

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
CRIMINAL REVISION CASE No. 2627 of 2014

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ORDER:

The petitioners, who are the respondents in D.V.C. No.48 of 2010, preferred the present revision aggrieved by the judgment dated 14.11.2014 passed in Criminal Appeal No.571 of 2013 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad.

The facts in issue are as under:

The second respondent herein filed D.V.C. No.48 of 2010 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short "the Act") before the Court of III Metropolitan Magistrate, Hyderabad, seeking reliefs under Sections 18, 19, 20 and 22 and also for interim custody of her minor daughter by name Anya. By an order dated 28.05.2013 the learned Magistrate granted custody of female child to the mother i.e., the second respondent herein till the child attains majority and till her marriage is performed or till permanent custody is granted by the competent court to either of the spouses whichever is earlier. Further, the first petitioner herein was directed to deposit an amount of Rs.5,00,000/- in the name of child Anya Chitturi within a period of six months from the date of the order in any Nationalized Bank in a fixed deposit for a period of 10 years and the mother was permitted to renew the same by standing herself as guardian and nominee for the said amount. On attainment of majority the female child was permitted to utilize the same for her education and welfare. The mother was directed not draw the amount till the child attains majority. The second respondent

herein was directed to furnish identity proof particulars of the child and herself to the bank authorities for keeping fixed deposit amount and she shall use the interest amount for the welfare of child only. However, the Court held that the aggrieved woman is not entitled for any other reliefs and rejected the petition insofar as the other reliefs are concerned. Challenging the same, the second respondent filed Criminal Appeal No.571 of 2013. By an order dated 14.11.2014 the learned V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad allowed the appeal and remanded the matter back to the trial Court. Challenging the same, the present revision is filed.

The learned counsel for the petitioner mainly submits that the learned Sessions Judge erred in remanding the matter back to the trial court when the circumstances clearly show that the second respondent herein was intentionally evading the progress of the case. The learned counsel for the petitioner also relied upon the judgments of various High Courts to show that the second respondent herein is not entitled for any relief under the Act. She relied upon number of documents to show that the reasons given by P.W.1 for not proceeding with the trial and not subjecting herself to cross-examination, are all false since she was attending to other works during the said period.

On the other hand, the learned counsel for the respondent submits that the mother of the second respondent herein was suffering with Cancer and as such she could not appear before the Court. He submits that the non participation in the trial of the case was neither deliberate nor wanton.

The averments of the petition filed in D.V.C. show that

marriage of the petitioner therein with first respondent took place on 10.03.2012 at Hyderabad as per Hindu rites and customs. It is alleged that on a demand made by the respondents therein, a sum of Rs.10,00,000/- was paid apart from spending Rs.25,00,000/- in providing accommodation, transportation gifts etc. It is alleged that harassment started from the date of marriage reception in Mumbai. The first respondent used to state that they missed out another match who would have given four crores of rupees as dowry and further the petitioner is not beautiful. The first respondent therein used to address the petitioner as "bitch" in front of everybody and when protested he used to shout at her on the top of her voice. Later R-1 left for USA (Boston) and when the petitioner therein joined the matrimonial company after one month, he used to insult the petitioner before his friends. As harassment of R-1 has become unbearable, having no other alternative, the petitioner therein was constrained to leave the matrimonial society of the first respondent and started residing separately along with her child. Since the first respondent, who is working as Engineer at USA and getting sufficient income, neglected to maintain the petitioner and her child apart from alienating the properties, the petitioner filed D.V.C. seeking reliefs of protection, alienation of properties, monthly maintenance, custody of the minor daughter and also for compensation and damages.

A counter came to be filed denying the allegations made and contended that the petitioner never cooperated with R-1 and she used to frequently pick up the quarrels with respondents. It is said that the petitioner voluntarily left the matrimonial society of R-1 and started staying away from the respondents. It is further contended that as the petitioner voluntarily and intentionally stayed

away from the respondents, she is not entitled to get any reliefs from the respondents.

