

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2280 of 2011

ORDER:

This Criminal Revision Case under Sections 397 and 401 Cr.P.C. is filed questioning the judgment dated 28.10.2011 rendered by Additional District and Sessions Judge, Nellore in Criminal Appeal No.93 of 2010 along with Crl.M.P.Nos.71, 207 and 220 of 2011 dismissing the appeal filed by revision petitioners and confirming the order passed by Additional Judicial Magistrate of I Class, Kovur in DVC.No.2 of 2007 dated 23.03.2010.

The 1st petitioner herein is the husband and 2nd respondent and 2nd petitioner herein are his first wife and second wife respectively.

The 2nd respondent filed a petition in D.V.C.No.2 of 2007 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") stating that her marriage with 1st petitioner was performed on 07.05.1990 and by that time he was working as a Reserve Constable. Her parents presented Rs.1,00,000/- cash and 20 sovereigns of gold to the 1st petitioner towards dowry and they were blessed with a male child during their wedlock. Thereafter, 1st petitioner developed illicit intimacy with one married woman and started harassing 2nd respondent both physically and mentally. The married woman, with whom 1st petitioner developed illicit contact, died in a fire accident. Thereafter, the 1st petitioner took the 2nd respondent to the Registrar Office and obtained her signatures on papers by deceitful means. As the 1st petitioner and his brother Venkateswarlu were working in the Police Department, they managed the police without registering a case and they entered into a compromise with the parents of the married woman, who died in a fire accident, and in terms of the said compromise, the mother of 1st petitioner settled four ankanams in favour of the son of the said married woman, by exerting pressure on her. Consequently, the mother-in-law of the 2nd respondent executed registered document in the year

2006 in respect of 12 ankanams of house for a valuable consideration by cancelling the earlier settlement deed executed in the year 2003 in favour of the first petitioner and the 2nd respondent purchased the said house with the retirement benefits of her father. Thereafter, 1st petitioner married 2nd petitioner by name Palle Sreedevi on 04.05.2003 and they were blessed with a male child.

After marriage, 1st petitioner along with 2nd petitioner herein trespassed into the house purchased by 2nd respondent and started living therein and when 2nd respondent demanded to vacate the house, 1st petitioner demanded Rs.2,00,000/- for vacating the house and, having no other go, she lodged a complaint before I Town Police Station, Nellore but the police did not take action against 1st petitioner and advised 2nd respondent to approach the Court for appropriate relief. Thereafter, 1st petitioner along with certain others, started threatening the 2nd respondent with dire consequences, when she was alone in the house. Again, 2nd respondent lodged a complaint with Kovur Police Station but no action was taken against 1st petitioner, as he is an employee in the Police Department. She also submitted an application to Superintendent of Police, Nellore and the same was forwarded to Inspector of Police for necessary action but police did not take any action and finally referred the matter as false case.

In view of the circumstances stated above, the 2nd respondent claimed the following reliefs:

- (i) to provide protection to her, her children and parents from the 1st petitioner;
- (ii) to handover possession of house bearing Door No.24-1-460 situated at Mulapet purchased with the retirement benefits of her father;
- (iii) to direct 1st petitioner to return an amount of Rs.1,00,000/- and 20 sovereigns of gold which was given by her parents to her at the time of marriage towards Stridhana;

- (iv) to direct the 1st petitioner to pay an amount of Rs.80,000/- which was spent for her operation on 03.04.2007 at Vijaya Health Centre, Chennai, as she paid the said amount by raising loans from others;
- (v) to direct the 1st petitioner to pay monthly maintenance of Rs.6,000/- each to her three children and herself; and
- (vi) to direct the 1st petitioner to pay an amount of Rs.50,000/- per year to her minor children for their education and other incidental expenses.

On appearance of parties before Protection Officer, an attempt for reconciliation was made but the same was failed.

