

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 1110 of 2016

ORDER:

1) Assailing the order dated 03.03.2016 passed in CrI.A.P.No.1045 of 2015 on the file of the Additional Metropolitan Sessions Court, Cyberabad, L.B.Nagar, Rangareddy District, the present revision is filed.

2) The petitioners herein are the respondents and the 2nd respondent herein is the petitioner in D.V.C. For the sake of convenience, the parties will hereinafter refer to as arrayed in main D.V.C.

3) The petitioner filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") seeking orders under section 18 of the Act to prevent respondents 2 and 3 from interfering her matrimonial life with respondent 1 and claiming maintenance @ Rs.30,000/- to be paid by the respondents, direction for return of dowry of Rs.5.00 lakhs under Section 19 of the Act and also the articles as per the list filed and compensation of Rs.10.00 lakhs under Section 20 of the Act.

4) The averments in the petition are as under:

5) The marriage between the petitioner and first respondent was solemnized on 15.02.2013 as per hindu rites and customs at Officers Mess, New Malakpet, Hyderabad. It is alleged that prior to

the marriage and after the engagement both of them shared their views and intentions in regard to happy marital life. At the time of marriage her parents presented cash of Rs.5.00 lakhs as dowry and also 20 tuls of gold which includes ornaments to 1st respondent apart from cash and gold to the petitioner. Her parents also presented household articles on the admission made by the respondents. Both of them lived happily for some time after marriage, thereafter 1st respondent went to Australia in April, 2013. Before leaving to Australia, 1st respondent promised to send necessary visa and other documents to take her to Australia. The petitioner also obtained passport, opened bank account, got all medical tests done as per the instructions of 1st respondent. At the request of respondents 2 and 3, the petitioner came back to her parents house and was staying there. As time went on there was no proper response from the 1st respondent. He was not answering to the telephone calls and also ignoring the petitioner. When enquired with respondents 2 and 3 they were also dodged the matter on one pretext or the other. The averments in the petition also show that respondents 2 and 3 are harassing her from the day one of the marriage abusing her stating that she is fat and unfit to their son. When the petitioner went for celebrating diwali festival with respondents 2 and 3, she was abused and put to lot of humiliation. In spite of those, the petitioner wanted to continue her relationship with a hope that 1st respondent would change his attitude she kept on maintaining good relationship with

respondents 2 and 3. Basing on these allegations the complaint was filed.

6) 1st respondent filed a separate counter while respondents 2 and 3 filed another counter denying the averments made in the petition except to the extent of admitting the marriage. It is stated in the counter filed by respondent No.1 that the marriage was not consummated due to non-co-operation of the petitioner. On the date of first night the petitioner appears to be uncomfortable and she stated that she is not willing to get intimate with him. She further informed him that she was not willing to accompany him to Australia even though it was made known to her and her parents before the marriage. There were also disputes between the parties with regard to attire worn by the petitioner.

7) In support of her case, aggrieved person examined herself as PW.1 and examined one Vidyachal Dubey as PW.2 and got marked Exs.P1 to P15. The respondents got examined RW.1 and got marked Exs.R1 to R3.

8) By its judgment dated 17.11.2015 the learned Judicial Magistrate of First Class, Special Mobile Court, L.B.Nagar, Cyberabad, after considering the evidence available on record directed respondent No.1 to pay maintenance @ Rs.30,000/- per month from the date of petition and further directed to pay arrears of maintenance within one month from the date of the order and continue to pay the same from the month of November,

2015 payable on or before 5th of succeeding month. Respondents 2 and 3 are further directed to pay compensation of Rs.5.00 lakhs each within one month and to pay costs of Rs.5,000/- . Aggrieved by the same, the respondents preferred CrI.A.No.1045 of 2015 where as the petitioner filed CrI.A.No.1127 of 2015 seeking return of gold ornaments and also return of dowry of Rs.5.00 lakhs. After analyzing the evidence on record and the counter claim made, the learned appellate Judge dismissed both the appeals. Challenging the same, the husband preferred the present revision questioning the grant of maintenance @ Rs.30,000/- per month and also payment of compensation of Rs.5.00 lakhs each by respondents 2 and 3 in D.V.C.

9) Heard both sides and perused the record.

10) Learned counsel for the husband mainly argued that the allegations made in the complaint are all false and invented for the purpose of this case. It is alleged that in the absence of any material to show that the petitioner and respondents are living together under one roof, the presumption drawn by the trial Court that there existed domestic relationship and that there was harassment in the shared household is absolutely false and incorrect. It is further urged that even as per the complaint, the petitioner left the company of in-laws after 1st respondent left to Australia in the month of April, 2013 and as such the question of harassment thereafter is absolutely incorrect. It is further submitted that since the allegations is only with regard to non-

sending of visa enabling the petitioner to go over to Australia, the same may at the most lead to filing of a application for restitution of conjugal rights but definitely not a complaint under the Act. In any event it is stated that the quantum of maintenance awarded by the trial Court is on higher side and even compensation of Rs.5.00 lakhs each to be paid by respondents 2 and 3 is un-warranted.

11) The same is opposed by the learned counsel appearing for the wife contending that the allegations made in the complaint do form part of domestic violence as defined under the provisions of the Act.

