

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRL. R. C. M. P. No. 1718 of 2017
IN/ AND
CRIMINAL REVISION CASE No. 2780 of 2016
AND
CRIMINAL REVISION CASE No. 1109 of 2017

COMMON ORDER :

Aggrieved by the judgment dated 14.06.2016 in Criminal Appeal No.9 of 2015 passed by the VI Additional Sessions Judge, Kadapa, wife maintained Crl.R.C.No.1109 of 2017 and her husband, parents-in-law and brother-in-law maintained Crl.R.C.No.2780 of 2016.

2. D.V.C.No.9 of 2013 was filed by the wife on the file of the I Additional Judicial Magistrate of First Class, Kadapa, for compensation/ damages including monitory relief of maintenance for her and minor child and protection against domestic violence. On contest, the learned Magistrate allowed said D.V.C. by order dated 20.12.2014 with the reliefs of monitory compensation of Rs.2,00,000/- to deposit in the name of the child within three months from the date of order supra and to pay maintenance of Rs.2,500/- p.m. to the wife and Rs.500/-p.m. to the minor child from the date of the order. It is impugning the same, wife maintained D.V.C.Appeal No.9 of 2015. The lower appellate Court, by the impugned

judgment, dated 14.06.2016, enhanced the monitory compensation from Rs.2,00,000/- to Rs.3,00,000/- and also the maintenance from Rs.2,500/- p.m. to Rs.8,000/- p.m. to the wife and Rs.500/- to Rs.2,000/-p.m. to the child from the date of the order of the lower Court.

3. The contentions of the learned counsel for the husband and in-laws are that the learned Magistrate held that there is no domestic violence that could not be proved by wife, much less, by examination of any neighbours of the alleged acts, but for, ipse dixit statements, apart from, her mother not a witness to anything and having so held, awarding of any monitory relief is unsustainable, from the very wording of Section 20 of the Protection of Women from the Domestic Violence Act, 2005 (for short 'the Act') and even the wife admitted working in New Model English Medium School as Teacher, but, granting of maintenance to the wife by the learned Magistrate at Rs.2,500/- p.m. apart from the same enhanced to Rs.8,000/- p.m. so also Rs.2,00,000/- to Rs.3,00,000/- by the lower appellate Court, on the appeal of the wife, are also unsustainable, thereby, sought for setting aside the monitory compensation and also the maintenance to the wife but for upholding if at all and reduce same to the child.

4. Whereas, it is the submission of the learned counsel for the wife that the order of the appellate Court holds good, though the lower Court held that there is no domestic violence, ordered maintenance, which was enhanced by the lower appellate Court, by appreciating the evidence on record; that from the evidence of PW.1-wife and her mother-PW.2 of dowry in the form of money and other valuables given of Rs.3,00,000/-, awarding Rs.3,00,000/- is sustainable equally of Rs.8,000/- p.m. maintenance to the wife and Rs.2,000/- p.m. to the child and thereby sought for dismissal of CrI.R.C.No.2780 of 2016 and to allow CrI.R.C.No.1109 of 2017 by enhancing the maintenance.

5. Heard both sides at length and perused the impugned order and also the other material on record.

6. The evidence on record before the learned Magistrate in passing the basic order dated 20.12.2014 in D.V.C. is from the oral evidence of the wife and her mother as PWs.1 and 2 and husband as RW.1, and also from the particulars covered under Ex.P2 and Ex.R1, showing he is getting a gross salary of Rs.18,711/- and net salary only Rs.10,056/- p.m. and also deposed about wife getting salary of more than Rs.8,000/- p.m. by working as Teacher in New Model English Medium School.

7. Now, the core issue as to whether any monetary relief including maintenance can be awarded, without proof of domestic violence. The very wording of Section 20 of the Act is clear that once there is domestic violence, the granting of relief arises, as it is not from mere existence of the domestic relationship. From this, coming to any acts of domestic violence proved by the wife from the conflicting findings by the Courts below concerned, it is a quasi civil proceeding, the proof is by preponderance of probabilities, more particularly, for the domestic violence concerned, when it is to be taken place within the four walls, it has to be appreciated from the evidence as to the credibility of the witness rather than expecting from outside witnesses apart from number of witnesses. Once such is the case, and also there is evidence of the wife and so far as giving of dowry or other valuables concerned, from that of the mother, who performed the marriage. The mere denying by husband/ RW.1 is not enough to the appreciation of evidence in either way and thus commenting by the lower Court of no neighbours are examined to believe is not the judicious way of appreciation, more particularly, in such type of matrimonial matters. Once such is the case, the evidence on record clearly shows that there is attribution of illicit relationship to him and ill-treatment there from, wife also filed case under Section

