

[2023 LiveLaw \(SC\) 116](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

B.R. GAVAI; J., VIKRAM NATH; J.

CRIMINAL APPEAL NOS.1404-1405, 1408-1409 OF 2012; February 09, 2023

P. SIVAKUMAR & ORS.

versus

STATE REP. BY THE DEPUTY SUPERINTENDENT OF POLICE ETC.

Indian Penal Code, 1860; Section 498A - When marriage has been found to be null and void, the conviction under Section 498A IPC would not be sustainable. Shivcharan Lal Verma v. State of Madhya Pradesh (2007) 15 SCC 369. (Para 7)

Code of Criminal Procedure, 1973; Section 378, 397-401 - In an appeal/revision, the High court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible. (Para 7)

For Appellant(s) Mr. S.Nagamuthu, Sr. Adv. Mr. S. Mahendran, AOR Mr. B.Vinodh Kanna, Adv. Mr. Purushothaman Reddy, Adv. Mr. Kaustubh Shukla, AOR

For Respondent(s) Dr. Joseph Aristotle S., AOR Mr. Shobhit Dwivedi, Adv. Ms. Vaidehi Rastogi, Adv. Mr. B.Vinodh Kanna, Adv. Mr. Purushothaman Reddy, Adv. Mr. Kaustubh Shukla, AOR Mr. S.Nagamuthu, Sr. Adv. Mr. S. Mahendran, AOR

ORDER

CRIMINAL APPEAL NOS.1404-1405 OF 2012

1. The present appeals challenge the judgment and order passed by the learned Single Judge of the High Court of Madras dated 7th December, 2011 thereby partly allowing Criminal Appeal No.192 of 2008 filed by the State and Criminal Revision Case No. 252 of 2008 filed by the first informant-wife.

2. The appellant No.1 had married PW-1-S.Beula on 04.12.2003. It appears that soon after marriage disputes arose between the parties and they started residing separately. PW-1-wife filed a complaint before the Deputy Superintendent of Police, Kanyakumari. After investigation, the charge sheet came to be filed for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 against the four accused, namely, accused No.1-husband, accused No.2-mother-in-law, accused No.3-father in law and accused No.4-brother-in-law. The trial was conducted before the learned Judicial Magistrate, Court No.1, Nagarcoli, Kanyakumari District, Tamil Nadu. On the conclusion of the trial, the learned trial Judge acquitted all the accused persons of all the offences charged with.

3. Against the said order, the State filed an appeal and PW-1-Wife also filed a Revision Petition before the High Court. The appeal was partly allowed. By the impugned judgment and order, the acquittal of accused Nos. 1 to 3 was set aside and they were convicted for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act.

4. Being aggrieved thereby, the present appeals.

5. Mr. S.Nagamuthu, learned senior counsel for the appellants submits that the marriage between the parties has been held to be null and void by the judgment of the High Court of Madras, Madurai Bench by order dated 25.02.2021. He therefore submits that in view of the judgment of this Court in the case of **Shivcharan Lal Verma**

v. *State of Madhya Pradesh* reported in (2007) 15 SCC 369, the conviction under Section 498-A IPC would not be sustainable.

6. Dr. Joseph Aristotle, learned counsel for the State of Tamil Nadu and Mr. Vinodh Kanna, learned counsel for the wife, vehemently oppose the appeals. It is submitted that, even if it is held that the conviction under Section 498-A IPC is not sustainable, the conviction under Sections 3 and 4 of the Dowry Prohibition Act would still remain.

7. Undisputedly, the marriage between the appellant No.1 and PW-1 has been found to be null and void. As such the conviction under Section 498-A IPC would not be sustainable in view of the judgment of this Court in the case *Shivcharan Lal Verma's* case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial Judge by an elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond reasonable doubt. In an appeal/revision, the High court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible.

8. We have perused the judgment of the learned trial Judge. We do not notice any perversity in the approach adopted by the learned trial Judge. The view taken by the trial Court also cannot be said to be impossible.

9. In that view of the matter, the High Court ought not to have interfered with the well-reasoned judgment of the trial Judge.

10. The appeals are, therefore, allowed.

11. The judgment and order dated 7th December, 2011 passed by the High Court is quashed and set aside and the judgment of the trial Court is affirmed.

12. The appellants are acquitted of the charges.

13. The bail bonds shall stand discharged.

CRIMINAL APPEAL NOS.1408-1409 OF 2012

In view of the order passed in Criminal Appeal Nos.1404-1405 of 2012, these appeals are disposed of.

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