

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.12974 of 2013

ORDER :

Heard and perused the material on record. The present petition filed under Section 482 Cr.P.C by the petitioner impugning the order in Crl.M.P.No.558 of 2013 in Crl.A.No.373 of 2013 against the order in D.V.C. No.17 of 2011 of XI Metropolitan Magistrate, Cyberabad, L.B.Nagar, where the order was to return the so called dowry amount of Rs.5,00,000/- by awarding towards compensation and to pay Rs.10,000/- towards maintenance to the D.V.C petitioners, wife and son, by the 1st respondent who is the petitioner herein and appellant before the appellate Court.

2) The contention by the learned counsel for the petitioner that it was an exparte order. It is subject to payment of all arrears of maintenance at Rs.10,000/- per month from the D.V.C respondent/appellant being the software engineer with sufficiency of means and bound to maintain and on condition of deposit of 1/4th of the amount of Rs.5,00,000/- to be deposited and while permitting to withdraw without furnishing security, the maintenance amount only by D.V.C petitioners, impugned order dated 21.10.2013 staying the operation of the order in D.V.C. No.17 of 2011 pending appeal passed by the learned

Additional Metropolitan Sessions Judge of Cyberabad on 21.10.2013. It is now impugned herein saying the D.V.C order fraudulently an exparte order and is unsustainable. No doubt, it is not an interim order exparte protection order under Section 23 of the Protection of Women from Domestic Violence Act (for short, 'the Act'). In fact Section 28 of the Act speaks save as otherwise specifically provided under the provisions of the Act, all proceedings are governed by the provisions of Cr.P.C. This Court in fact by scanning the law answered in ***Gaddameedi Nagamani V. State of Telengana***^[1] at para No.11 categorically observed that by virtue of Section 28 of the Act the procedure of Section 126 to 128 Cr.P.C equally applies to the cases of Act relieves for there is no any specific provision or special procedure or Rules made thereunder to that extent by interpreting the scope of Section 5 and Section 4(2) of Cr.P.C with the provisions of the Act. In fact proviso under Section 126(2) Cr.P.C even enables to pass exparte orders and to set aside the exparte orders or stay subject to such terms, which includes terms as to costs. Once by virtue of the provisions stay or setting aside the exparte order of maintenance and dowry amount awarded in the D.V.C proceedings pending appeal to decide the correctness, stay granted on condition of deposit of all arrears of maintenance and 1/4th of the amount of dowry or

compensation and permitted to withdraw what is to be deposited only of arrears of maintenance and not the 1/4th amount of dowry/compensation such terms no way shows illegal, untenable or onerous and inequitable even for this Court to sit against and interfere once that is the enabling provision under Section 28 of the Act read with Section 4, 5 and 125 to 128 Cr.P.C.

3) In the result, the petition is dismissed to enable the lower appellate Court to decide the appeal on merits. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.01.2016
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[\[1\]](#) 2015(3) ALT (CrI.) 263