498-A I.P.C., which is not in dispute, even it is ended in acquittal only on benefit of doubt and not with finding of false implication. These acts are sufficient from the pragmatic approach required in appreciating the evidence, once the evidence of wife proves the same to say that there is a domestic violence. Hence, the lower appellate Court is right, irrespective of the finding of the trial Court, in awarding the relief with an observation as if there is no domestic violence, in reversing the same and in granting the reliefs by holding that there is domestic violence.

8. Now from the above, coming to another aspect of sufficient or insufficient or excessiveness or otherwise of the monitory relief and maintenance concerned, from the rival claims of the grounds urged in the two revisions concerned, the wife in her evidence categorically deposed that she is working as Teacher in New Model English Medium School. Once such is the case, the lower appellate Court can safely be held went wrong by ill-appreciation of evidence in saying as if she was working for some time or as if it is only a temporary employment. In fact, the D.V.C. case is filed in the year, 2013 and she deposed in her deposition that she is working in the New Model English Medium School and thus there is nothing to ignore her means or her earnings even from the expressions placed reliance including before the Courts below and to the

conclusions arrived, for mere possessing of some means by the wife is not a ground to totally negate maintenance, but for, that is also required to be taken into consideration in arriving a just sum from the wife is entitled to have the equal status of life with that of the husband and equally by the child.

9. Additional evidence receive petition filed in CrI.R.C.MP.No.1718 of 2017. This Court feels for a just decision to arrive it requires to be received and thereby the CrI.R.C.MP.No.1718 of 2017 is allowed and the document is marked as Ex.C1 for reference purpose of this revision.

10. Having regard to the above, once the wife is admittedly getting about Rs.8,000/- p.m. by working as Teacher in New Model English Medium School and there is no proof of she was removed from service, leave about in such an event with no independent means to seek for enhanced sum by filing maintenance case, coming to present prevailing facts, awarding maintenance of Rs.2,500/- p.m. by the trial Court is just and enhancing the same to Rs.8,000/- p.m. by the lower appellate Court is unsustainable. So far as the maintenance of Rs.500/- awarded to the minor child is a pittance and even what the lower appellate Court enhanced of Rs.2,000/- p.m. is also insufficient and thereby it requires to enhance the same to Rs.2,500/- p.m.

11. So far as monitory compensation of Rs.3,00,000/- is concerned, not only the evidence of PW.1 but also her mother as PW.2 stated that cash of Rs.3,00,000/- was given towards dowry apart from other valuables. It cannot be ignored, but for taking judicial notice of the fact that any dowry given prior or at the time of or subsequent to date of marriage which is proved to legal consequences not being covered by any documentary evidence or photographs or video coverage but in secrecy. Once such is the case, and there is evidence on record, it requires to be appreciated by preponderance of probabilities and there is nothing to find fault with the Courts below on the findings of valuables and dowry shown given has to be returned by way of compensation within the meaning of monitory relief, under Section 20 of the Act. Thus, the lower appellate Court is justified in this regard in awarding Rs.3,00,000/-.

12. Having regard to the above, CrI.R.C.MP.No.1718 of 2017 is allowed and both the Criminal Revision Cases are allowed in part by upholding Rs.3,00,000/- monitory compensation for return, however, by granting four months time to pay from today and by reducing maintenance to the wife from Rs.8,000/- p.m. to Rs.2,500/- p.m. and by enhancing the maintenance of child from Rs.2,000/- to Rs.2,500/- from the

date of order of D.V.C. i.e., 20.12.2014. Three months time is granted for payment of arrears of maintenance.

13. As per the lower appellate Court's order it shows the amount deposited in the name of the minor, represented by father as guardian, the D.V.C. respondent/ husband is directed to encash the amount and pay said amount of Rs.3,00,000/- with bank fixed deposit lending rate of interest from the date of appellate Court's order i.e., 14.06.2016 within three months from the date of receipt of copy of this order, to the wife from her undertaking to invest in the name of the minor child by her standing as guardian. However, she cannot withdraw the same from the understanding arrived between the parties till attaining majority of child, but for accrued interest time to time thereon.

14. Consequently, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:19.04.2017.
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