

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.1926 of 2014

Between :-

Divakar Reddy and others .. Petitioners

and

K.Vandana and another .. Respondents

DATE OF JUDGMENT PRONOUNCED: 18th August, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wish to see
the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.1926 of 2014

ORDER:-

The revision is filed against the Judgment of the leaned Additional

Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Ranga Reddy District, in Criminal Appeal No.578 of 2014, dated 10-09-2014, by and under which the appeal filed by the revision petitioners against the orders of the VIII-Metropolitan Magistrate, Cyberabad at Rajendranagar, Ranga Reddy District, in CrI.M.P.No.1686 of 2014 in DVC No.13 of 2012 under Section 340 Cr.P.C., was dismissed.

2. Facts in brief are as under:-

The revision petitioners are the husband and his relatives of the 1st respondent. The respondent/aggrieved party filed a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act') before the Protection Officer who filed a report before the jurisdictional Magistrate and the cognizance was taken. Enquiry in the main case bearing DVC No.13 of 2012 has concluded and when the Case was coming up for arguments, the revision petitioners filed three petitions. They sought for the following reliefs:-

- 1) To summon the Branch Managers, HDFC Bank, Rashtrapathi Road, Secunderabad, to bring the details in respect of the bank account belonging to the respondent/aggrieved party;
- 2) To summon the Regional Provident Fund Commissioner, Thane, Maharashtra State, for producing the documents relating to the respondent/aggrieved party and Provident Fund application while opening the account; and
- 3) To prosecute the respondent/aggrieved party for giving false evidence in Court suppressing the fact of her employment and stating that she is a house-wife.

3. In the present revision case, we are concerned with the petition filed by the revision petitioners to prosecute the wife for giving false evidence in Court by suppressing the fact of her employment stating that she is a housewife.

4. By Order, dated 11-07-2014, the learned VIII-Metropolitan Magistrate, Cyberabad at Rajendranagar, dismissed all the three petitions. Aggrieved by the same, a revision was preferred before the

High Court and the said revision was dismissed holding that appeal is the remedy. Consequently, Criminal Appeal No.578 of 2014 came to be filed before the Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, which came to be dismissed. Hence, the revision.

5. The contention of the learned Counsel appearing for the revision petitioners is that both the Courts below erred in dismissing the petitions filed by the revision petitioners. It is contended that even though the respondent/wife was gainfully employed, she claimed interim maintenance of Rs.20,000/- per month by suppressing her employment. In the evidence, as PW.1, the respondent/wife admitted that as at present she is working in Atlas Documentary Facilitators Pvt. Ltd., BPO Call Centre, since 2012. Therefore, the orders be set aside and the respondent/wife be prosecuted. It is also contended that the learned appellate Judge erred in holding that the appeal is not maintainable since it is an interlocutory order and that the revision lies.

6. Insofar as the first aspect is concerned, there is no need for going into the details since already this Court has held that appeal is maintainable and therefore the observations of the learned appellate Judge that appeal is not maintainable becomes insignificant. However, what is noticed is that on merits the appellate Court has dismissed the appeal and hence what is required to be seen is as to whether the rejection of the request of the revision petitioners is justified.

7. The object of enacting the Act is to provide expeditious remedy to an aggrieved party in order to protect the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India to provide for a remedy which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is also provided in the Act that such a petition should be disposed of within a period of sixty days from the date of its first hearing as per Section 12 (1) of the Act.

8. Therefore, every endeavour should be made by the concerned authorities including the Courts to see that the relief sought for and if entitled should be granted expeditiously and the immediate succour be

provided to an aggrieved party.

9. In the instant case, what is noticed is that the revision petitioners' intention is only to protract and drag on the proceedings on some ground or the other. The husband claims that the wife is gainfully employed and she is drawing a sum of Rs.25,000/- per month, thereby being disentitled to claim interim maintenance. The wife though initially denied that she is working but she contended that in order to sustain herself, she started working in a private organization and is earning Rs.9,000/- per month. After the aggrieved party was examined, subsequently the husband filed a petition to recall her for cross-examination. That was rejected and appeal was preferred there against and the appellate Court directed that PW.1/the aggrieved party be recalled. Thereafter, the aggrieved party was recalled and she was further cross-examined. In the cross-examination, she admitted that she had a Bank Account with HDFC, Secunderabad and she also admitted that her salary is Rs.12,500/- per month and sometimes incentives will be given. She further claimed that she requires a sum of Rs.50,000/- per month towards shelter, food, clothing, medication etc., and therefore she is claiming interim maintenance of Rs.20,000/- per month. After this cross-examination was completed and after the entire trial, the case was posted for the arguments. At that stage, the revision petitioner filed three applications which have been referred to above. It is also noticed from the record that during the pendency of the enquiry, the Court directed both the wife and the husband to produce the respective salary certificates. The respondent/wife produced the salary certificate and wanted it to be exhibited. The same was objected to and hence that could not be marked as an exhibit.

