

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.459 of 2013

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.PC challenging the order dated 22.1.2013 in Criminal Appeal No.108 of 2011 on the file of the court of I Additional Metropolitan Sessions Judge, Visakhapatnam wherein and whereby the order dated 06.7.2011 in D.V.C. No.22 of 2009 on the file of the court of IV Additional Chief Metropolitan Magistrate, Visakhapatnam was confirmed.

2. The first respondent herein filed D.V.C. against the petitioner, respondent Nos.2 and 3 herein claiming relief under Sections 18 to 22 of the Act. The parties will hereinafter be referred to as they are arrayed before the trial court to avoid confusion.

3. The sole contention of the learned counsel for the first respondent is that the IV Additional Chief Metropolitan Magistrate Court, Visakhapatnam has no territorial jurisdiction to entertain the D.V.C. He further submitted that the appellate court has not considered this aspect and allowed the appeal on erroneous grounds.

Per contra, learned counsel for the petitioner submitted that the IV Additional Chief Metropolitan Magistrate Court, Visakhapatnam has territorial jurisdiction to entertain the D.V.C.

4. The facts leading to filing of the present revision case are briefly as follows: The marriage of the petitioner was performed with the first respondent on 23.8.1992 at Daragangamma Temple, S.Kota, Vizianagaram District as per Hindu rites and caste customs. The marriage was registered before the Sub-Registrar, S.Kota on 27.8.1992. Immediately after the marriage, the petitioner joined the first respondent at Vizianagaram to lead marital life. Unfortunately, disputes arose between the petitioner and the first respondent;

therefore, the petitioner has been residing at her brother's house in Visakhapatnam. The petitioner filed M.C. No.8 of 1994 on the file of the court of Judicial First Class Magistrate, S.Kota seeking maintenance of Rs.500/- per month from the first respondent. The first respondent filed O.P. No.20 of 1993 on the file of the Court of Senior Civil Judge, Vizianagaram under Section 9 of Hindu Marriage Act. The first respondent also filed O.P. No.34 of 2009 on the file of the court of Senior Civil Judge, Vizianagaram under Section 13 of the Hindu Marriage Act for dissolution of the marriage between him and the petitioner. While so, the petitioner filed D.V.C. No.22 of 2009 against respondent Nos.1 to 3 seeking various reliefs under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 (DVC Act). After fullfledged trial, the trial court allowed the D.V.C. directing the first respondent to pay maintenance of Rs.2,500/- per month to the petitioner. The trial court also directed the first respondent to pay Rs.750/- per month to the petitioner towards rent for accommodation of the petitioner from the date of the petition. Feeling aggrieved by the orders dated 06.7.2011 in D.V.C. No.22 of 2009, the first respondent preferred Criminal Appeal No.108 of 2011. The learned I Additional Metropolitan Sessions Judge, Visakhapatnam, after reappreciating the oral and documentary evidence, arrived at a conclusion that the first respondent committed the acts of domestic violence and dismissed the appeal. Hence, the present criminal revision case.

5. The fact remains that the petitioner filed M.C. No.8 of 1994 against the first respondent on the file of the court of Judicial First Class Magistrate, Vizianagaram. As per the testimony of P.W.1, the petitioner has been residing at her brother's house in Visakhapatnam. That fact was not denied by the first respondent. The petitioner filed Transfer C.M.P. No.598 of 2009 to transfer O.P. No.34 of 2009 from the file of the court of Senior Civil Judge, Vizianagaram to the Family

Court, Visakhapatnam and this court allowed the same on 29.3.2012.
As per the allegations made in the petition, the first respondent and his second wife threatened the petitioner when she attended the Court at Visakhapatnam in connection with D.V.C. No.22 of 2009. Therefore, the petitioner lodged a complaint to the Station House Officer, Visakhapatnam III Town Police Station. The first respondent is facing trial in C.C. No.706 of 2010. A perusal of the record *prima facie* reveals that the first respondent married another lady during the pendency of the D.V.C. The material available on record clinchingly establishes the acts committed by the first respondent falls within the definition of “domestic violence”. The trial court as well as the appellate court gave a specific finding that the first respondent committed the acts of domestic violence; therefore, the D.V.C. is maintainable under law.

6. Now, the crucial question that falls for consideration is whether the IV Additional Chief Metropolitan Magistrate Court, Visakhapatnam has territorial jurisdiction to entertain D.V.C. No.22 of 2009 or not.

7. In order to resolve the issue, it is not out of place to extract Section 27 of the DVC Act.

27. Jurisdiction.—

(1) The court of Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) **the person aggrieved permanently or temporarily resides** or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India.

A perusal of Clause (a) of Sub-section (1) of Section 27 of DVC Act, at a glance, demonstrates that the aggrieved person can file a petition within the local limits of the court where she has been residing permanently or temporarily. As observed earlier, the petitioner has been residing at her brother's house in Visakhapatnam. Moreover, this court transferred O.P. No.34 of 2009 from Vizianagaram to Visakhapatnam on the ground that the petitioner has been residing in Visakhapatnam. In view of Section 27 of DVC Act, the petitioner is entitled to file the D.V.C. either at Vizianagaram or Visakhapatnam.

8. The contention of the learned counsel for petitioner that the IV Additional Chief Metropolitan Magistrate Court, Visakhapatnam has no territorial jurisdiction to entertain D.V.C. No.22 of 2009 has no legs to stand in view of Section 27 of DVC Act. The trial court as well as the appellate court considered the jurisdictional aspect, in right perspective, and arrived at a conclusion that the plea of the first respondent that the trial court has no territorial jurisdiction to entertain the D.V.C. is not legally sustainable. The finding recorded by the courts below is supported by the material much less legally admissible material.

9. There is no dispute with regard to financial status of the first respondent. The courts below considered the oral and documentary evidence, in right perspective, and arrived at a conclusion that the petitioner is entitled to claim reliefs from the first respondent under the provisions of DVC Act. The finding recorded by the courts below, on this aspect, is supported by oral and documentary evidence. There is no illegality or irregularity in the orders passed by the courts below, which warrants interference of this court by exercising revisional jurisdiction under Section 397 Cr.P.C. The criminal revision case lacks merits and is liable to be dismissed.

10. Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions if any pending in this CrI.RC shall stand closed.

T.SUNIL CHOWDARY, J

July 14, 2016.

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