In support of the case of the petitioner therein, no oral or documentary evidence was adduced. The appendix of evidence shows that only the first respondent therein was examined as R.W.1 and Exs.R-1 to R-44 were marked. After recording the evidence, it is stated that though the petitioner therein obtained interim orders of maintenance on the date of institution of the case, but failed to commence the trial though the respondents were seriously contesting the matter by filing counter. Since the petitioner did not participate in the trial, her evidence was closed and the evidence of R.W.1 was recorded in chief and 44 documents were marked. Basing on the evidence adduced by the respondents, the trial court framed two issues and after considering the evidence adduced by the respondents, rejected the request of the petitioner in granting her any relief except giving custody of the minor child on certain terms and conditions. It was held that the evidence of R.W.1 coupled with Ex.R-33, 34 and 37 to 40 clearly demonstrate that the petitioner is an income tax assessee deriving substantial income. A perusal of the judgment of the trial court does not anywhere indicate participation of the petitioner in the trial. Challenging the same, the petitioner therein filed an appeal explaining the circumstances as to why she could not participate in the trial. Satisfied with the reasons given, the lower appellate court remanded the matter back to the trial court for disposal of the case by giving an opportunity to the petitioner to adduce evidence on her behalf and also permitting her to cross-examine the respondent therein.

As stated earlier, the learned counsel for the petitioners

herein placed on record the docket orders of the trial court to show that the second respondent herein intentionally did not participate in the trial of the case. A perusal of the docket orders, which are placed on record, would show that from 09.04.2010 the case was being posted after every 10 days and the second respondent herein(wife) was present on 09.04.2010, 19.04.2010, 30.04.2010, 10.05.2010, 22.06.2010, 29.06.2010, 16.07.2010, 09.09.2010, 28.09.2010, 05.10.2010, 12.10.2010, 03.11.2010, 18.11.2010, 25.11.2010, 07.12.2010, 21.12.2010, 06.01.2011, 25.01.2011, 01.02.2011, 18.02.2011, 15.03.2011, 22.03.2011, 11.04.2011, 26.04.2011, 09.05.2011, 27.05.2011, 15.06.2011, 06.07.2011, 29.07.2011, 02.09.2011, 16.09.2011, 28.10.2011, 03.11.2011, 09.11.2011, 17.11.2011, 24.11.2011, 07.12.2011, 21.12.2011, 23.01.2012, etc. The docket orders also show that she was present on almost all the occasions except few dates. Even in the year 2013 the wife (respondent herein) was present before the Court on 11.02.2013. The docket order shows that the petitioner was present on 11.02.2013, 16.02.2013, 28.02.2013, 04.03.2013. On 17.03.2013 and 30.04.2013 the petitioner was absent but her absence was condoned on a petition filed. On 30.04.2013 it was brought to the notice of the court that the petitioner herein filed a transfer petition before the High Court which was dismissed on 29.04.2013. The court observed that since the trial was directed to dispose of the case within certain time by the High Court in a Criminal Petition filed under Section 482 Cr.P.C., the court eschewed the evidence of P.W.1 and proceeded further.

The affidavit filed in D.V.C. No.48 of 2010 seeking permission to lead evidence and to set-aside the final order dated 30.04.2013 would show that the mother of the second respondent

underwent surgery in Asian Institute of Gastroenterology, Somajiguda, Hyderabad on 18.02.2013 and 28.02.2013 as she was suffering with “Cholangiocarcinoma and liver Metastases”. In spite of the said surgery she could not recover and she was forced to get her mother admitted in Basavatarakam Indo-American Cancer Hospital and Research Institute from 11.03.2013 to 18.03.2013. After a PET scan, the Doctors at Indo American Hospital advised her to go for alternative treatment at Kerala. Then she along with her mother rushed to “The Clinic” run by Dr. Manik Hiranandani at Kerala where she was admitted as an in-patient in the Hospital on 18.03.2013. According to her, she left Hyderabad on 10.03.2013 and attended on her mother who was admitted at “The Clinic”, and only recently she was forced to come back to Hyderabad to contest the matters. She also placed on record the transfer petition filed seeking transfer of the said case, which was however dismissed. After the dismissal of the Transfer O.P., the Court posted the matter to 01.05.2013 and proceeded on day to day basis. The docket orders clearly indicate that R.W.1 was examined in chief on 01.05.2013 and Exs.R-1 to R-36 were marked on the said date. Thereafter, it posted the case to 02.05.2013 for further evidence of respondents. As no further evidence was adduced, the same was closed on that date. The appellate court in its order observed that though R.W.1 was examined i.e., the first petitioner herein on 01.05.2013, the written arguments were also filed on 01.05.2013 itself, though it was posted for further evidence to the next date. Though the wife (respondent herein) petitioner brought to the notice of the court the reason for not adducing any evidence, it appears that the same was not considered by the trial court. With a view to give an

