

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**
+ CRIMINAL PETITION NO.23 OF 2013

% 17.06.2015

- # 1. Bheri Veera Vara Ravindra Prasad, S/o.Laxmi Narayana.
2. Bheri Lakshmi Narayana, S/o.Late Chellarao.

...PETITIONERS

VERSUS

\$1. State of A.P., Represented by Public Prosecutor, High Court of A.P., Hyderabad, and two others.

...RESPONDENTS

< **GIST:**

> **HEAD NOTE:**

!Counsel for Petitioners: Sri V.Hari Haran

^Counsel for Respondent No.1: Public Prosecutor (AP)
Counsel for Respondent Nos.2 and 3: Sri P.Veerraju

? Cases referred

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
CRIMINAL PETITION NO.23 OF 2013

ORDER:

This petition has been preferred for quashing D.V.C.No.5 of 2012 on the file of the IV Additional Chief Metropolitan Magistrate, Visakhapatnam.

Respondents 2 and 3 are the petitioners in the said D.V.C. and the petitioners herein are the respondents in that case. The first petitioner in D.V.C is the legally wedded wife of the first respondent therein and the first petitioner herein. The second petitioner in D.V.C. is the daughter of the first respondent/first petitioner herein.

It is set out that the marriage between the first petitioner herein and the second respondent took place on 23.02.2003 and at the time of the marriage, the first petitioner was working with Hindustan Petroleum Corporation Limited at Visakhapatnam drawing fairly a handsome salary. It is alleged against the petitioners herein that cash in a sum of Rs.6,00,000/- was paid as dowry for the marriage, 50 tulas of gold, 150 tulas of silver and cash of Rs.2,00,000/- towards other formalities have all been paid. But, however, it is alleged that the second respondent herein has not been properly treated by the first petitioner-husband and his family members. The third respondent-daughter was born on 12.07.2004. It is asserted that the first petitioner herein was transferred from Visakhapatnam to Ananthapur in August 2005. Therefore, the first petitioner and respondents 2 and 3 moved to Ananthapur, but, however, the first petitioner has sent away respondents 2 and 3 on 18.12.2005 to Visakhapatnam on some pretext and when respondents 2 and 3 were getting ready to return Ananthapur, the petitioner has got issued a telegram on 14.01.2006 asking respondents 2 and 3 not to return to Ananthapur, as he has vacated the flat which he had hired at Ananthapur for certain reasons. However, it is the case of respondent Nos.2 and 3 that the first petitioner has not made any attempt to take them back to Ananthapur even after seven (7) months time elapsed. The place of residence of the first petitioner, according to the complaint, has become difficult to be traced. In the meantime, the second respondent appears to have lodged a complaint with the police for the alleged offence under Section 498-A of the Indian Penal Code, 1860, read with Sections 3, 4 and 5 of the Dowry Prohibition Act, 1961. That was registered as Crime No.906 of 2006 and ultimately, the I Additional Chief Metropolitan Magistrate at Visakhapatnam, in C.C.No.1131 of 2007, acquitted the accused persons setting forth in

judgment the principal reason for such acquittal as under:

“.....Therefore, in the absence of any evidence from independent witnesses, it is not safe to base conviction basing upon the above material. Hence, under the above facts and circumstances, the prosecution failed to establish the guilt of any of the accused beyond reasonable doubt and they are entitled for acquittal...”

It appears, the second respondent has filed O.P.No.564 of 2007 on the file of the Family Court, Visakhapatnam, seeking restitution of her conjugal rights. She has also filed O.P.No.565 of 2007 along with her daughter, the third respondent herein, seeking maintenance from the first petitioner herein. O.P.No.564 of 2007 was decreed and O.P.No.565 of 2007 was ordered on 23.06.2009 for payment of monthly maintenance of Rs.2,000/- to the second respondent and Rs.1,000/- to the third respondent-daughter. The first petitioner-husband has filed O.P.No.621 of 2007 seeking dissolution of marriage. O.P.No.621 of 2007 was dismissed by the Family Court. Against the decree of restitution of conjugal rights passed in O.P.No.564 of 2007, the first petitioner has preferred F.C.A.No.244 of 2009 before this Court and this Court passed interlocutory order on 05.10.2009 suspending the restitution of conjugal rights. He has also preferred an appeal in F.C.A.No.257 of 2009 against the dismissal of divorce O.P.No.621 of 2007, which is also pending.

The main grounds of attack against D.V.C.No.5 of 2012 has been orchestrated by Sri V.Hari Haran, learned counsel for the petitioners as under:

Respondents 2 and 3 lodged the complaint only on 13.03.2012, i.e., more than 7 ½ years after the alleged desertion of respondents 2 and 3. This apart, for the very same allegations, prosecution was already launched against the petitioners herein in C.C.No.1131 of 2007 and the learned I Additional Chief Metropolitan Magistrate at Visakhapatnam has acquitted the

petitioners herein by his judgment dated 15.04.2015 and hence, question of drawing the very same allegations all over again in the above D.V.C. is impermissible. This apart, O.P.No.565 of 2007 is already filed by respondents 2 and 3 and that was ordered and the first petitioner herein has been complying with the order passed therein by tendering the monthly maintenance as ordered by the Court by depositing the same before the Court. Hence, question of reconsideration of the entire issue once again would not arise.

