

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2454 OF 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner before the Judge, Additional Family Court, Hyderabad, challenging the order dated 23.12.2015 passed in I.A. No.649 of 2015 in O.P. No.980 of 2008, whereunder the Judge, Additional Family Court, dismissed the petition filed under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') to summon Smt.P.Rajani, Assistant Director, Andhra Pradesh Forensic Science Laboratories, Red Hills, Hyderabad.

The respondent herein filed marriage O.P. for divorce on the ground of cruelty and the petitioner filed counter in the O.P. raising several contentions, resisted the claim mainly on the ground that the respondent herein, within 11 months from the date of marriage, obtained her signatures forcibly on some papers to obtain loan for his personal purpose and the respondent also forged her signature on several documents to obtain loan for purchase of flat, insurance and house interiors (work order). A complaint was lodged against the respondent and the same was registered by the police. During investigation, the police referred the alleged forged documents to Forensic Science Laboratory, Hyderabad, through the III Additional Chief Metropolitan Magistrate, Erramanzil, Hyderabad. On examination of the disputed signatures, the Assistant Director issued an opinion that the signatures of the petitioner were forged on the documents, which are subject matter of the crime.

The certified copy of the opinion obtained by the petitioner herein tendered in her examination-in-chief for marking of those documents, the respondent herein allegedly raised an objection, since opinion of the expert has to be marked by examining expert and the respondent afford an opportunity to cross-examine the expert on various aspects. Therefore, the documents could not be marked before the court.

The respondent filed counter in I.A. No.649 of 2015 denying material allegations *inter alia* contending that the petitioner did not disclose any reason for marking the expert opinion and that this document would not advance the case of the petitioner nor destroy the case of the respondent and the opinion of hand writing expert of Forensic Science Laboratory, Hyderabad, is irrelevant for deciding the issue in controversy and, therefore, such irrelevant evidence cannot be allowed to bring on record and prayed for dismissal of the petition.

Upon hearing argument of both the counsel, the Judge, Additional Family Court, Hyderabad, dismissed the petition on the ground that the alleged forged signature of the petitioner on various document is not germane to adjudicate the dispute in controversy, since, the respondent seeking dissolution of the marriage by granting decree on the ground of cruelty. Therefore, summoning of the Assistant Director, Andhra Pradesh Forensic Science Laboratories, Hyderabad, is unnecessary and accordingly dismissed the petition.

Challenging the order passed by the Judge, Additional Family Court, Hyderabad, the present civil revision petition is filed

on various grounds, mainly the Assistant Director, Forensic Science Laboratory, Hyderabad, is competent person to speak about the findings recorded in the report and the evidence of Assistant Director is highly essential to decide the dispute in question, denial of opportunity to summon the witness would amount to denial of justice and thereby the Judge, Additional Family Court, committed an error in dismissing the petition.

During hearing, Smt. D.Pramada, learned counsel for the revision petitioner, would contend that the document is necessary to establish the very conduct of the respondent as to how the revision petitioner was subjected to harassment by the respondent. Even if the document is allowed to be brought on record, it would not cause any prejudice to the respondent.

On the other hand, if the document is not marked by summoning the Assistant Director, Andhra Pradesh Forensic Science Laboratory, Hyderabad, it would cause much prejudice to the petitioner. The learned Judge, Additional Family Court, Hyderabad, declined to issue summons to the Assistant Director, Andhra Pradesh Forensic Science Laboratory, Hyderabad, without recording any specific reason, the reason assigned by the petitioner is misconceived and thereby dismissal of the petition is erroneous and prayed to set aside the order under challenge by allowing the revision petition summoning the Assistant Director, Forensic Science Laboratory, Hyderabad, to give evidence with regard to her opinion.

Smt.Sesha Rajyam, learned senior counsel for the respondent, supported the order under challenge in all respects,

while, contending that when the respondent filed a petition for dissolution of the marriage on the ground of cruelty, the evidence of Assistant Director, Forensic Science Laboratory, Hyderabad, to prove the conduct of the petitioner is totally irrelevant and therefore, the court cannot summon any witness to bring irrelevant evidence on record. It is also contended that the conduct of the respondent is not relevant in civil proceedings under the Indian Evidence Act. Therefore, no evidence need be brought on record to establish the conduct of the respondent to decide the real controversy between the parties and prayed to dismiss the petition, affirming the orders passed by the Judge, Additional Family Court, Hyderabad.

Considering rival contentions, perusing the material available on record, the sole point that arise for consideration is as follows:

"Whether evidence of Assistant Director, Forensic Science Laboratory, Hyderabad, is necessary to resolve the real controversy between the parties in O.P.No.980 of 2008 pending on the file of the Judge, Additional Family Court, Hyderabad? If so, denial or refusal to summon the witness is failure to exercise of discretion that vested on the Judge, Family Court? If so, the order is liable to be set aside?"

