

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CRIMINAL REVISION CASE Nos.2561, 2627 & 2628 OF 2012

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COMMON ORDER:

These three Criminal Revision Cases arise out of a common order dated 21.09.2012 of the learned V Additional Metropolitan Sessions Judge (Judge, Mahila Court) Hyderabad passed in Criminal Appeals Nos.46/2011 and 226/2012. Therefore, these three criminal revision cases which were heard together are being disposed of by this common order.

2. At the outset, it is necessary to mention that both the said Criminal Appeals, which were disposed of by the Court below by a common order, arose out of one order dated 30.12.2010 passed in D.V. Case No.63/2010 (for short, 'the DVC') by the learned IV Metropolitan Magistrate, Hyderabad.

3. In these revision cases, the parties shall be referred to as the petitioner/wife and the first respondent/husband as arrayed in the original proceedings before the trial Court. The State is also a party to these criminal revision cases and is represented by the learned Public Prosecutor. The other respondents in the revision cases filed by the wife are the relatives of the first respondent/husband.

4. I have heard the submissions of the learned counsel for the petitioner/wife, the learned Additional Public Prosecutor representing the State and of the learned counsel for the first respondent/husband who is also appearing for the other unofficial respondents and who are the relatives of the first respondent/husband. I have carefully perused the material record.

5. To begin with, it is to be noted that the petitioner/wife filed the DV Case against the first respondent/husband, her parents-in-law, brother-in-law and co-sister claiming the following reliefs:

- (a) To pass a final protection order under Section 18 of the Domestic Violence Act (for short, 'the Act') and restrain the husband from entering into the place of work of the wife;
- (b) To direct the husband and his said relatives to return the dowry amount of Rs.4 lakhs and marriage expenses of Rs.2 lakhs besides gold ornaments mentioned in the petition and Rs.10,000/- towards Adapaduchu Katnam;
- (c) To award compensation of Rs.25 lakhs under Section 22 of the Act and direct the husband and his said relatives to pay the same to the applicant for the mental torture meted out to her and domestic violence caused to her and for subjecting her to emotional stress; and
- (d) To direct the husband and his said relatives to execute a bond with sureties for prevention of commission of domestic violence against the petitioner/wife.

The said petition was resisted by the husband, his parents, brother and sister-in-law. Before the trial Court, the wife was examined as PW1 and the husband and his supporting witnesses were examined as RWs 1 to 3; and exhibits P1 to P37 and exhibits D1 to D15 were marked. On merits, the trial Court had allowed the petition in part and had granted the following reliefs only:

- (a) Compensation of Rs.5 lakhs to the wife payable by the husband and his parents (respondents 2 and 3).
- (b) Return of certain gold ornaments and other articles viz., (i) 2 gold rings; (ii) 1 black bead chain; (iii) 3 silk saris; (iv) 3 costly saris; (v) 10 pairs of Salwar suits; (vi) 1 big traveller suit case (vii) Walkman with ear phones and battery charger; (viii) 5 cassettes; (ix) spectacles and (x) Sri Ramakoti books 2.

The trial Court had also passed consequential orders that in case of breach of protection orders by the respondents or any other person they would be liable for punishment under the provisions of the Act and also for payment of Rs.20,000/- as fine coupled with imprisonment for one year in default of payment of fine. The trial Court had denied the reliefs in so far as return of dowry and marriage expenses. Therefore, the aggrieved wife had preferred Crl A No. 226/2012 and the aggrieved

husband and his relatives had preferred CrI A No.46/2011. The learned V Additional Metropolitan Sessions Judge by the common judgment impugned in these revisions had *inter alia* held that the first respondent/husband alone is responsible for causing domestic violence and that the parents-in-law i.e., the respondents 2 and 3 are not guilty of domestic violence. He had further reduced the compensation amount awarded by the trial Court from Rs.5 lakhs to Rs.2.5 lakhs and had further directed the first respondent/husband alone to pay the same to the petitioner/wife. In respect of the other reliefs granted to the petitioner like return of gold jewellery and other articles, he had confirmed the judgment of the trial Court. However, the appellate Court had also confirmed the judgment of the trial Court in so far as dismissal of the DV Case in regard to return of dowry and Rs.10,000/- towards *Adapaduchu Katnam* besides marriage expenses. Therefore, the aggrieved wife had filed CrIIRCs Nos.2627 and 2628 of 2012 and the husband who is also aggrieved had filed CrIRC No.2561/2012.

