

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRL.R.C. No.1870 OF 2009

JUDGMENT:

The present Criminal Revision Case is filed by the petitioner - wife aggrieved over the judgment, dated 01.06.2009, in Criminal Appeal No.57 of 2008, passed by the learned Additional Metropolitan Sessions Judge, Cyberabad, NTR Nagar, Hyderabad, whereby and where-under, the learned Sessions Judge, allowed the criminal appeal in part modifying the order, dated 02.04.2008, passed in D.V.C. No.15 of 2007 by the learned IX Metropolitan Magistrate, Cyberabad, Kukatpally, reducing the monthly maintenance amount and residential accommodation to Rs.4,000/- and Rs.3,000/- as against the amounts of Rs.7,500/- and Rs.5,000/-, respectively, granted by the learned Magistrate.

2. The present revision case came up for the first time on 10.11.2009, and the same is now taken up for disposal at the admission stage.

3. The learned IX Metropolitan Magistrate's Court in D.V.C. No.15 of 2007, while allowing the claim of the revision petitioner - wife, granted prohibitory order, against any act of domestic violence and also not to alienate any of the assets, Rs.5,000/- towards rental for the alternative accommodation and Rs.7,500/- towards monthly maintenance to the wife and her child from the date of the order and

Rs.25,000/- towards compensation and damage under Section 22 of the Protection of Woman from Domestic Violence Act, 2005, while dismissing the petition against respondent Nos.2 and 3, who are father and brother of respondent No.1 - husband.

4. Aggrieved over the said order, when respondent No.1 - husband preferred Criminal Appeal No.57 of 2008, the learned Additional Metropolitan Sessions Judge, by his judgment, dated 01.06.2009, reduced the rental accommodation to Rs.3,000/- from Rs.5,000/- and monthly maintenance to Rs.4,000/- from Rs.7,500/-, while maintaining the order in all respects.

5. Aggrieved over the reduction of the aforesaid amounts, the revision petitioner - wife preferred the present Criminal Revision Case, whereas, respondent No.1 - husband also preferred Criminal Revision Case No.1304 of 2009.

6. Subsequently, on 13.06.2014, respondent No.1 - husband got filed a letter, dated 12.06.2014 through his counsel seeking permission to withdraw the Criminal Revision Case and, accordingly, granting permission, this Court dismissed the said Criminal Revision Case as withdrawn, by order, dated 13.06.2014.

7. Now, the question is, whether the order of the D.V.C. Court can be restored so far as the aforesaid two components are concerned.

8. Though, the case has been pending since 2009 onwards, there was no representation for the revision petitioner - wife when the matter was called in the morning session and after-noon session on 20.11.2017 and 21.11.2017 and, therefore, the case was directed to list under the caption 'for orders' on 23.11.2017. Again since there was no representation, it was again posted to this day. Today, the learned counsel for the petitioner - wife, represented the matter.

9. Heard Sri S. Mujib Kumar, learned counsel for the revision petitioner - wife, and the learned Additional Public Prosecutor for the State of Telangana.

10. When looked at the grounds of the revision, it is to be found that, somehow, the lower appellate Court did not properly appreciate the findings recorded by the learned Magistrate and erroneously got swayed away by the evidence of respondents. It is stated in paragraph No.14 that the lower appellate Court ought to have seen that on the mere ground that husband pleads that he has no job, he cannot be absolved from paying maintenance and what is to be considered by the Court for granting maintenance is whether or not the husband is well-qualified, has job experience, he is able bodied and mentally sane, and if the Court is satisfied with the above aspects, it can award substantial maintenance irrespective of the fact that he leaves his job. It is also contended that global economic crisis in the software field, which ought to have taken as judicial notice by the

learned lower appellate Court and for survival of wife and child, mere amount of Rs.3,000/- and Rs.4,000/- per month ought not to have been ordered by reduction from Rs.5,000/- and Rs.7,500/- respectively. No doubt, the wife pleaded that the reduction in the maintenance amount and rental amount done by the lower appellate Court is not correct, but, however, the lower appellate Court would observe in paragraph Nos.13 on point No.2 thus:

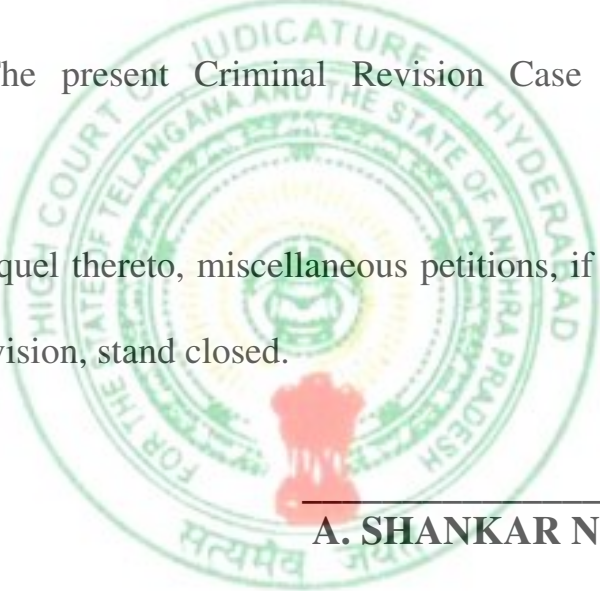
“..... Further in view of the fact that the prosperity of Software Profession is reduced for the present and also in view of the Global Economic Crisis a Judicial Notice can be taken that the appellant/husband may not derive monthly income of Rs.50,000/- as a Software Engineer. Further it is also an admitted fact that the respondent/wife is also more qualified than her husband by being a Postgraduate in Computer Science. Since the respondent/wife failed to adduce sufficient evidence that her husband is getting definite income awarding of maintenance amount @ Rs.7,500/- per month and Rs.5,000/- per month towards rental for alternative accommodation for residence in favour of the wife is highly excessive.”

11. It is no doubt true, at that point of time i.e., when the lower appellate Court decided the appeal, it appears that there was not much prospects in Software Profession, but without there-being any concrete evidence or at least statistics being projected, the lower appellate Court, in fact, ought not to have taken judicial notice of Global Economic Crisis and it ought to have been substantiated when such judicial notice is taken.

12. However, when kept in view, the cost of living even in 2007, during which year DVC was filed, it would be reasonable to set aside the order, dated 01.06.2009, passed by the learned lower appellate Court in Criminal Appeal No.57 of 2008, to the extent of reduction of monthly residential accommodation charges from Rs.5,000/- to Rs.3,000/- and monthly maintenance amount from Rs.7,500/- to Rs.4,000/- and restoring the order, dated 02.04.2008, passed by the learned Magistrate Court in D.V.C. No.15 of 2007.

13. The present Criminal Revision Case is, accordingly allowed.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.



A. SHANKAR NARAYANA, J

November 24, 2017.
Mgr