IN RE. POINT:

This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in certain circumstances and nature of the jurisdiction is supervisory in nature over the subordinate courts or the tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge,

passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdiction, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- “a) When the inferior court assumes jurisdiction erroneously in excess of power.**
- b) When refused to exercise jurisdiction.**
- c) When found an error of law apparent on the face of record.**
- d) Violated principles of natural justice.**
- e) Arbitrary or capricious exercise of authority or discretion.**
- f) Arriving at a finding which is perverse or based on no material.**
- g) A patent or flagrant error in procedure.**
- h) Order resulting in manifest injustice.**
- i) Error both on facts and law or even otherwise.”**

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following cases:

- "a) Where the only question involved is one of interpretation of deed;**
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;**
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;**
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;**
- e) to correct an error of law, not being an error apparent on the face of the record;**
- f) to interfere with the intra vires exercise of discretionary power, unless it is violative of principles of natural justice;**

g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226, in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**¹ that under Article 227 of Constitution of India, the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

Undisputedly, the respondent filed an O.P. under Section 13(1)(i-a) and (iii) of the Hindu Marriage Act, 1955 to dissolve the marriage between the petitioner and the respondent by granting

¹ (34)2005 (3) ALT (CrI.) 125 (SC)

decree of divorce, in the year 2008. The main allegation in the petition is that the respondent herein was subjected to cruelty by the petitioner herein in different ways. But the respondent raised a specific contention in the counter that she was subjected to cruelty while contending that the petitioner is guilty of suppressing his residential proof and called upon him to prove the residential proof.

It is also contended that within a year from the date of marriage the respondent herein insisted the petitioner to transfer the property in his name, to clear liability and that the respondent herein is a chronic depressant/Schizophrenic and he was on continuous treatment, but the said fact was suppressed by the respondent during marriage and thereby ruined the future of the petitioner herein.

It is also contended that the respondent herein forged the signatures of the petitioner, having waited for long time i.e from 15.03.2007 she was constrained to lodge a complaint with S.R. Nagar Police Station on 03.11.2008 i.e. after lapse of one year 8 months, after her failure to sort out or resolve the dispute in alternative methods and whereabouts of the petitioner are not known and the police though summoned the petitioner, did not appear before the police in connection with the offence, he allegedly committed i.e. forgery of signatures of the petitioner to obtain loan. Thus, the conduct of the respondent is reprehensible and therefore to establish the conduct of the respondent and also about forgery of the signatures of various documents, it is necessary to summon the witness.

Undoubtedly, the opinion was issued by Assistant Director, Forensic Science Laboratory, Hyderabad. It is the subject matter of criminal litigation pending before the competent authority or court. If, for any reason, the Assistant Director is summoned to give evidence with regard to his opinion, it will have its own impact on the pending criminal proceedings, that apart the controversy before the Judge, Additional Family Court, is not with regard to the forgery and the only question to be determined by the learned Judge is, whether the petitioner herein subjected the respondent to cruelty and thereby the marriage between them is liable to be dissolved, granting decree of divorce?.

The dispute between the petitioner and the respondent in the main O.P. is totally unconnected with the alleged forgery. But the contention of the counsel for the petitioner is that the evidence of Assistant Director, Forensic Science Laboratory, Hyderabad, to prove forgery, is relevant to prove the conduct of the respondent herein, to deny the decree of divorce dissolving the marriage between them, but this contention does not stand to any legal scrutiny, for the simple reason that the conduct of the parties in civil proceedings is irrelevant, as per Section 52 of the Indian Evidence Act.

Section 52 of the Indian Evidence Act made it clear that in civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant. Therefore, the character or conduct attributed to the respondent is irrelevant, since it is not pertaining

to the real controversy to be adjudicated in the main petition. To prove the character or the conduct of the respondent herein, a witness cannot be summoned. On this ground, the relief claimed by the petitioner to summon the witness cannot be accepted.

Smt. D.Pramada, learned counsel for the petitioner, contended that even if the document is brought on record, it would not cause any prejudice to the respondent. Prejudice is irrelevant, when criminal litigation is pending before the competent court or authority and the subject matter of the criminal case is offence of forgery. If, for any reason, the witness is summoned to prove the document in a civil proceeding, it will have its serious impact on the pending criminal proceedings. Therefore, certainly summoning of the Assistant Director, Forensic Science Laboratory, Hyderabad, to prove the opinion, in the petition filed for divorce under Section 13 of the Hindu Marriage Act, on the ground of cruelty, would cause serious prejudice to the respondent. Therefore, the contention of the counsel of the petitioner that it would not cause prejudice to the respondent is without any basis and the same cannot be sustained.

