

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24<sup>TH</sup> DAY OF DECEMBER 2010

BEFORE

THE HON'BLE MR.JUSTICE JAWAD RAHIM

Criminal Revision Petition No. 1527 of 2006

Between:

Sri G.K.Revana Kumar  
S/o Kariya Bovi @  
Kariyappa  
Aged about 30 years  
Residing at B.Gowdagere  
Village, Srirangapatna Taluk  
Mandya District

.. Petitioner

(By Sri H.C.Shivaramu and Sri Sathyanarayana Chalke,  
Advocates)

And:

The State of Karnataka  
Represented by the  
Station House Officer  
Mandya West Police Station  
Mandya

.. Respondent

(By Sri Rajasubrahmanya Bhat, HCGP)

This criminal revision petition is filed u/s 397 Cr.P.C. by the Advocate for the petitioner praying that this Hon'ble Court may be pleased to set aside the order passed in CC No.193/1998 on the file of the CJ (Sr.Dn.) & CJM, Mandya on 05.07.2005 and etc.



This petition coming on for dictating orders this day, the Court made the following:

**ORDER**

Convict-accused is in revision against the judgment in Criminal Appeal No.78/2005 dated 03.07.2006 on the file of the Judge, Fast Track Court, Mandya, confirming the judgment dated 05.07.2005 in CC No. 193/1998 on the file of the CJM, Mandya made for offence punishable under Section 498-A of the IPC and the consequent sentence.

2. This matter was heard and reserved and is taken up for dictation today.

3. The material allegations on the basis of which the petitioner was arraigned, tried and ultimately convicted, as manifest from the case papers reveal;

Latha-PW1 lodged a report alleging on 08.12.1995 she married Revana Kumar Karia Bovi @ Kariappa, the



petitioner-accused and the marriage was solemnised in Subramanya temple according to Hindu rights and customs. Out of the wedlock, she gave birth to a child and thereafter, the relationship between the couple reached upheavals. The petitioner-accused is alleged to have picked up quarrel on one pretext or the other, resulting in mental and physical torture. She endured in hope of better times, but it was of no avail. She had to face the onslaught from the accused at the cost of physical pain and mental strain. Unable to bear the harassment any further, she took refuge in the house of her parents. Again the accused took her to his matrimonial home, where the harassment continued. Several instances are narrated by her, in her report to the police. She also alleged, unable to bear the torture any more, she lodged a report at the jurisdictional police station against him, which after investigation resulted in filing of the final report arraigning the petitioner-accused for offence under Section 498-A of the IPC.



4. The accused was put to trial in CC No.193/1998. He pleaded not guilty, necessitating trial in which the prosecution placed reliance on the testimony of seven witnesses and six documents. The accused put up defence of denial simplicitor, when questioned about the incriminating aspects in evidence. The learned trial Judge analysed the evidence on record and found it outweighs the feeble defence put forward by the accused. In the resultant position, he was convicted for offence punishable under Section 498-A of the IPC and sentenced to undergo imprisonment for one year and pay fine of ₹10,000/-, which was assailed in Criminal Appeal No.78/2005 reiterating the plea which was put forward before the trial court. It was a failure.

5. The main contention of the accused is, Latha, PW1 is not his wife. There is no relationship of husband and wife between them and thus no charge could have been raised under Section 498-A of the IPC,



which comes into play only when the victim is the wife and the perpetrator is the husband. In other words, for want of marital relationship, charge is described as untenable.

6. The learned appellate Judge re-appreciated the evidence and found there is sufficient proof of marital relationship between the complainant-Latha and the accused. Therefore, that defence was rejected. Regarding the alleged harassment, the learned trial Judge held that the victim had described the sequence of events which spells out the atrocious conduct of the accused upon his wife and the infant baby girl. Appeal thus came to be dismissed. Assailing both the judgments, he is in this revision.

7. The learned counsel for the petitioner once again reiterated the same plea. Sri Rajasubrahmanya Bhat, learned Government Pleader, in negation of such



plea, has drawn my attention to the evidence of PW1 Latha, the victim-complainant, Jayamma, her mother and Narasimhegowda who has spoken to about Latha being married to the petitioner and his conduct.

