

HONOURABLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.1361 OF 2009

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ORDER:

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This criminal revision case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the revision petitioners herein, seeking to set aside the order dated 04.08.2009 passed in Crl.M.P.No.1059 of 2009 in D.V.C.No.21 of 2009 on the file of the Judicial Magistrate of First Class, Suryapet, whereby and whereunder the application filed by the 1st respondent herein under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') was allowed, granting *ex parte* protection order prohibiting the petitioners herein from committing any act of domestic violence against the 1st respondent and also residence order directing the petitioners herein to allow the 1st respondent into their house within ten days from the date of order and take necessary steps to provide suitable accommodation to her.

Learned counsel for the petitioners argued that the trial Court has no power to pass the aforesaid *ex parte* interim orders, when the notice was forcibly served on the 1st petitioner herein while he was present in the court to attend the proceedings in M.C.No.52 of 2007 on the file of the said Court. It is also argued that the 1st petitioner has been paying the interim maintenance as per the directions of this Court and that the 1st respondent herself deserted the 1st petitioner and the trial Court, without taking these aspects into consideration, ought not to have directed for providing accommodation to the 1st respondent in the house belonging to the 2nd petitioner. The learned counsel, therefore, prayed for setting aside the order of the trial Court.

On the other hand, learned counsel for the 1st respondent argued that under Section 23(2) of the Act, the trial Court has got powers to grant *ex parte* interim orders in favour of the 1st respondent herein, who filed the D.V.C. case against the petitioners herein. He further argued that the present petition is not maintainable as there is a remedy available to the petitioners to approach the trial

Court itself for setting aside the orders passed by it. Further, the trial Court has granted monthly maintenance of Rs.1,500/- to the 1st respondent, but the 1st petitioner is not complying with the said order, though the revision filed by him against the said order was dismissed by a Division Bench of this Court. He also argued that the 1st respondent has a crippled child and at one point of time, the 1st petitioner denied the paternity and thereupon D.N.A. test was conducted, which resulted positive, and thus the conduct of the 1st petitioner has also to be taken into consideration. He finally prayed the Court to dismiss the revision case.

Now, the point for consideration is -

“Whether the revision petitioners are entitled to set aside the order dated 04.08.2009 passed in CrI.M.P.No.1059 of 2009 in D.V.C.No.21 of 2009 on the file of the Judicial Magistrate of First Class, Suryapet, as prayed for?”

A perusal of the record shows that the 1st respondent herein filed D.V.C.No.21 of 2009 on the file of the Judicial Magistrate of First Class, Suryapet, against the petitioners herein. She also filed M.C.No.52 of 2007 and the trial Court granted Rs.1,000/- as maintenance to her to be paid by the 1st petitioner, and aggrieved thereby, the 1st petitioner filed a revision before this Court and the same was dismissed by a Division Bench of this Court.

The main contention of the petitioners is that the 1st petitioner was very much present in the court on the date of passing of *ex parte* interim orders and notice was forcibly served on him and without giving him an opportunity to put forth his stand, the trial Court granted the *ex parte* interim reliefs in favour of the 1st respondent. A perusal of the record makes it clear that based on the affidavit filed by the 1st respondent, the trial Court passed the *ex parte* interim orders, which are under challenge in the present revision, and nothing was mentioned therein about service of notice. Further, according to the petitioners, the house, in which the 1st respondent was directed to be allowed to live, belongs to the 2nd petitioner and it is his self-acquired property. In these circumstances, this Court is of the opinion that it would be appropriate to set aside the orders passed by the trial Court and remand the matter to the trial Court, so as to enable the petitioners to contest the matter by filing counter.

Accordingly, the order under revision is set aside and the matter is remanded to the trial Court for fresh consideration. The trial Court shall give the petitioners an opportunity to file their counter and dispose of CrI.M.P.No.1059 of 2009 in D.V.C.No.21 of 2009, in accordance with law, within a period of one month from the date of receipt of a copy of this order.

The criminal revision case accordingly stands allowed. Pending miscellaneous petitions, if any, shall stand closed.

ANIS, J

16th April, 2015

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