Per contra, learned counsel Sri P.Veerraju, who appeared today in the matter, would submit that the present application is moved under Sections 17, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005 (henceforth referred to for short as "the Act") and hence, question of quashing the present D.V.C. against the petitioners herein would not arise.

The Parliament has noticed that effective measures are essentially required for protection of the rights of women guaranteed under the Constitution, who are getting victimised due to violence occurring within the family and hence, for putting in place preventive measures and with a view to protect the rights of women, enacted the Act. Therefore, the Act itself has been ushered in for achieving greater social objectives. Above all, the Parliament wanted to announce in clear terms that in this country, the guaranteed rights of women are not merely confined to the statute book but they are taken adequate care of. With a view to give protection to the women essentially from violence within the family, the present special piece of Legislation has been brought forth.

Section 3 of the Act has attempted in very broad and wide terms, as to what constitutes domestic violence and hence, tried to cover the various acts, omissions or commissions or even conduct of a particular person to constitute domestic violence and hence, couched the language in far and wide terms. The expression

“physical abuse” is explained under Section 3 of the Act as to mean any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person. Similarly, the expression “verbal and emotional abuse” is sought to be explained in inclusive terms as insult, ridicule, humiliation, name calling etc. I am, therefore, of the opinion that if an act of a particular person is likely to impair the health or development of a particular person or if a person is openly put to humiliation, the expressions “physical abuse” and “verbal and emotional abuse” get attracted in the above context.

When the contents of the complaint lodged by the second respondent herein have been carefully studied, the humiliation heaped upon her by the petitioners is, *prima facie*, made out. After the first petitioner herein, who is the husband of the second respondent herein and the father of the third respondent, has been transferred from Visakhapatnam to Ananthapur where respondents 2 and 3 joined him but he sends them away on some pretext back home at Vizag and in the meantime, abruptly vacates the flat hired by him at Ananthapur so as to prevent respondents 2 and 3 to come back and join him at Ananthapur to lead a life of dignity along with him, perhaps, towards such a conduct various expressions found in the sweep of Section 3 of the Act get attracted.

This apart, whatever be the differences and their intensity be between the first petitioner and the second respondent, the third respondent herein was born to them on 12.07.2004. The petitioners herein being the father and the grand father are liable to ensure that the third respondent makes a steady progress and development in all respects. They are liable to ensure that the personality and intellectual development of the third respondent should not get impaired in the process in any manner. The third respondent is not

at fault in any manner for the unresolved differences between the petitioners on one hand and the second respondent on the other. If the third respondent has been unjustly denied what is legitimately due to her, the paternal care and guidance, while all other children of her age group who receive it in abundance and lead a normal course of living, the third respondent, *prima facie*, appears to have been put to “verbal and emotional abuse”, as she has invidiously been made to suffer humiliation apart from the expression “physical abuse” itself getting attracted in her case.

This apart, the learned counsel for the second respondent is right in pointing out that Section 17 of the Act has conferred a right to reside in a “shared household” to every woman in a domestic relationship and Section 19 is an enabling provision empowering the Magistrate for passing an appropriate order for residence of the parties. While Section 20 of the Act talks of the monetary relief which can be granted to a party under this Act, clause (d) of sub-section (1) of Section 20 of the Act makes it very clear that the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973, or any other law for the time being in force can be granted by the learned Magistrate. Therefore, the fact that the second respondent or respondents 2 and 3 have already approached the Family Court by instituting O.P.Nos.564 of 2007 and 565 of 2007 for restitution of conjugal rights and for securing maintenance respectively, would not come in the way of the Magistrate to exercise the power available under Section 20 of the Act and award appropriate monetary relief, should he consider that grant of Rs.3,000/- as monthly maintenance to the respondents 2 and 3 is hopelessly inadequate for one to lead a life of dignity in a city like Visakhapatnam.

I am, therefore, of the opinion that the grounds urged by the petitioner for quashing D.V.C.No.5 of 2012 are not available and since the Domestic Violence Case has made out a *prima facie* case requiring prompt and immediate attention for securing the reliefs under Section 17 and Section 20 of the Act, it is only appropriate that the stay order passed by this Court on 03.01.2013 be vacated.

Accordingly, this Criminal Petition stands dismissed. D.V.C.No.5 of 2012 shall be disposed of as expeditiously as possible within a maximum period of two months from the date of receipt of a copy of this order. Miscellaneous petitions, if any, pending shall stand dismissed.

(NOOTY RAMAMOHANA RAO, J)

17th June 2015

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