opportunity to the petitioner to lead evidence and contest the matter as she was left out without any maintenance and shelter, the appellate court found that it was just and necessary to remand the matter. It may be true that the petitioners herein have a fair chance of success in the D.V.C. basing on the evidence placed by them but the second respondent should also be given opportunity to adduce evidence on her side and also to cross-examine the first petitioner who examined himself as R.W.1.

It may also be true that the petitioners 2 and 3 who are aged about 70 and 60 years respectively are put to great inconvenience. It may also be true that there was no domestic relationship at all and the second respondent may not be entitled to any relief under the Act, but the same can be decided basing on the evidence adduced by either parties. It may also be noted that the proceedings under the Domestic Violence Act are mere of civil nature with no punishment.

In **Valisetti Chandra Rekha v. State of Andhra Pradesh**^[1], this Court while dealing with a situation where issuance of NBWs while taking DVC case on file held that issuance of summons and non-bailable warrants for their presence is not at all warranted, at the stage of passing of the protection orders or residence orders by the concerned Magistrate. This Court further held that mere impleadment of petitioners in Domestic Violence Case does not give rise to a criminal offence so as to quash proceedings at the initial stage. While dismissing the petition, this Court observed that if the petitioners did not represent in the matter *ex parte* orders can be passed and only if they violate the orders, they can be proceeded under Section 31 of the Act.

In **Mohit Yadav v. State of Andhra Pradesh**^[2], this Court after referring to the various judgments of the Apex Court and also to the objects and reasons of the Act, held that none of the provisions of the Act has direct penal consequence. It is only a remedial statute which receive a

liberal construction. The breach of protection order, or an interim protection order, by the respondent in DVC shall be an offence under Section 31 of the Act. Since the Act has no penal consequences, except violation of orders passed under Sections 17 to 22 of the Act, it can be held that it is a “beneficial legislation to stop the pandemic that violence suffered by women, with an object to prevent the gender based violence.”

In **Mohd. Akber Yaseen v. Rizwana Sultana**^[3], a learned single Judge of this Court held that “in the case of Domestic Violence cases filed for reliefs under Sections 18 to 23 of the Act, there is no element of criminality involved, much less the domestic violence case is a criminal case. Unless the case is filed alleging offences under Sections 31 and 33 of the Act, the entire proceedings in a domestic violence case are purely civil in nature, but entertained by criminal Courts applying procedure enunciated under the Code of Criminal Procedure, 1973.”

Accepting the explanation given by the second respondent and with a view to give an opportunity to the second respondent herein to lead evidence, I see no reason to interfere with the order passed by the lower appellate court. However, as the respondents 2 and 3 are old people aged about 70 and 60 years respectively, residing at Mumbai and as the proceedings are mostly civil in nature in view of the judgments referred to above, their presence is dispensed with during the process of trial except on the dates when their presence is specifically required by the court. It is needless to mention that the respondents shall not raise any dispute with regard to the evidence adduced, the procedure adopted and the questions put by their counsel during their absence in the court.

With the above direction, the criminal revision is disposed of.

As a sequel to it, miscellaneous petitions, pending if any in this CrI.R.C. shall stand closed.

C. PRAVEEN KUMAR, J

Date:25.02.2015
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[\[1\]](#) 2010(2) ALD (CrI.)689 (AP)

[\[2\]](#) 2010(1) ALD (CrI.)1

[\[3\]](#) 2010(2) ALD (CrI.) 680 (AP)