HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 2127 of 2014

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ORDER:

The present Revision is filed under Sections 397 and 401 Cr.P.C., aggrieved by the order dated 02.09.2014 passed in Criminal Appeal No.450 of 2014 on the file of the II Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, wherein the order dated 28.05.2014 passed in Crl.M.P. No.3286 of 2013 in D.V.C. No.15 of 2013 on the file of X Metropolitan Magistrate, Cyberabad at Malkajgiri, was set-aside.

The facts in issue are as under :

The petitioner herein filed D.V.C. No.15 of 2013 before the X Metropolitan Magistrate, Cyberabad at Malkajgiri, Ranga Reddy District, claiming various reliefs under the Protection of Women from Domestic Violence Act, 2005. Along with the said D.V.C. the petitioner herein filed Crl.M.P. No.3286 of 2013 seeking interim maintenance of Rs.20,000/- per month. By an order dated 28.05.2014, the learned X Metropolitan Magistrate, Cyberabad at Malkajgiri, awarded interim maintenance @ Rs.5,000/- per month to the petitioner until disposal of the main case. Challenging the same, the respondents herein filed Crl.Appeal No.450 of 2014, which was allowed on 02.09.2014.

As seen from the record, the main D.V.C. is still pending. During the pendency of the said D.V.C., the petitioner herein filed an Crl.M.P. No.3286 of 2013 under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 seeking interim maintenance. It is alleged by the petitioner that her marriage with the first respondent was performed on 21.10.2007 and at the time of her marriage, her parents gave 22 tolas of gold, Adapadachu gift by way of cash Rs.30,000/-, clothes worth Rs.25,000/- and other household articles worth

Rs.80,000/- to the respondents. It is alleged that R-1 is a Physiotherapist and had his clinic at Peerzadiguda, Uppal. In the said application the petitioner herein stated that she is also a Software Engineer and employed in Delloit company as a Senior Analyst and her office timings are 2.00 p.m to 11.00 p.m. The averments in the said report further disclose that due to coming late to the house, the respondents started harassing her alleging extra marital affair. Though the petitioner used to work till late night she was also insisted by the respondents to do the household work. The contents of the petition also show that R-1 used to abuse her in filthy language and force her to take personal loan from ICICI Bank and transfer the said amount to the account. R-1 also used the credit cards of the petitioner by swiping them approximately to an amount of Rs.4,00,000/-. It is also stated that she filed O.P. for divorce and also O.S. for recovery of the amount.

The first respondent filed counter denying the averments made in the petition. In his counter he stated that he treated the petitioner with love and affection and no dowry was taken at the time of marriage. Further, out of love towards her father the petitioner gave money to her father as he does not have any economic capacity. He further submits that the amount which was transferred to his account was never misused by him but it is only to get over the unlawful demands made by the father of the petitioner. The respondent further contends that the father of the petitioner has no economic capacity and he became a dependant on the income of others. It is specifically contended that the father of the petitioner previously worked as a sales person in Fantoosh readymade cloth store and was removed from the service on allegation, therefrom he became addicted to spend money beyond his capacity and indirectly he wanted to take over the work place of R-2 to grab the income of R-1. The said act was resisted by R-1. Due to the said resistance, the father of the petitioner started provoking his daughter in many ways. As a result differences arose between the petitioner and R-1. Thereafter the father of the petitioner started vexatious and frivolous litigations by filing O.P.678 of 2010 and O.S. No.2 of 2011. Since then the father of the petitioner did not allow the respondent to talk with the petitioner and started blackmailing R-1 on one ground or the other and demanding Rs.50 lakhs to withdraw all the cases.

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

At the time, when the matter was taken up for hearing, the learned counsel for the petitioner strenuously contended that without hearing the petitioner, the lower appellate court has set-aside the order of the Magistrate.

On the other hand, the learned counsel for the respondents disputed the said fact.