The 1st petitioner filed a counter admitting the relationship between himself and 2nd respondent but attributed extra-marital relationship with one Mr.Shaik Riyaz of China Padugupadu. As the 2nd respondent did not mend her ways of life, a customary divorce in writing was obtained on 07.07.1999 by the 1st petitioner with the 2nd respondent before the caste elders and he also paid Rs.1,15,000/- to the 2nd respondent and her children towards permanent alimony under a registered document No.128/1999. Thereafter, the 2nd respondent developed illicit intimacy with one Mr.Brahmaiah and as the same was not digested by the earlier paramour Shaik Riyaz, he committed suicide. Thereafter, in the year 2005, the 2nd respondent developed illicit intimacy with one Mr.Bellamkonda Suresh and immediately, wife of Bellamkonda Suresh by name Madhavi lodged a report with the SHO, Gudur and the same was registered as a case in Cr.No.155/2006 for the offence punishable under Section 506 read with Section 34 I.P.C against her husband and the 2nd respondent. The same was published in Print Media as well as telecasted in TV channels. She also filed a petition before the Court of Judicial Magistrate, Gudur under the Act. The 1st petitioner stated that the 2nd respondent is not entitled to claim any of the reliefs sought in the petition and prayed for dismissal of the DVC.

During enquiry, on behalf of the 2nd respondent herein, P.Ws.1 to 3 were examined and Exs.P.1 to P.29 were marked. On behalf of the petitioners herein, R.Ws.1 to 3 were examined and Exs.R.1 to R.10 were marked.

Upon hearing argument of both counsel, the Magistrate passed an order directing the 1st petitioner to deliver vacant possession of the property bearing Door No.24/1/460 of Mulapet, Chamundithota, Nellore to the 2nd respondent within 15 days from the date of the order under Section 19(8) of the Act. The 1st petitioner was further directed to pay Rs.1,000/- per month each to the children of the 1st petitioner and the 2nd respondent till they attain majority from the date of order, to deposit said amount in a bank for their educational expenses and to provide necessary education to all the children as they are studying different classes, till they attain the age of majority, according to his financial status.

Aggrieved by the order passed in DVC.No.2 of 2007 by the Magistrate, petitioners herein (respondents 1 and 3 before the Magistrate in DVC) preferred the appeal in Criminal Appeal No.93 of 2010 and three other Miscellaneous Petitions referred to supra. By the common judgment dated 28.10.2011, Additional District and Sessions Judge dismissed the appeal and disposed of the Miscellaneous Petitions without prejudice to the right of the petitioners for implementing the orders basing on the proposed documents intended to be filed as additional evidence, while giving liberty to the 2nd respondent to agitate her right before the trial Court for implementing the respective orders of the appellate court and the trial court. Challenging the said order, the petitioners herein preferred the present Criminal Revision Case raising several grounds.

The main ground urged before this Court is that the direction issued by the trial Court and affirmed by the appellate Court to the 1st petitioner to vacate and deliver possession of the house bearing Door

No.24/1/460, Mulapet, Chamundithota, Nellore within 15 days from the date of the order, when the petition schedule property is in occupation of petitioners 1 and 2, is arbitrary and illegal and the remedy available to the 2nd respondent is to approach the Civil Court for appropriate relief.

The second ground urged before this Court is that the petition schedule property was initially gifted to 1st petitioner and later the donor unilaterally cancelled the gift deed and executed a sale deed in favour of the 2nd respondent and that the said sale deed obtained by the 2nd respondent from the mother of the 1st petitioner is illegal. As, such a question cannot be decided in summary proceeding in a petition filed under Section 12 of the Act, the order passed by the trial Court and affirmed by the appellate Court directing the petitioners to deliver vacant possession of the property bearing Door No.24/1/460 is illegal and contrary to the procedure contemplated under law.

Finally, it is contended that the order passed by the trial Court and affirmed by the appellate court granting maintenance to the children of the 2nd respondent under Section 125 Cr.P.C. till they attain majority is illegal, since their two children have already become majors and the paternity of the third child was denied by the 1st petitioner.

During hearing, Smt. K.Lalitha, counsel for the petitioners, mainly contended that the trial Court and the appellate Court erred in directing the petitioners to vacate the house and deliver vacant possession of the same to the 2nd respondent, when there is a dispute with regard to execution of the sale deed in favour of the 2nd respondent, thereby cancellation of gift deed executed in favour of the 1st petitioner by his mother, which is illegal and is not enforceable in law and therefore, the said direction is liable to be set aside. Learned counsel further contended that similarly the direction for payment of maintenance to all the three children, when two children have already attained the age of majority and the paternity of third child is denied, is illegal and requested this Court to set aside the same.

