below ought not to have convicted the accused purely on the basis of interested witnesses. Hence the learned counsel contents that both the courts below have erred in appreciating the evidence of the witnesses mechanically without scrutinizing the same about the trustworthiness and credibility of the same.

Hence, the learned counsel for the petitioner prays that the order of conviction and sentence passed by the Trial Court in C.C.No.504/2002 dated 27.04.2006 which was partly affirmed by Appellate Court in Crl.A.No.107/2006 by order dated 07.03.2011 be set aside and the petitioner be acquitted of the offences under Section 498A IPC and Section 4 of the DP Act.

5. Per contra, learned HCGP for the State has taken me through the scope and object of Section 498A

of IPC and Section 4 of the DP Act. He contends that though the Appellate Court has acquitted the petitioner from the offence under Section 506 IPC in view of the fact that there was no evidence to support the say of PW-4 that Accused No.1 threatened to pour acid on the complainant, it cannot be said that the accused did not extend physical or mental harassment to the complainant to bring dowry from her parental home. Hence he contends that the Appellate Court has rightly held the accused guilty of offence under Section 498A IPC and Section 4 of the DP Act though acquitted him of the offence under Section 506 IPC. Hence, the learned HCGP contends that the order passed by the Appellate Court being just and proper, needs no interference in this revision petition.

6. On a careful consideration of the contentions advanced by the learned counsel for the petitioner - accused and the learned HCGP and having regard to the material on record, it is seen that the courts below have erred in convicting the petitioner in the absence of legally acceptable and clinching evidence. It is seen that the prosecution has not at all placed cogent and consistent evidence in respect of the charges under Sections 498-A and 506 of the IPC as well as under Section 4 of the DP Act. As contended by the learned counsel for the petitioner, it is very strange that PW-8 Mangalamma who was the house owner of the rented premises where the first accused and the complainant

were residing from the past three years prior to the incident, did not know anything about the quarrel between the husband and wife nor regarding that accused no.1 had been demanding dowry from her and harassing her. However, PWs 3 and 4 being the mother and sister of PW-1 have deposed to the effect that accused no.1 was extending physical harassment to the complainant. Hence, the evidence of PW-8 runs contrary to the evidence of PW-1 Bhagyamma, and PW-3 Ningamma and PW-4 Rajeswari. PW-1 has stated that Accused No.1 was frequently quarrelling with her and also harassing her physically. It is strange that PW-8, owner of the rented house who was residing in the neighboring house did not know anything about the ill- treatment meted out to PW-1, which creates a serious doubt in the case of the prosecution. I find that the ill- treatment said to be meted out to the complainant by accused No.1 has not been proved by the prosecution by cogent, corroborative and acceptable evidence since only interested witnesses have supported the case of the prosecution. There are also inconsistencies in the evidence of all the witnesses and both the Trial Court as well as the Appellate Court have not appreciated the evidence of all the witnesses in a proper perspective. Though all other accused, namely Accused Nos.2 to 5 were residing very much away from Accused No.1 and the complainant, PW-1 complainant had falsely alleged that all of the accused were ill-treating her. The Trial Court rightly noticing the fact that the allegation of the complainant was not true, has acquitted Accused Nos.2 to 5 of the alleged offences, which judgment has also been affirmed by the Appellate Court. Hence, I am of the opinion that the courts below ought to have acquitted Accused No.1 as well of

the alleged offences.

7. At a cursory glance of the evidence of the witnesses, it is seen that they do not corroborate each other and further there are inconsistencies and contradictions in the case put forth by the prosecution. When there are inconsistencies and contradictions, the benefit of doubt shall accrue in favour of the accused. Hence, I am of the opinion that the prosecution has failed to establish the guilt of petitioner - Accused for the offence under Section 498-A IPC and Section 4 of the DP Act, beyond all reasonable doubt. Consequently, the petitioner/accused deserves to be acquitted. Accordingly, I proceed to pass the following:

ORDER

This revision petition is allowed. The impugned order passed by the Trial Court in C.C.No.504/2002 dated 27.4.2006 as well as the impugned order passed by the Appellate Court in CrI.A.No.107/2006 dated 07.03.2011 are hereby set-aside. The petitioner - accused is acquitted of the offences punishable under Sections 498-A IPC as well as under Section 4 of the DP Act.