6. In the revision case No.2628/2012, the wife's contentions are directed against the reduction of compensation from Rs.5 lakhs to Rs.2.5 lakhs by the appellate Court and exonerating the parents-in-law of the petitioner from paying the same and directing the first respondent/husband alone to pay the same while holding that the parents-in-law did not commit any acts of domestic violence. It is *inter alia* contended that the compensation as prayed for ought to have been awarded; and it is alternately urged that when once it is found by the Court below that the petitioner is entitled to the compensation, the compensation in a sum of Rs.5 lakhs as awarded by the trial Court ought to have been confirmed as contended before the Court below instead of reducing it from Rs.5 lakhs to Rs.2.5 lakhs and that the order impugned reducing the compensation awarded to the petitioner/wife is contrary to the facts and the law.

7. The second CrIRC No.2627/2012 filed by the petitioner/ wife is specifically directed against the findings of the Court below in so far as the same related to exonerating the respondents 2 to 5 while holding that the husband/first respondent had alone committed acts of domestic violence.

8. On the other hand, the Revision Case No.2561/2012 by the husband is directed against the reliefs granted against him by the Court below, particularly the award of compensation of Rs.2.5 lakhs to the petitioner/wife.

9. I have gone through the pleadings of both the parties and also the oral and documentary evidence on record.

10. Now the points that arise for determination are:

- i. Whether the husband and his parents, brother and sister in law have all committed the acts of domestic violence as contended by the petitioner?
- ii. Whether the petitioner is entitled to award of compensation as claimed by her?
- iii. Whether the Court below is justified in awarding a compensation of Rs.2.5 lakhs after reducing the compensation awarded by the trial Court from Rs.5 lakhs?
- iv. Whether the first respondent/husband is not liable to pay any compensation as contended by him?
- v. Whether the petitioner is entitled to refund of dowry, Adapaduchu *Lanchanam* of Rs.10,000/- as well as the marriage expenses said to have been paid to the first respondent/husband?
- vi. To what relief?

11. **POINTS 1 & 2:**

11. (a) The case of the petitioner in the DV Case is this: 'The petitioner hails from a respectable family of Srikakulam District. The petitioner was first given in marriage to a person of Thurupu Kapu community who is a Junior Engineer by that time. That marriage of the

petitioner with the said person of Thurupu Kapu community was dissolved due to misunderstanding with that person. Subsequently the marriage of the petitioner was performed with the first respondent. As per the demand of the respondents 1 to 5 in the DV case, the father of the petitioner gave Rs.4 lakhs, and also Rs.68,000/- towards the cost of the two wheeler which was already purchased by the first respondent besides gold bracelet, gold chain and two gold rings-6 tolas to the first respondent besides Rs.10,000/- to the sister of the first respondent as *Adapaduchu Katnam*. Subsequently the marriage was celebrated. The father of the petitioner had incurred a considerable amount of Rs.13,000/- on the to and fro journey of the 1st respondent and his party consisting of 25 persons. The petitioner was also given house hold articles (Sare Saamaanlu). The nuptial ceremony was scheduled at the 1st respondent's house on 03.09.2007. Since the 1st respondent had expressed his desire of having Rs.8 lakhs for consummation of marriage, there is no consummation of marriage between the spouses. The brother of the petitioner stated that they have no capacity to fulfill the demand of the first respondent. The matter was brought to the notice of the parents of the petitioner. On the eve of Dasara festival, the petitioner's family invited the first respondent to stay in their house. Accordingly, the first respondent and the petitioner came to her parent's house on 21.10.2007. At that time, the first respondent had demanded the mother of the petitioner to fulfill his demand and had also stated that unless the demand is fulfilled the petitioner's marital life would become fruitless as it had happened before. On 22.10.2007, the petitioner and the first respondent had returned to their matrimonial home. The first respondent had made a phone call to the petitioner's father and had repeated his illegal demands. The father of the petitioner made a request for amicable settlement; but, the first respondent and his father expressed their unwillingness for the same. When the petitioner and her family members were unable to fulfill the illegal demands, the first

