

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1045 of 2012

ORDER:

This revision is filed by the petitioner under Section 397 and 401 Cr.P.C. challenging the judgment dated 04.09.2010 in Criminal Appeal No.42 of 2009 wherein whereby modified the orders dated 03.02.2009 in D.V.C.No.3 of 2008 on the file of the Court of Judicial First Class Magistrate, Nalgonda reducing the maintenance amount from Rs.3,000/- to Rs.2,000/-.

The parties will be herein after referred to as they are arrayed before the trial Court.

The facts leading to file the present revision are briefly as follows:

The marriage of the petitioner was performed with the respondent on 09.03.1991 as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined with the respondent to lead marital life. Out of lawful wedlock, the petitioner and the respondent were blessed with three children. The respondent filed O.P.No.25 of 1997 on the file of the Court of Senior Civil Judge, Nalgonda against the petitioner under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and that petition was dismissed. Thereafter, petitioner joined with the respondent to lead marital life. For one reason or other petitioner and respondent lived together for a short period. The petitioner presented a petition under Section 12 of the D.V.C. Act before the Protection Officer. After receipt of the complaint, the Judicial Magistrate of First Class, Nalgonda has taken the case on file and numbered it as D.V.C.No.3 of 2008. The petitioner filed the petition seeking various reliefs under Sections 18 to 21 of the Act.

The petitioner claimed maintenance amount of Rs.5,000/- from the respondent. Basing on the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the petitioner is entitled to claim maintenance from the respondent and allowed the petition by granting maintenance of Rs.3,000/- per month. Feeling aggrieved by the judgment of the trial Court, the respondent filed CrI.A.No.42 of 2009 on the file of the Court of Family Court-cum-Additional District and Sessions Judge, Nalgonda. The appellate Court after reappraising the material available on record allowed the appeal in part on 14.09.2010 by reducing the maintenance amount from Rs.3,000/- to Rs.2,000/-. Hence, the present revision petition.

The contention of the learned counsel for the respondent (petitioner herein) is two fold:

1. The second respondent left the matrimonial home of the petitioner in the year 1998, therefore, she is not entitled to claim maintenance under the provisions of D.V.C. Act.
2. The Courts below granted maintenance without taking into consideration the financial capacity of the petitioner.

Now, the points that arise for consideration are

1. Whether the petitioner is entitled to claim maintenance from the respondent or not.
2. Whether there is any illegality or irregularity in the orders of the trial Court which warrants interference of this Court.

Both points are interlinked to each other hence, I am inclined to address both points together in order to avoid recapitulation of facts.

The following admitted facts can be culled out from the material available on record.

The marriage of the petitioner was performed with the respondent on 09.03.1991 as per Hindu rites and caste customs. Out of lawful wedlock, the petitioner and the respondent were blessed with three children. The elder daughter is residing with the respondent. The petition filed by the respondent in O.P.No.25 of 97 on the file of the Court of Senior Civil Judge, Nalgonda, for restitution of conjugal rights was dismissed.

Before the trial Court, on behalf of the petitioner, P.W.1 was examined. On behalf of the respondent, R.Ws.1 and 2 were examined and Exs.R1 to R4 were marked.

The first and foremost contention of the learned counsel for the respondent is that the petitioner is not entitled to file a petition under the provisions of the D.V.C.Act as the alleged acts arose prior to the commencement of the D.V.C.Act.

In order to appreciate the contention of the respondent, this Court is placing reliance on the following judgments:

MRS.SAVITA BHANOT v. LT.COL.V.D.BHANOT^[1],

wherein the Delhi High Court held as follows:

18. For the reasons given in the preceding paragraphs, I am of the considered view that a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 is maintainable even if the acts of domestic violence have been committed prior to coming into force of the Act or despite her having in the past lived together with the respondent, a shared household woman is no more living with him,

at the time of coming into force of the Act.

The view expressed by the Delhi High Court in the case cited supra was affirmed by the Hon'ble Supreme Court in **V.D. Bhanot Vs. Savita Bhanot**^[2]. The same principle is reiterated in **Saraswathy vs. Babu**^[3] as follows:

14. The other issue that whether the conduct of the parties even prior to the commencement of the PWD Act, 2005 could be taken into consideration while passing an order Under Sections [18](#), [19](#) and [20](#) fell for consideration before this Court in **V.D. Bhanot v. Savita Bhanot**, (2012) 3 SCC 183. In the said case, this Court held as follows:

12. We agree with the view expressed by the High Court that in looking into a complaint Under Section [12](#) of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order Under Section [18](#), [19](#) and [20](#) thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005,

It is not in dispute that the marriage between the petitioner and the respondent took place on 09.03.1991 i.e. much prior to DVC Act came into force. As per the principle enunciated in the

cases cited supra, the conduct of the parties even prior to coming into force of the DVC Act, could be taken into consideration while passing orders under the Act. The material placed on record prima facie reveals the cause of action for filing of the case arose after the Act came into force.”

As per the finding of the trial Court the petitioner left the matrimonial home of the respondent in the year 2008. The finding of the trial Court is fully endorsed by the appellate Court. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. There is no perversity in the findings of the Courts below, which warrants interference.

In view of the findings recorded by courts below as well as the principle enunciated in the cases cited supra, I am unable to accede to the contention of the respondent that the present petition is not maintainable under law.

In the present case, the fact remains from 2008 onwards, the petitioner has been residing at her brother's house along with her two children. It may not be possible for the petitioner to provide school fee and other amenities to her children without the financial support of the respondent. It is not the case of the respondent that the petitioner is having sufficient source of income. There is a moral and social obligation on the part of the respondent to provide basic amenities to his wife and children. While disposing the petitions of this nature, the Court shall not lost sight on the ground realities. The amount of Rs.2,000/- per month may hardly be sufficient for sustenance of one person in view of prevailing price index. In such circumstances, an amount of Rs.2,000/- per month even may not be sufficient for maintenance of petitioner and her two children.

Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that granting of an amount of Rs.2,000/- to the petitioner is on high side. On the other hand, the trial Court as well as the first appellate Court by taking into consideration the socio economic conditions and other circumstances granted the maintenance. Hence, there are no grounds much less valid grounds to interfere with the orders passed by the Courts below and the revision petition lacks merits and the same is liable to be dismissed.

Accordingly, Criminal Revision Case is dismissed at the stage of admission. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

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T.SUNIL CHOWDARY, J.

June 27, 2016

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[\[1\]](#) 2011 Cri. L J 2963

[\[2\]](#) (2012) 3 SCC 183 = AIR 2012 SC 965

[\[3\]](#) (2014) 3 SCC 712 = AIR 2014 SC 857