Whereas, Smt C.Vani Reddy, counsel for the 2nd respondent, supported the order passed by the trial Court and confirmed by the appellate Court in all respects and requested to dismiss the Criminal Revision Case at the stage of admission itself.

The marriage of the 1st petitioner with the 2nd respondent on the one hand and the 2nd petitioner on the other hand is not in dispute. The 2nd petitioner is the second wife even according to the 1st petitioner. Marrying another woman as second wife, during the lifetime of first wife and subsistence of marital relationship, is an offence and it amounts to “domestic violence” as defined under Section 3 of the Act.

The contention of the 1st petitioner is that the marriage between himself and the 2nd respondent was dissolved by customary divorce and accordingly obtained a deed of divorce on payment of Rs.1,15,000/- towards full and final settlement as permanent alimony vide registered document bearing No.128/99 dated 06.08.1999. The marital relationship, according to the contention of the 1st petitioner, between himself and the 2nd respondent ceased to subsist in view of customary divorce. The 1st petitioner and 2nd respondent are Hindus by religion. It is not known whether any such custom is prevailing in the caste of 1st petitioner and 2nd respondent to obtain customary divorce to dissolve the marriage without approaching the Court, but no evidence was adduced before the Courts below to establish that any such custom was prevailing in the caste of 1st petitioner and 2nd respondent to dissolve the marriage by customary divorce. In the absence of proof of prevalence of such custom in the caste, the customary divorce pleaded by the 1st petitioner cannot be accepted in summary proceedings under the Act which is a remedial legislation. Based on the customary divorce, payment of permanent alimony vide a registered document cannot be accepted and consequently, the marital relationship between 1st petitioner and 2nd respondent is deemed to subsist. Therefore, 1st petitioner and 2nd

respondent are deemed to be wife and husband till their marriage is dissolved in accordance with law.

The word “aggrieved person” is defined under Section 2(a) of the Act to mean any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. It is not in dispute that the 1st petitioner is the husband and the 2nd respondent is the wife.

The word “domestic relationship” is defined under Section 2(f) of the Act. It means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Here, the relationship is in the nature of marriage between 1st petitioner and 2nd respondent. Therefore, there exists a domestic relationship between 1st petitioner and 2nd respondent.

Coming to the allegations made in the petition, the 1st petitioner married another woman as second wife, who died in a fire accident, and later he married the 2nd petitioner as third wife. Such marriage of the 1st petitioner with the 2nd respondent third time during subsistence of the marriage with 2nd respondent would amount to emotional abuse. The 2nd respondent also alleged that while she was living in the house bearing Door No.24/1/460 of Mulapet, Chamundithota, Nellore, both the petitioners trespassed into the house and threatened her with dire consequence while demanding for Rs.2,00,000/- to vacate the house. Such act would fall within the definition of “domestic violence” as defined under Section 3 of the Act.

According to Section 3, for the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse,

sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I thereto explained what is “physical abuse”, “sexual abuse” and “verbal and emotional abuse”. Under Clause (iii) of Explanation I to Section 3 of the Act, “verbal and emotional abuse” includes (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

In the present facts, 1st petitioner developed illicit contact with a married woman, who died in a fire accident and who was termed as the second wife of the 1st petitioner, and later he married the 2nd petitioner as third wife during subsistence of marriage with the 2nd respondent. Marrying second time or third time, during subsistence of first marriage and during the lifetime of first wife, would certainly cause humiliation to the person aggrieved i.e 2nd respondent herein and, similarly, threatening the 2nd respondent with dire consequences and demanding for payment of Rs.2,00,000/- to vacate the house also would amount to domestic violence as defined under Section 3 of the Act. Therefore, the act of the 1st petitioner would constitute “domestic violence” as defined under Section 3 of the Act and the said facts were proved by examining P.W.1 herself and by producing voluminous documentary evidence before the Magistrate.