respondent had stated that she should be thankful to him for marrying her; and, he had indulged in vulgar talk and had abused her by using indecent words. The first respondent often used to abuse the petitioner/wife and at times he used to beat her. Finally the first respondent and others had realized that there is no chance of squeezing money or getting any further amounts from the petitioner's father. Therefore, they had made the life of the petitioner more miserable. On 28.10.2007, the petitioner's parents visited the house of the respondents 1 to 3 and questioned them as to why they were torturing the petitioner and are creating hell on earth for her. On that, the respondents 1 to 3 became aggressive and necked the petitioner out of their house without heeding the request of the parents of the petitioner. Having no option, she had returned to her parents' house without taking any of her belongings with her. The petitioner was surprised when she came to know from the first respondent that he did not study MBA and that a false representation was made in his profile at the time of marriage. He had cheated the petitioner and his parents in regard to his qualification. It is also revealed that the representations made at the time of settlement of marriage were also false. The respondents 1 to 5 used to sit together and conspire to cause harm to the petitioner and used to plan various ways and means for extracting money from her. The first respondent used to harass the petitioner by stopping her on her way to the office and also to her house and used to threaten her with dire consequences. She had faced a lot of mental agony and emotional distress due to the cruel acts of the respondents 1 to 5 in the DV case.'

11. (b) On the other hand, the case of the first respondent/husband is this: 'The petitioner and her parents had suppressed the fact of dissolution of her earlier marriage and that by the time of giving information to the marriage bureau, the first respondent was pursuing third year MBA, but, while giving information to the bureau

mistakenly he had failed to mention the degree in brackets so as to indicate that the degree was incomplete. The petitioner's parents insisted upon him to stay as illatom son-in-law and the same was not agreed to by the first respondent and as such they had started harassing the first respondent on one ground or the other and had further refused to send the petitioner to the matrimonial home. The first respondent is not having any negative mind or cruel behaviour on his part. If his conduct was so, he would not have married a divorced woman. Being a person with progressive ideas, he had married the divorced woman having understood her agony.' Further, in the counter, the material allegations averred in the D V Case regarding cruelty and harassment meted out to the petitioner are denied. The payment of dowry and the amounts for purchase of vehicle etcetera are also denied.

11. (c) The learned counsel for the petitioner/wife advanced contentions in line with the pleadings and the evidence that was adduced before the trial Court. On the other hand, the learned counsel for the first respondent advanced arguments in line with the defence and had further contended that there is no evidence to substantiate the contention that the petitioner was harassed and that on the other hand there is evidence to show that the first respondent had discharged his matrimonial obligations faithfully. It is further contended as follows: 'Had there been a demand for additional dowry on the very first day and the same had really resulted in non-consummation of marriage, the petitioner would not have stayed with the respondent for any period. The first respondent used to pick up the petitioner from her place of employment and used to drop her at the house. He was caring for his wife. There was no demand for any dowry. The Courts below have erroneously held that this respondent had committed acts of domestic violence. The courts below erroneously directed him to pay compensation in a huge sum. On account of the cases filed by the petitioner, the first respondent had lost

his job. He is not earning any income. He is already paying Rs.3,000/- per month towards maintenance as per the orders in the maintenance case. He is now unemployed. He cannot pay any compensation, much less a compensation of Rs.2,50,000/- awarded by the Court below. The order impugned is liable to be set aside.” On the other hand, the learned counsel for the petitioner/wife would contend that when it was found that the marriage was not consummated, the Court ought to have recorded a finding that all the respondents 1 to 5 are responsible and that all of them had committed the acts of the domestic violence and ought to have awarded the compensation as prayed for and ought to have further directed the respondents to return the dowry, marriage expenses etcetera instead of partly allowing the petition. He had further submitted that initially the petitioner was working and was earning more than her husband but, later she had resigned the job and that therefore, she is now not having any income and hence, in the maintenance case monthly maintenance was awarded to her and that the present claim for compensation is altogether different and that the petitioner is entitled to the reliefs under the provisions of the special enactment. It is therefore, prayed on her behalf for allowing her revisions as prayed for.