In order to avoid the said controversy, this Court called for report from the II Additional District Judge, Ranga Reddy, to find out as to whether there was any representation on behalf of the petitioner. By his letter dated 09.01.2015 the II Additional District Judge sent a report wherein it is stated that on 10.07.2014 both the parties appeared and after hearing the appeal, it was posted to 24.07.2014. On 24.07.2014 the first appellant i.e., the first respondent herein was present and the petitioner herein who was respondent therein was absent. On behalf of the petitioner one Sri P.Srinivas, Advocate filed vakalath and the matter was posted to 13.08.2014 for hearing. The letter states that as it was an appeal against an interim order, there was no practice for insisting the presence of the parties in the Court on every date of adjournment. It is further stated in the letter that the Advocate on record argued the matter and then it was posted for pronouncement of orders to 14.08.2014. On 14.08.2014 the orders were not made ready and hence, it was posted to 01.09.2014 for passing order and thereafter on 02.09.2014 the orders were pronounced allowing the appeal. The letter and the docket order dated 13.08.2014 show that both the counsel were heard and then only the matter was posted "for orders". As seen from the letter, even after posting the matter "for orders", the case got adjourned twice. The objection, which is now raised could have been raised at that time when the matter was adjourned twice for pronouncement of orders. Having regard to the remarks sent by the II Additional District Judge and taking into consideration the docket order dated 13.08.2014, it cannot be said that the appeal order was passed without hearing the learned counsel for the petitioner.

Then, the question would be "Whether the petitioner is entitled for interim maintenance?"

Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 states that :

"If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent."

A reading of Section 23(2) of the Act makes it clear that an *ex parte* interim order can be passed on the basis of an affidavit filed if it discloses that the husband is committing, or has committed an act of domestic violence or that there is every likelihood that the husband may commit an act of domestic violence, the wife is at liberty to claim any of the reliefs under Sections 18, 19, 20 and 21 or as the case may be against the husband.

Section 20 of the Act deals with Monetary relief. Clause (d) to sub clause (1) of Section 20 deals with grant of maintenance to the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

Sub Clause (2) of Section 20 of the Act states that monetary relief granted under this Section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

Sub Clause (3) of Section 20 of the Act states that the Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

In the case on hand except the affidavit of the petitioner and the counter of the respondent no evidence has been adduced sofar. As stated earlier, the main D.V.C. is still pending. In the petition, She admits that she is Software Engineer and working as a Senior Analyst in Delloit company. But, however, did not mention the amount of income which she is earning due to her employment. The respondent in his counter submits that the petitioner is earning substantial amount and that she is in a better position than the respondent. The counter also explains the circumstances under which the amounts were transferred from the Bank account of the petitioner to the first respondent's account and also the cases filed by the father of the petitioner. He categorically states that a sum of Rs.60,000/- per month has been credited to the Bank account of the petitioner towards her salary. Section 20(2) of the Act empowers the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent (husband) to meet the expenses incurred including the maintenance of the aggrieved person and her children.

As stated earlier, the case is still pending for trial. The petitioner on her own count stated that she is working as a Software Analyst in a Multinational Company. She in her affidavit did not state the amount of salary, which she is earning. But, on the other hand, the counter filed by the respondent would show that an amount of Rs.60,000/- per month was being credited to her account. Therefore, at this stage, it cannot be said that the amounts earned by the petitioner are not fair, reasonable and adequate. Except the affidavit and counter, there is no other material on record to substantiate the plea of the petitioner. Though the petitioner tried to contend that she is totally dependant on her parents, but the same gets falsified by her own version in the affidavit. In view of the above, I see no reason to interfere with the order passed by the lower appellate court.

Accordingly, the Criminal Revision is dismissed. However, having regard to the facts and circumstances of the case, the learned Magistrate is advised to dispose of D.V.C. No.15 of 2013 as expeditiously as possible preferably within a period of 4 (four) months from the date of receipt of the copy of this order.

C. PRAVEEN KUMAR, J

Date:03.02.2015
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