10. Pending disposal of the main DVC, the revision petitioner/husband is seeking the relief of launching prosecution against the wife for having suppressed the material fact of her employment. The petition is filed under Section 340 Cr.P.C., which reads as under:-

“Procedure in cases mentioned in Section 195:- (1) When, upon an application made to it in this behalf or otherwise, any

Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary –

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2)

(3)

(4)

11. It is apparent that the object of the section is to safeguard frivolous and vexatious prosecution. Section 340 Cr.P.C., is in respect of a document produced or given in evidence in a proceeding in the Court. In the instant case, it is not the case of the revision petitioner/husband that any false document has been filed by the respondent/wife. The only grievance is that in the petition filed for interim maintenance, she contended that she is a housewife and hence needs maintenance of Rs.20,000/- per month. However, in the evidence which was subsequently recorded, she admits that as at present she is working in a private company and drawing about Rs.12,500/- per month. The wife as PW.1 explained in her evidence, recorded on 21-10-2014, that at the time when the petition was filed, she was not doing any job but consequently to eke out her livelihood, she joined in a temporary job in a private company.

12. On the basis of such evidence and the explanation, *prima facie*, it cannot be said that the respondent/wife has committed any offence, more

particularly, the one prescribed under Section 340 Cr.P.C. At best, it attracts Section 344 Cr.P.C., which reads as under:-

“Summary procedure for trial for giving false evidence:- (1) If, at the time of delivery of any Judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this Section shall effect the power of the Court to make a complaint under Section 340 for the offence, where it does not choose to proceed under the Section.

(4) Where, after any action is initiated under sub-section (1) it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the Judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.”

13. It is evident from the above that even for initiating the prosecution under Section 344 Cr.P.C., the occasion will arise only at the time of delivery of any Judgment or final order wherein an opinion is expressed that the witness had knowingly and wilfully given false evidence or had fabricated false evidence. Sub-section (4) of Section 344 Cr.P.C., also provides that if any appeal or revision is pending, against the observations of the trial Court against a witness, the same has to be stayed until the disposal of the appeal or the application. Only when the

appellate Court or the revisional Court confirms the observations of the trial Court, that any witness is guilty of having committed the offence punishable under Section 344 Cr.P.C., further proceedings should follow.

14. In the instant case, the main case in which the respondent/wife gave the evidence is yet to be disposed of. There is no observation by any authority that the respondent/wife knowingly or wilfully given false evidence with the intention that such evidence should be used in such proceedings. The main DVC is for maintenance and other reliefs. The respondent/wife claimed interim maintenance on the ground that she is housewife. She said that subsequently she took up a private job to sustain herself. That aspect can be taken into consideration in determining the maintenance to be awarded but to say that the respondent need to be prosecuted for the offences punishable under Section 340 or for that matter 344 Cr.P.C., is not at all permissible. Even if what is claimed by the revision petitioner/husband is true, the cause of action to initiate action against the respondent/wife will arise only after an opinion is expressed by the trial Court indicting the respondent/wife but not till then.

15. It is noticed from the above conduct of the revision petitioner that instead of cooperating with the Court for expeditious disposal of the DVC, which is statutorily required to be disposed of within a period of two months, the revision petitioner/husband has been indulging in filing frivolous and vexatious petitions. This conduct of the revision petitioner/husband cannot be countenanced. Therefore, the revision case is liable to be dismissed by imposing costs against the revision petitioner/husband for taking recourse to the remedies at premature stages.

16. In the result, the Criminal Revision Case is dismissed with costs of Rs.5,000/- (Rupees five thousand only), which the revision petitioner is directed to deposit with the Secretary, High Court Legal Services Committee, within a period of two weeks from today. The learned Magistrate is further directed to dispose of DVC No.13 of 2012 within a period of one month from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

M.S.K.Jaiswal, J]

18th August, 2015
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