It is the duty of the court to decide whether any evidence is admissible and relevant before bringing the same on record. Section 136 of the Indian Evidence Act conferred power on the court to decide whether the evidence proposed to be given regarding any fact by any parties to the pending proceedings, the judge may ask the party proposing to give evidence in what manner alleged fact, if proved, would be relevant and the Judge shall admit the evidence, if he thinks that the fact, if proved, would

be relevant and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

In the present case, the dispute is with regard to cruelty and specific allegations made in the petition attributing the cruelty to the petitioner herein. To prove those principle facts, collateral facts, if necessary the court may in its discretion permit to adduce evidence to prove collateral fact, which is relevant to prove the principle fact. But here the principle fact is 'cruelty'. If the respondent herein failed to establish the acts attributed to the petitioner, the Judge, Additional Family Court, is bound to dismiss the petition.

The petitioner herein is not required to adduce negative evidence in all conceivable modes to disprove certain facts pleaded in the petition, since the initial onus of proof is on the respondent herein to prove the acts of cruelty attributed to the petitioner herein. When the burden is shifted to the petitioner herein, she has to adduce evidence to disprove the facts pleaded in the O.P. In the present case, the main intention of the petitioner herein is to bring on record the report of forensic science laboratory with

regard to the forgery of signature of the petitioner on certain documents for obtaining loan. Proof of forgery of signature of the petitioner on certain document is totally unconnected with the fact required to be proved. It is neither the principle fact nor the collateral fact.

Paragraph 3 of Section 136 of the Indian Evidence Act exemplified and explained by illustration C and d and vested powers on the Judge to decide relevancy of a fact. The relevancy of two facts being interdependent, the court may in its discretion allow the first fact to be proved before the second fact and *vice versa*. The combined effect of paragraphs 2 and 3 of section 136 is to give the court a wide discretion in the matter dealt with in them.

A strict adherence to the rules of evidence would prevent admission of evidence of a relevant fact before proof of the fact on which its relevancy depends. Such a course would necessitate interruption of one witness during his examination by calling another witness, involving loss of time. The object of the Section is to obviate this inconvenience. It is the general rule that it should be left to the discretion of the presiding judge to determine whether he will require proof of connecting or preliminary facts before deciding the question of relevancy or whether he will admit the testimony on the statement of counsel that he expects to show the relevancy by other facts. Thus, the court can reject the irrelevant evidence while permitting the relevant evidence in its discretion and such discretion has to be exercised judiciously.

In the present case, the conduct of the respondent herein is irrelevant as discussed above and any attempt to prove the

conduct by summoning any witness cannot be permitted. Added to that, the alleged forgery of the signature of the petitioner is a subject matter of the criminal proceedings pending before the competent authority or the court and if the report of the forensic science laboratory is permitted to be proved in the civil proceedings, which is unconnected with the forgery, it would cause serious prejudice to the respondent in the criminal proceedings. It is clear from Section 136 of the Indian Evidence Act that it is the discretion of the court to permit the party to give evidence deciding its relevancy. In the present case, the court exercised its discretion rightly declined to summon the witness exercising power under Rule 1 of Order 16 of CPC based on the power conferred on the presiding officer of the court under Section 136 of Indian Evidence Act. Hence, the order under challenge cannot be faulted as the Judge, Additional Family Court, exercised his discretion judiciously.

The learned counsel for the petitioner drawn the attention of this court to Section 14 of the Family Courts Act, it permits the court receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually. Even if Section 14 of the Family Courts Act is applied, the presiding officer cannot permit the parties before it to bring on record unnecessary material, totally unconnected with the issue involved and the Judge, Family Court opined that examination of Assistant Director of Forensic Science Laboratory is unnecessary. If the presiding officer permits to bring on record such irrelevant evidence, without deciding relevancy, it amounts to disowning his/her responsibility as presiding officer of court. Therefore,

opinion of Assistant Director of Andhra Pradesh Forensic Science Laboratory cannot be allowed to bring on record.

Therefore, I am unable to exercise power under Article 227 of the Constitution of India to interfere with the findings recorded by the trial Court since the trial Court acted within its bounds and passed the order, which is under challenge. Thus, in view of the limited scope of jurisdiction as to exercise powers under Article 227 of the Constitution of India I must examine the order in the guidelines stated above.

In view of my foregoing discussion, I find no ground to reverse order under challenge passed by the Judge, Additional Family Court, Hyderabad, consequently the petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

Date:13.06.2017
BV

M.SATYANARAYANA MURTHY, J