11. (d). Both the parties admit that there is no consummation of marriage. The reason for such non-consummation of marriage according to the petitioner is that immediately after the marriage the first respondent had demanded additional dowry of Rs.8 lakhs as a condition precedent for consummation of marriage. PW1 had testified according to the version pleaded in her case. She had also stated that when her parents went to question the conduct of the first respondent, she was necked out from the matrimonial home. On the other hand, the respondents' case is that the marriage could not be consummated on account of some gynec problem of the petitioner. But in the cross examination it was suggested to PW1 that the marriage was

consummated and the said suggestion is contrary to the pleadings of the first respondent. The inconsistency in the stand of the first respondent would show that the contention of the wife in regard to non-consummation of marriage is probable. However, the fact remains that the petitioner had continued to stay with the first respondent for some time and that during that period while she was working, the first respondent used to pick her up at her place of employment and drop her at the house. This evidence would show that on certain aspects there were no problems and that the terms between the spouses were cordial. The matrimonial O.P. No.76/2011 on the file of the learned Additional Family Court, Hyderabad filed by the petitioner for dissolution of the marriage, was dismissed by an order dated 27.08.2012 by the learned Additional Family Judge is not in dispute. In the said case, it appears that the petitioner had pleaded that on 22.10.2007 she had left the matrimonial home and that on that the first respondent had telephoned to her father and demanded for illegal dowry. However, before the said Court in her cross examination, she had stated that she was necked out from the matrimonial house on 28.10.2007. In view of the inconsistency in her stand, the contention that she was necked out from the matrimonial home on 28.07.2010 which was contrary to her pleadings was disbelieved and a finding was recorded that she had left the company of the 1st respondent on 22.10.2007. Be that as it may, leaving the parties to settle their other claims in the maintenance case, the DVC and other cases pending, as desired by the parties the divorce case was settled amicably before the Adalat and by the award of the Adalat divorce was granted to the spouses by dissolving the marriage. The fact remains that in the maintenance case the petitioner was awarded a monthly maintenance of Rs.3000/- payable by the first respondent/husband. Coming to the defence of the husband, at one breath he had contended that the fact that the petitioner was a divorcee was suppressed and the said fact was not informed to him before the marriage with the petitioner.

And at another breath he had contended that on account of his broad mindedness he had married a divorced woman knowing the difficulties of a divorced woman. Apparently there was also a false statement in his marriage profile submitted to the marriage bureau. In the said profile it was stated that he holds a degree in Master Business Administration, while in fact by that time he had not completed the said course and was only pursuing the third year course of study. Thus, looking at the matter from the point of view of the facts and evidence, it can safely be accepted that the first respondent had committed the acts of domestic violence and was also responsible for non-consummation of marriage. However, as rightly observed by the Court below except the bald statement that the other respondents used to sit together and conspire for demanding dowry, there are no specific allegations referring to the details of the acts of domestic violence, if any, committed by the other respondents. In fact, the respondents 4 and 5 who are the brother and sister-in-law of the first respondent had not resided in the shared house hold at any time even according to the case of the petitioner. As such, this Court finds itself in agreement with the findings of the Court below that the trial Court was right in holding that the respondents 4 and 5 are not guilty of domestic violence. In view of the omnibus allegations, which cannot be countenanced, this court also finds itself in agreement with the finding of the court below that it is not possible to hold that the other respondents 2 and 3 had indulged in acts of domestic violence. Accordingly, this Court finds that the finding of the Court below that the first respondent had alone committed acts of domestic violence is correct and is sustainable.

12. POINTS No.3 & 4:

Coming to the award of compensation of Rs.2.5 lakhs against the claim of Rs.20 lakhs made by the petitioner, when once it is accepted by this Court that the first respondent had committed the acts