The main grievance of the petitioners herein is that the alleged sale deed under the original of Ex.P.8 dated 15.12.2006 executed by the mother of 1st petitioner, cancelling the gift deed executed in his favour, in

favour of the 2nd respondent, conveying the house bearing Door No.24/1/460 in 11 akanams is invalid, but the trial Court and the appellate Court did not accept this contention. It is an undisputed fact that mother of 1st petitioner executed a gift deed in favour of 1st petitioner and after settlement of the dispute with his second wife, who died in a fire accident, and execution of settlement deed in favour of the children of the deceased-alleged second wife under the original of Ex.P.7, mother of the 1st petitioner revoked the gift deed under Ex.P.5 dated 17.03.2006 and executed a registered sale deed under the original of Ex.P.8 dated 15.12.2006. Ex.P.9 is the encumbrance certificate dated 28.01.2010. Ex.P.10 is the bunch of house tax receipts. All these documents would *prima facie* establish that the 2nd respondent became the owner of the property purchased under the original of Ex.P.8, after cancellation of the gift deed executed in favour of the 1st petitioner herein, and she has been paying house tax vide Ex.P.10 and continuing in possession and enjoyment of the same. It is the contention of the 2nd respondent that when she was staying in the house purchased by her, the petitioners herein illegally occupied the house and threatened her with dire consequences, while demanding for payment of Rs.2,00,000/- to vacate the premises. While this fact was spoken by the 2nd respondent-P.W.1 in her evidence and corroborated by P.Ws.2 and 3, the contention of the petitioners herein is that the very execution of the sale deed under the original of Ex.P.8 is invalid and thereby the 2nd respondent would not get any title to the property.

When there is a dispute with regard to cancellation of the gift deed executed by mother of the 1st petitioner in his favour and execution of the sale deed in favour of the 2nd respondent, the remedy open to the parties to the petition is to approach the Civil Court for appropriate relief. However, as on today, by revocation of gift deed executed by the mother of the 1st petitioner in his favour, the 1st petitioner ceased to be the owner of the property. The validity of a deed of revocation cannot be

decided in summary proceedings under the Act, which is a remedial legislation. If the 1st petitioner is aggrieved by such cancellation, his remedy is to approach the Civil Court for appropriate relief and till the Civil Court upholds his contention, the sale in favour of the 2nd respondent is valid and, therefore, the finding recorded by the trial Court and confirmed by the appellate Court that the 2nd respondent is the *prima facie* owner of the house bearing Door No.24/1/460 of Mulapet, Chamundithota, Nellore cannot be interfered.

According to Section 19 of the Act, the Magistrate, while disposing of an application filed under Sub-section (1) of Section 12, may pass a residence order (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household; (b) directing the respondent to remove himself from the shared household; (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same; (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

What is “shared household” is defined under Section 2(s) of the Act. It means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title,

interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

The inclusive definition of “shared household” is more comprehensive. On the question as to whether the aggrieved person is the sole owner and resides therein or the household belongs to both the aggrieved person and the respondent, while deciding an application under Section 12(1) of the Act, the Magistrate can pass an order under Section 19 of the Act in favour of an aggrieved person i.e the 2nd respondent herein.

The property in dispute i.e house bearing Door No.24-1-460 is registered in the name of the 2nd respondent under the original of Ex.P.8, while it was initially registered in the name of the 1st petitioner by way of a gift deed executed by his mother and revoked by execution of Ex.P.8. Therefore, *prima facie*, the 2nd respondent was residing in the petition schedule premises. Whether it belongs to the 1st petitioner or the 2nd respondent or both of them, the Magistrate can direct the 1st petitioner herein to deliver vacant possession of the property.

The main contention of counsel for the petitioners is that the remedy open to the 2nd respondent is to approach the Civil Court for appropriate reliefs and this Court cannot pass an order under Section 19(1) of the Act, for the relief of evicting the 1st petitioner herein but according to Section 26(1) of the Act, reliefs to be granted by the Magistrate under Sections 18, 19, 20 and 22 may also be sought in any legal proceeding, before a Civil Court, Family Court or a Criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after commencement of the Act. Any relief referred in sub-section (1) of Section 26 may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a Criminal or Civil Court. In

case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under the Act, she shall be bound to inform the Magistrate of the grant of such relief. Thus, Section 26 of the Act provides that any relief available under the Act may also be sought in any legal proceedings before a Civil Court, Family Court or a Criminal Court.

Section 28 of the Act further laid down the procedure to be followed by the Magistrate under the Act, according to which all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974). Nothing in this Section shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act.

