

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 1389 OF 2014

AND

CRIMINAL REVISION CASE No.1392 OF 2014

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COMMON ORDER:

The parties in both the revisions are one and the same and since both the Revisions arise from the common judgment passed in two Criminal Appeals, they are being disposed of by this common order.

For the sake of convenience, the parties hereinafter be referred to as arrayed in D.V.C.

The facts in issue are as under :

The petitioner/wife filed a petition against the respondent/ husband, under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to "the Act") before the Special Judicial Magistrate of First Class (For Proh & Excise), Kurnool seeking reliefs under Sections 18, 19 and 20 of the Act. The allegations in the report are that the marriage between the petitioner and respondent took place on 15.06.1997 at Kurnool as per Hindu rites and customs. The respondent was a Government Employee working in Fire Department at Atmakur at the time of marriage and presently working at Dhone. After the marriage, the petitioner joined her husband, lead happy marital life and gave birth to a female child on 11.05.1998. On the ground that she gave birth to a female child, the respondent is alleged to have necked her out of the house by demanding to bring additional dowry of Rs.50,000/-. After payment of additional dowry of Rs.30,000/-, the respondent allowed the petitioner to join him. While things stood thus, the petitioner gave birth to another female child on 13.06.1999. After coming to know that she gave birth to another female child, her husband and in-laws never visited to see her and the child. When the petitioner joined the respondent after five months of the birth of second child, the respondent is alleged to have started harassing the petitioner by subjecting her to mental and physical harassment. Finally, in the month of September, 1999 she was necked out from the matrimonial home with a demand of additional dowry of Rs.1,00,000/-. Though mediations took place, but all their efforts

proved futile. Since then the petitioner has been staying along with her mother. It is contended that the respondent, who is a Government employee, working at Dhone in Fire Department, is drawing a salary of Rs.25,000/- per month. Apart from that he is said to be in possession of Ac.1.00 of fertile paddy land at Masamaseed and also has a vegetable garden in Ac.0.09 cents of land on the banks of Tungabhadra River getting Rs.5 Lakhs per annum. He is said to have let out nine huts constructed in the garden land at the rate of Rs.500/- per hut besides owning a house situated in D.No.6-184, Telugu Street, Kurnool. It is stated that since the elder daughter is studying IX class and younger daughter in VIII class, they are unable to survive with the meager amount, hence filed the present application.

The respondent/husband, filed counter contending that he himself is a chronic Asthma patient requiring Rs.1500/- per month towards his treatment. According to him, the house bearing D.No.6/184 is a joint family property and the present petition came to be filed at the instance of her uncle and her sister's husband. He further contended that the petitioner filed C.C. No.445 of 2003 against him for the offences punishable under Sections 498-A and 494 IPC, which ended in acquittal on 24.08.2006 and also filed M.C. No.17 of 2000 on the file of Family Court, Kurnool, wherein a sum of Rs.1,100/- p.m., was awarded as maintenance. Being not satisfied with the said amount, the petitioner filed a petition seeking enhancement of the maintenance amount and as such the same was enhanced to Rs.7,000/- p.m. It is stated that since the petitioner is voluntarily living separately from 18.12.1998 and the children are being provided with free education, he is not entitled to pay any amount towards education expenses. It is urged that as the petitioner left the matrimonial home on her own, she is not entitled to any reliefs under the Act.

In support of the case, the petitioner examined P.Ws.1 to 3 and got marked Exs.P-1 to P-22. On behalf of the respondent, R.W.1 was examined, but no documents were marked. After appreciating the rival arguments, the trial court partly allowed the D.V.C. with a direction to the respondent do pay a sum of Rs.2,500/- per month towards rent for alternate accommodation to the complainant and her two daughters from 05.07.2012 u/s.19(f) of the Act and also directed to deposit the arrears of rent for alternate accommodation from 05.07.2012 till date within a period of one month and continue to pay the rent for alternate accommodation at the same rate on or before 5th of every succeeding month. Challenging the same, both the petitioner and respondent preferred appeals vide Crl. Appeal Nos. 113 of 2013 and 122 of 2013.

After appreciating the rival arguments and the evidence on record, the lower appellate court disposed of the two appeals by remanding the matter to the trial court for fresh disposal in accordance with law laid down, after giving an opportunity to both parties to adduce further evidence, if any. Challenging the same, the present two Revisions are filed.

The learned counsel for the respondent/husband mainly submits that initiation of proceedings under Domestic Violence Act itself is barred by limitation. He further submits that since maintenance was already granted in an application filed under Section 125 Cr.P.C., the question of again granting an amount of Rs.2,500/- p.m. towards alternate accommodation does not arise. He also placed reliance on the Judgment of the Apex Court in **Inderjit Singh Grewal v. State of Punjab and another**. A perusal of paragraph 33 of the said Judgment would show that on merits of the case, the Apex Court found that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, held that the said process amounts to an abuse of the process of the court.

The learned counsel appearing for the respondent/wife opposed the same.

A perusal of the judgments of both the courts would disclose that the marriage between the petitioner and respondent took place on 15.06.1997 at Kurnool as per Hindu rites and customs. The respondent is a Government Employee working in Fire Department. After the marriage, both parties lead happy marital life and petitioner gave birth to two female child i.e, one child on 11.05.1998 and another child on 13.06.1999. For the reason that the petitioner gave birth to two female child, the respondent did not show any interest to continue the conjugal life with her. Though the petitioner joined the respondent after five months of the birth of second child, the respondent is alleged to have tortured her by subjecting her to mental and physical harassment. Finally, in the month of September, 1999 the petitioner was necked out from the matrimonial home with a demand of additional dowry of Rs.1,00,000/-. Thereafter mediations took place, but as the efforts proved futile, the petitioner has been staying along with her mother since then.

The learned lower Appellate Judge while considering the material available on record found that to grant any relief under any of the provisions of the Act, the Magistrate has to *prima facie* satisfy the domestic violence has in fact taken place.

Though it is observed by the trial Court that there is no domestic violence between the parties in the case, erred in granting an amount of Rs.2,500/- towards alternate accommodation under Section 19 (f) of the Act. If the lower Court felt that domestic Violence has not taken place, there was no need to grant any amount for alternate accommodation. So, the said finding appears to be against the own finding of the trial court. Further, the trial court did not consider the evidence of P.W.2 at all. Hence, no prejudice would be caused to the parties herein if the matter is remanded back to the trial court. In fact the respondent/husband would get an opportunity to raise all the pleas which are taken here before the trial court. In view of the above, the order under challenge warrants no interference and accordingly the matter is remanded to the trial court for fresh disposal in accordance with law, leaving it open to the respondent/husband to raise the grounds of limitation and also the maintenance already awarded before the trial court.

Both the Criminal Revisions are accordingly disposed of. Consequently, the judgment of the trial Court stands set aside and the matters are remanded back to the trial Court for fresh decision after giving opportunity to both parties to adduce further evidence, if any.

As a sequel thereto, Miscellaneous Petitions pending if any in these Revisions, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 08.04.2015

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