of domestic violence and that he was responsible for non-consummation of marriage between the spouses, it follows that the same would have caused mental stress to the petitioner. Such an act can be termed as an emotional abuse and such an act causes mental cruelty also can be accepted. Therefore, it is trite to observe that some compensation can be awarded to the petitioner in the facts and circumstances of the case. However, coming to the financial status, it is borne out by record that the petitioner was earlier employed and was drawing more salary than the first respondent. However, it is also borne out by record that she had later left her job. Even according to the case of the petitioner at the time of arrangement of the marriage a false representation was made that the first respondent is having properties while in fact he does not own any such properties. It is categorically stated in the petition of the petitioner that after the marriage when enquiries were made by her father it was revealed that the second respondent and his father did not own substantial immovable properties as represented prior to the marriage and that the second respondent did not act as village elder prior to his shifting to Bandlaguda of Ranga Reddy District. Therefore, there is no evidence on record as to the financial status and good economic condition of the 1st respondent/husband. However, in view of the entitlement of the petitioner to some compensation, and considering the evidence on record, the trial had awarded a sum of Rs.5,00,000/- as compensation, but, the same was reduced to Rs.2,50,000/- by the court below. The compensation was so reduced without assigning any valid reasons and only by observing that the petitioner/wife is gainfully employed and is having independent financial capacity. What is to be noted is that both the courts below concurrently held that the petitioner/wife is entitled to compensation and one of the reasons for awarding compensation is non-consummation of marriage on account of the conduct of the first respondent. Hence, the principal ground for award of compensation to the petitioner/ wife is non-consummation of marriage

for no fault of her and the mental agony and emotional stress that was suffered and being suffered by her on that count and also for mental agony that was caused to her by the acts of domestic violence committed by the husband. Her marriage with the 1st respondent is a second marriage. As per amicable settlement before the Adalat, a divorce by mutual consent was granted to the spouses. Therefore, the probability of her getting married a third time is remote in the circumstances she is placed. Therefore, considering the facts and the circumstances of the case and keeping in view the financial status of the husband on one hand and the fact that the compensation awarded shall be commensurate to the agony and loss suffered by the wife on the other, this court holds that a compensation of Rs.4,00,000/- would be appropriate in the facts and circumstances of this case. Therefore, this Court finds that there are sufficient grounds calling for interference with the award of compensation in a sum of Rs.2.5 lakhs only by the court below. Accordingly, the order of the court below insofar as the reduction of compensation awarded to the petitioner/wife is set aside and a compensation of Rs.4,00,000/- (Rupees Four Lakhs only) is awarded to the petitioner/wife. It is needless to mention that the same is payable to her by the 1st respondent/husband. However, part of compensation, if any, paid pursuant to the interim orders of this court shall be given credit. For compliance in regard to payment of compensation/balance compensation, the 1st respondent/husband is granted three months time from the date of a copy of this order. These points are accordingly answered.

13. POINTS No.5 & 6:

Coming to the return of dowry, marriage expenses etcetera, except the self serving statement of PW1 there is no other evidence adduced. Even the father of the petitioner was not examined to prove that he had paid dowry to the first respondent either at the time of

settlement of marriage or after the marriage. Though exhibit P37, the post office savings account pass book of the father of the petitioner, was exhibited and the entries in the same also show some withdrawals by the father of the petitioner, no evidence was adduced by examining the father to show that the amounts withdrawn by him were utilized either for meeting marriage expenses or towards payment of dowry etcetera to the first respondent. No reasons are forthcoming for non- examination of the father of the petitioner to speak about his capacity to pay the dowry and the actual payment of dowry. Therefore, both the Courts below had recorded concurrent findings of fact that there is no proof in regard to payment of dowry or Rs.68000/- towards value of the vehicle already purchased by the first respondent or Rs.10000/- towards *Adapaduchu Katnam* and incurring of Rs.2 lakhs towards marriage expenses. Having regard to the facts and for lack of evidence, this court holds that the petitioner is not entitled to any relief in regard to return of the said amounts. So far as the return of articles, no contentions were raised and it is on the other hand admitted by the first respondent that he is liable to return the ornaments and articles. Therefore, the findings of the Courts below directing return of the ornaments and articles etcetera brook no interference. The points are accordingly answered.

14. In the result, the revision case filed by the husband in CrI.R.C.No.2561 of 2012 is dismissed. However, the revision cases filed by the wife, viz., CrI.R.C.Nos.2627 & 2628 of 2012 are disposed of by awarding compensation of Rs.4,00,000/- (Rupees Four Lakhs only) payable to her by the 1st respondent while rejecting her all other claims by confirming the orders of the court below in all other respects.

Miscellaneous petitions pending, if any, in these Criminal Revision Cases shall stand closed.

M.SEETHARAMA MURTI, J

19th January 2015
MVA