8. Keeping in mind, what is urged against the impugned judgments, I have bestowed my concern to all grounds.

9. As could be seen, PW1-Latha has assertively claimed to have been married to the petitioner-accused on 08.12.1995 in Subramanya temple. She was questioned about it denying her assertion. But as seen from her evidence, there is not much cross-examination on her assertion that she was living in the house of the accused for 5 to 8 months prior to filing of the complaint. She has furnished details of the residence at Shankarnagar and KEB Colony, Mandya. PW2 Jayamma, is a witness. PWs3 and 4 are the owners of



the houses in which the complainant and the accused lived together as husband and wife. PW5 is a witness to the mahazar and PW6 is the mother of the complainant. Amongst them, evidence of PWs3 and 4 reveal that the complainant was residing in their house. PW3-Narasimhegowda who owned the house occupied by the accused has deposed that during 1997-98, the accused and PW1 were tenants in his house. He has further revealed that two or three times, he had gone there to demand rent which was due. Therefore, he knew PW1 Latha was living with the accused in the said house as his wife. He has also deposed about cruel conduct of the accused in not providing food and basic necessities to Latha and the infant child. Similarly, evidence of PW4-Venkatamma reveals she is the owner of the house in which the accused and the complainant were residing before they occupied the house of PW3 as tenants. They paid PW3-Narasimhegowda ₹5,000/- as advance and ₹700/- as rent. She also speaks of both cohabiting as



husband and wife for more than four to five years. Thus, evidence of both these witnesses corroborates the evidence of PW1 that she lived as the wife of the accused.

10. The contention of the learned counsel is, in the absence of any proof of marriage, such living together would not bring the charge under Section 498-A of the IPC. This ground has to be discounted, as the mother of the complainant is a witness who claims to have arranged the marriage between the couple at Kukke Subramanya temple when the accused tied *Thali* and performed all rituals to complete the ceremony of marriage. It is in evidence that subsequent to that ceremony, they went to Revanasiddeswara temple, where gold *Thali* was tied to the complainant by the accused.

11. In the circumstances, except for denial, there is no other evidence from the accused that no such





marriage was performed. Therefore, the finding of the trial court and the appellate court that complainant and accused were knit by nuptial knot as husband and wife needs no interference and it is affirmed.

12. Regarding the alleged cruelty, the evidence of PW-1 is material. She is the victim and that it is she who could speak of what transpired. While dealing with matrimonial cases, we must keep in mind that crimes are committed not in the public view, but in secrecy or within the contours of the house. We can hardly expect an independent witness. It is the victim-prosecutrix who is the best witness. When she has volunteered to lodge a complaint against the husband at the risk of ruining her life, there is no reason to disbelieve her version. The appellate court has re-appreciated the evidence and has concurred with the trial court, that perpetration of cruelty by the accused was fully substantiated and proved. This is a revision under

*JB*

Section 397 and re-appreciation of evidence is not warranted.

13. In the result, the finding of the courts below against the petitioner-accused convicting him for the offence punishable under Section 498-A IPC is affirmed.

14. Regarding the sentence, it is noticed that the trial court had sentenced the petitioner to one year's imprisonment, which the appellate court has scaled down to six months. The narration of incident and other attaining circumstances show that within a short period, the marriage failed. In the result, considering the period of time from 1998 till now consumed in trial and the other appeal action, the sentence of imprisonment of six months needs to be further scaled down and accordingly it is reduced to three months, retaining the amount of fine imposed by the trial court and affirmed by the first appellate court.



15. In the result, the revision fails. The finding of guilt by the trial court and the first appellate court against the petitioner for the offence punishable under Section 498A, I.P.C. is affirmed. However, the order of by the trial court and the appellate court sentencing the accused to imprisonment is modified and is further reduced to a period of three months. The order regarding fine is affirmed. The petition is disposed of in terms of this order.

Sd/-  
JUDGE

Pmg/