

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMIAL REVISION CASE NO.618 OF 2011

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 09-02-2011 in Crl.M.P.No.1373 of 2010 in D.V.C. No.36 of 2010 on the file of the IV Additional Chief Metropolitan Magistrate, Visakhapatnam.

2. The contention of the learned counsel for the petitioner herein is two fold viz., (1) the trial Court passed the order even though the 2nd respondent is not the legally wedded wife of the petitioner and (2) the order of the trial Court is based on assumptions and presumptions.

3. Per contra, learned counsel for the 2nd respondent herein submitted that the revision is not maintainable. He further submitted that findings recorded by the trial Court is supported by material, much less legally admissible material.

4. A perusal of the record reveals that the 2nd respondent filed a petition under Section 23 (2) of the Protection of Women from Domestic Violence Act, 2005 (for brevity 'the Act') against the petitioner and others claiming various reliefs under Sections 18 to 22 of the Act. Pending main D.V.C., the 2nd respondent filed Crl.M.P.No.1373 of 2010 seeking interim maintenance of Rs.5,000/- per month from the petitioner. After hearing both sides, the trial Court allowed the petition directing the petitioner to pay interim maintenance of Rs.1500/- per month to the 2nd respondent. Aggrieved by the said order, the present revision is filed.

5. The predominant contention of the learned counsel for the 2nd respondent is that the revision is not maintainable and hence, the same is liable to be dismissed without going into the merits of the case. To substantiate the arguments, learned counsel for the 2nd respondent has drawn my attention to the provisions of the Act.

6. In order to appreciate the rival contentions, it is apposite to refer to Section 29 of the Act, which reads thus:

“29. Appeal:- There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

Section 29 of the Act clearly demonstrates that an appeal lies to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later. Without exhausting the alternative remedy, the petitioner approached this Court directly. Having regard to the facts and circumstances of the case and also the scope of Section 29 of the Act, I am of the considered view that this revision is not maintainable.

7. Accordingly, this Criminal Revision Case is dismissed. However, dismissal of this revision does not preclude the petitioner to avail the remedies available to him under law. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 14-06-2016.

Hsd