The Act is a welfare legislation for the benefit of women, who are subjected to domestic violence, and when any provisions of the Act are interpreted, the Courts must lean towards the person for whose benefit the legislation is adopted. Therefore, the Act is intended to benefit the women, who is an aggrieved person as defined under the Act. Merely because a remedy is available under the Specific Relief Act in a Civil Court, when the petitioner is entitled to claim such relief under the provisions of the Act, the Court cannot deny the relief and direct the aggrieved person to approach the Civil Court. If such a direction is given, it amounts to disowning the responsibility of the Presiding Officer of the Court to frustrate the intention of the Legislature.

Counsel for the petitioner, while contending that the sale deed under Ex.P.8 is invalid in view of the unilateral cancellation of the gift deed, would draw the attention of this Court to the judgment of **Ediga Chandrasekar vs. State of Andhra Pradesh**¹. In the said judgment, the learned Single Judge of this Court had an occasion to decide the

¹ 2017(4) ALD 12

validity of cancellation of an agreement of sale-cum- irrevocable General Power of Attorney, at the instance of its executants, held that such document cannot be revoked unilaterally but such question cannot be gone into in view of the limited jurisdiction that is conferred on the Magistrate under the Act.

If the 1st petitioner is the person aggrieved by such unilateral cancellation, he may seek appropriate relief in Civil Court, but till the sale deed obtained by the 2nd respondent under the original of Ex.P.8 is declared as invalid, or set aside or cancelled by the competent court, the 2nd respondent is deemed to be the owner of the property, even assuming that the 1st petitioner is the owner by virtue of the gift deed which is revoked by his mother. The 2nd respondent was living in the said house but she was dispossessed, thereby it would fall within the meaning definition of “shared accommodation” and she is entitled to claim relief under Section 19 of the Act. Consequently, the order passed by the trial Court and affirmed by the appellate Court does not suffer from any illegality warranting interference by this Court, since the jurisdiction of this Court under Sections 397 and 401 Cr.P.C to interfere with the concurrent fact findings recorded by both the Courts below is limited and this Court can exercise such power only when there is manifest perversity or apparent error in the concurrent fact findings recorded by both the Courts below. Otherwise, this Court is bound to accept the concurrent fact findings recorded by the Courts below. Hence, I find no illegality in the order passed by the trial Court and affirmed by the appellate Court warranting interference by this Court.

The second contention urged before this Court is that two children, out of three, of 1st petitioner and 2nd respondent attained the age of majority and the paternity of the third child is in dispute and thereby they are disentitled to claim maintenance. Unless and until the 2nd respondent establishes that the third child was born to 1st petitioner and 2nd respondent during wedlock, the third child is not entitled to claim

maintenance as the legitimacy itself is in question, but the trial Court and the appellate Court did not accept this contention by assigning reasons.

The children of 1st petitioner and 2nd respondent became majors according to the contention of the petitioners but the trial Court and the appellate Court awarded maintenance only till they attain majority. The 2nd respondent's counsel contended that though their children became majors, they are entitled to claim maintenance. This contention cannot be accepted, since the word "child" is defined, under Section 2(b) of the Act, as any person below the age of eighteen years and includes any adopted, step or foster child. Thus, any person aged more than 18 years is not a child to claim any relief under this Court. Therefore, grant of maintenance by the trial Court and confirmed by the appellate Court to the children till they attain majority is in accordance with law and the same cannot be faulted while exercising jurisdiction under Sections 397 and 401 of Cr.P.C.

The other contention is that the paternity of the third child is in dispute. But on this ground, maintenance cannot be denied to the third child for the reason that Section 112 of the Indian Evidence Act stipulates that the fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten. Thus, till it is proved or established that the third child was not born during wedlock between the 1st petitioner and the 2nd respondent, the third child is also entitled to claim maintenance. Therefore, the contention of counsel for the petitioners does not merit acceptance warranting interference of this Court while exercising power of revision under Sections 397 and 401 of Cr.P.C. However, it is left open to the

petitioners to initiate appropriate legal proceedings either to question the validity of sale deed under the original of Ex.P.8 or to question the paternity of the third child in whose favour maintenance was awarded.

In view of my foregoing discussion, I find no ground to interfere with the findings recorded by the trial Court and affirmed by the appellate Court and the revision is devoid of any merits. Consequently, the Criminal Revision Case is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 22.09.2017
JSU



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL REVISION CASE No.2280 of 2011

Date: 22.09.2017

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