

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL REVISION CASE No.1107 of 2012

ORDER:

1 This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C challenging the order dated 03.04.2012 passed in CrI.A.No.163 of 2009 on the file of the Court of the Sessions Judge-cum-Mahila Court, Vijayawada wherein and whereby the order dated 13.07.2009 passed by the II Additional Chief Metropolitan Magistrate – cum – Mahila Magistrate, Vijayawada in DVC no.19 of 2007, granting an amount of Rs.1,000/- to the petitioner and Rs.500/- each to the children towards maintenance and Rs.500/- towards shelter to the petitioner was confirmed.

2 For the sake of convenience, the parties to this case will hereinafter be referred to as they are arrayed before the trial Court.

3 The marriage of the petitioner was performed with the first respondent on 13.06.1998 as per Hindu rites and caste custom. Immediately after the marriage, the petitioner joined the first respondent to lead marital life. Out of the lawful wedlock, the petitioner and the first respondent were blessed with a daughter and son aged about 7 years and 6 years respectively. The petitioner and the first respondent lived together up to the year 2004 at Karakampadu village. Due to family disputes, the petitioner and her children has been staying at her parents house in Punadipadu village. The petitioner submitted an application under Section 12 of the DVC Act to the Protection Officer seeking various reliefs, who transmitted the same to the concerned Court. The learned II Additional Chief Metropolitan Magistrate – cum – Mahila Magistrate, Vijayawada has taken the case on file and numbered it as DVC No.19 of 2007.

4 Before the trial Court, on behalf of the petitioner P.W.1 was examined and Es.P.1 to P.13 were marked. On behalf of the first

respondent, R.W.1 was examined and Exs.R.1 to R.5 were marked.

5 Basing on the oral, documentary evidence and other material available on record, the trial Court allowed the petition in part, granting an amount of Rs.1,000/- to the petitioner and Rs.500/- each to the children towards maintenance and Rs.500/- towards shelter to the petitioner. Feeling aggrieved by the order passed by the trial Court, the first respondent preferred Criminal Appeal No.163 of 2009 on the file of the Court of the Sessions Judge-cum-Mahila Court, Vijayawada. The appellate Court, having reappreciated the material available on record, arrived at a conclusion that the first respondent intentionally avoided to provide maintenance to the petitioner and confirmed the orders passed by the trial Court. Hence the present Revision Case.

6 The contention of the learned counsel for the first respondent / petitioner is two fold. 1) The alleged acts of domestic violence pertain to the period prior to the commencement of the Act and hence the petition is not maintainable. 2) Both the Courts below, without considering the financial status of the first respondent, granted maintenance of Rs.2,500/-.

7 It is not in dispute that the petitioner is the legally wedded wife of the first respondent. Out of their lawful wedlock, the petitioner and the first respondent were blessed with a daughter and a son. From 2004 onwards, the petitioner has been living at her parents' house along with her children. As per the findings of the trial Court as well as the appellate Court the first respondent intentionally and willfully neglected to provide maintenance to the petitioner. The first respondent filed O.P.No.18 of 2007 on the file of the Court of the Senior Civil Judge, Avanigadda for restitution of conjugal rights and the same was dismissed on 20.11.2007.

8 The contention of the first respondent is that in spite of his best efforts, the petitioner did not choose to join him to lead marital life,

therefore, she is not entitled to claim any relief under Sections 18 to 21 of the DVC Act. It is not out of place to extract hereunder the relevant portion of the judgment of the trial Court at para No.14, which reads thus:

“Q: The petitioner is ready to join you with children. Are you ready?

A: I do not take them”

9 A perusal of the record clearly establishes that the first respondent bluntly refused to take back the petitioner and the children. It appears that the first respondent is not willing to look after the welfare of the petitioner and the children. The findings recorded by the trial Court are supported by material more so legally admissible evidence on this aspect. I am fully agreeing with the findings recorded by both the Courts below that the first respondent willfully and intentionally neglected to provide maintenance to the petitioner.

10 A perusal of the record clearly reveals that the petitioner has been residing at her parents' house at Punadipadu since 2004 along with children. The DVC Act came into force with effect from 26.10.2006. The contention of the learned counsel for the first respondent is that the alleged acts done by the first respondent are much prior to the commencement of the Act, therefore, the petitioner is not entitled to file the petition under the provisions of the DVC Act. In order to appreciate the contention of the learned counsel for the first 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 Hon'ble apex Court reiterated the same principle in **Saraswathy vs. Babu**^[3] wherein it held 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 Sections 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,

11 It is not in dispute that the marriage between the petitioner and the first respondent took place on 13.06.1998 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.

12 As per the principle enunciated in the cases cited supra, the wife is entitled to file petition under the provisions of the DVC Act even though the acts of domestic violence have been committed much prior to the commencement of the DVC Act.

13 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned counsel for the first respondent that the petition is not maintainable under law.

14 The next contention of the learned counsel for the first

respondent is that the Courts below, without considering the financial status of the first respondent, have awarded an amount of Rs.2,500/- to the petitioner.

15 The trial Court as well as the appellate Court have considered the recitals of Exs.P.8 to P.10 and arrived at a conclusion that the first respondent is having landed property. A perusal of the record further reveals that the first respondent purchased land out of the joint family nucleus. There is no material on record to establish that the petitioner is having any landed property or any source of income. It may not be possible for the petitioner to provide even basic amenities to her children without any source of income. There is a social and moral obligation on the part of the first respondent to look after the welfare of his wife and children. The Courts below, taking into consideration the financial status of the first respondent as well as the petitioner, granted an amount of Rs.1,000/- to the petitioner and Rs.500/- each to the children towards maintenance and Rs.500/- towards shelter. The court should not lose sight of the ground realities while disposing of the petitions of this nature. An amount of Rs.2,500/- is hardly sufficient for sustenance of three persons in these days in view of the prevailing price index.

15 Viewed from angle, I am unable to accede to the contention of the learned counsel for the first respondent that an amount of Rs.2,500/- granted by the Courts below is on higher side. There is no illegality or irregularity in the orders passed by the courts below warranting interference of this court while exercising revisional jurisdiction under Sections 397 and 401 Cr.P.C.

16 For the above discussion, I see no merits in this Criminal Revision Case and accordingly the same is dismissed. As a sequel, miscellaneous petitions if any pending in this Revision Case shall stand dismissed.

T.SUNIL CHOWDARY, J.

Date: 30th June, 2016.

Kvsn

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

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

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