12) Though the learned counsel for the husband and in-laws tried to contend that the petitioner never lived along with them under one roof after the first respondent left to Australia in April, 2013 and in view of the admission made by her that both of them lived happily till then, the question of awarding maintenance and compensation on the ground of alleged harassment thereafter is absolutely incorrect. But the evidence of RW.1 show that the aggrieved person stayed in the matrimonial home even after the departure of first respondent to Australia. As seen from the evidence of RW.1, he left to Australia on 8 or 9.04.2013 and did not return to India till the date of giving evidence before the Court. It is also an admitted fact that the petitioner went to her matrimonial home for Diwali festival nearly six months after the departure of first respondent and stayed there for five days. During that time respondents 2 and 3 are alleged to have harassed

her and also subjected her to lot of humiliation. The evidence of PW.1 show that she was locked in the house for two days without food and water. Insofar as not sending visa is concerned, RW.1 in his cross examination admitted that he cannot say the status of his visa though in his chief evidence he stated that he is a permanent resident of Australia.

13) Coming to the evidence of PW.2, who is the paternal uncle of PW.1, he deposed about the demand of the respondents, payment of dowry in his presence at the time of Tikka. His evidence corroborates the evidence of PW.1 with regard to the attitude of respondents 1 to 3 in not properly answering, the indifferent attitude of RW.1 and his act of avoiding to talk to the petitioner on phone. In his evidence PW.2 deposed that when first respondent stopped making phone calls and when respondents 2 and 3 have not allowed the petitioner to live with them in the matrimonial home, he intervened and requested respondents 2 and 3 to allow her in their house, the respondents 2 and 3 are alleged to have given a handwritten letter asking PW.2 to sign on the same.

14) From a reading of the evidence of the witnesses it is clear that at the time of marriage dowry was given to the respondents apart from some gold articles. The evidence also establish that PW.1 could not join the first respondent in leading matrimonial life in Australia only due to non-sending of visa papers by first respondent. The first respondent who was examined as RW.1, failed to explain as to why he could not send the visa papers to the

petitioner. Though RW.1 tried to contend that the petitioner left to her parents house on the third day of marriage stating that she was not interested in going to Australia but the same appears to be incorrect in view of the evidence of PW.1 and the admissions made by RW.1. It was admitted by the witness that PW.1 spent couple of days in the matrimonial home even during Diwali.

15) Insofar as issuance of notice is concerned, RW.1 stated that at the time of issuance of legal notice under Ex.P4 by him he was in Australia and he does not know through whom he contacted his advocate for issuance of legal notice.

16) The material placed before the Court goes to show that the petitioner made all attempts to join the first respondent in Australia, but the first respondent, instead of sending the visa papers to the petitioner made her go to her parents house and then started making allegations against her. In fact, even while hearing of this revision, the petitioner offered to join her husband if he is willing to take her to Australia, though the learned counsel for the husband initially stated that his client is willing to take her back but after instructions there was no positive answer from him. As a last resort, the respondents alleged that the petitioner is suffering with mental illness and because of her acts, the respondents was forced to leave the petitioner. But no material has been placed before the Court in support of the same.

17) From the above, it cannot be said that there was no domestic violence in the hands of the respondents and that the petitioner is not entitled for any relief under the provisions of the Act.

18) Coming to the reliefs which are awarded by the trial Court, it is to be noted that the first respondent was directed to pay maintenance at Rs.30,000/- per month and respondents 2 and 3 were directed to pay compensation of Rs.5.00 lakhs each to the petitioner.

19) Learned counsel for the husband mainly contended that the husband was only working as a taxi driver in Australia and as such awarding a sum of Rs.30,000/- per month is definitely on higher side. But a perusal of the evidence show that the qualification of the first respondent is that he is a post graduate in M.C.A. Though RW.1 tried to depose that he is running taxi as driver, but no material was placed before the Court to show that his main source of livelihood was only way of running a taxi. Having regard to the qualifications, it is very hard to believe that he will be doing the job of taxi driver permanently. Therefore, the argument that the husband has no source of livelihood and what he is earning is sufficient for his maintenance alone cannot be accepted.

20) Coming to the payment of compensation of Rs.5.00 lakhs payable by each respondents 2 and 3. Admittedly respondents 2 and 3 are aged about 67 and 62 years respectively and their son is residing in Australia. Both of them are suffering with ill health. There was no basis in arriving at a figure of Rs.5.00 lakhs to be

paid by the respondents 2 and 3 and as such the compensation awarded by the trial Court appears to be on higher side, but an amount of Rs.3,00,000/- each would meet the ends of justice.

21) The 2nd respondent made a counter claim in the present criminal revision with regard to return of Stridhan articles which were given at the time of marriage, cash of Rs.5,00,000/-, jewellery, cloths and household articles etc. listed in the complaint. If the 2nd respondent was aggrieved for not awarding the claims made before the Courts below, she has to file an independent revision challenging the same, in accordance with law.

22) Accordingly, the Criminal Revision Case is partly allowed with the above modification in payment of compensation by the respondents 2 and 3. Miscellaneous petitions, if any, pending, shall stand closed.

C. PRAVEEN KUMAR, J

07.09.2016
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