

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.482 OF 2017

AND

CRL.R.C. NO.153 OF 2017

COMMON ORDER:

Crl.R.C.No.482 of 2017 is filed by the petitioners (wife and son) under Sections 397 and 401 of Cr.P.C. challenging the order, dated 07.11.2016 in D.V.Appeal No.541 of 2016 passed by the IV Addl.Metropolitan Sessions Judge, Hyderabad not considering interim maintenance for enhancement in Crl.M.P.No.1096 of 2015 in D.V.C.No.44 of 2015 dt.17.05.2016 passed by the III Metropolitan Magistrate, Hyderabad.

2. Crl.R.C.No.153 of 2017 is filed by the petitioner (husband) under Sections 397 and 401 of Cr.P.C. challenging the order, dated 07.11.2016 in D.V.Appeal No.541 of 2016 in Crl.M.P.No.1096 of 2015 in D.V.C. No.44 of 2015 passed by the IV Addl. Metropolitan Sessions Judge, Hyderabad enhancing the interim maintenance awarded by the trial Court from Rs.3,000/- to Rs.5,000/- to the first respondent and from Rs.1,000/- to Rs.2,000/- to the second respondent.

3. Therefore, these two revisions are filed only against one order. Hence, I find that it is expedient to decide both the revisions by a common order.

4. For sake of convenience, the parties will be hereinafter referred to as petitioners and respondents as arrayed in D.V.C.No.44 of 2015.

5. The petitioners filed D.V.C.No.44 of 2015 under Section 12 of Protection of Women from Domestic Violence Act, 2005 and filed an application for grant of interim maintenance alleging that the petitioners are subjected to domestic violence as defined under Section 3 of Protection of Women from Domestic Violence Act, 2005 i.e. economic abuse, while narrating the facts of the case, mainly contending that the marriage of first respondent was performed with first petitioner on 30.04.2008 at Salwa Garden Function Hall, Golnaka, Amberpet, Hyderabad and thereafter, their marriage was consummated. Three days after the marriage, the first respondent started harassing her with a demand to bring additional dowry of Rs.5 lakhs from her parents and she was subjected to both mental and physical harassment. The father of the first petitioner spent huge amount of Rs.6 lakhs to first respondent as he was suffering from fertility problem. However, they blessed with male child on 04.01.2012 who is named as P. Lakshya. The first respondent used to inform that he would get marry any other woman, he would get more dowry and on that ground he used to harass the first petitioner and picking up quarrel for petty reasons as she failed to meet the illegal demand of additional dowry, but the matter was referred to the elders, the first respondent did not heed to the advice of the elders. Later, the first respondent and first petitioner entered into memorandum of understanding to live amicably, but the respondent No.1 continued the harassment. The first petitioner lodged a complaint with the police and as counter-blast the first respondent filed case against the first petitioner and her parents and other relatives for the offences punishable under Sections 382

and 506 IPC. Finally on 06.07.2014 the first respondent forcibly necked out the petitioners 1 and 2 from the house as she failed to meet the illegal demand of additional dory of Rs.5 lakhs

6. It is specifically contended that the first respondent is carrying on business earning Rs.80,000/- per month and also receiving Rs.40,000/- per month as rent from two shops and the petitioners have no means to maintain themselves and prayed to grant interim maintenance during the pendency of the D.V.C.

7. The first respondent filed counter admitting the marriage and birth of second petitioner denying the alleged harassment for payment of additional dowry and incurring any amount by the father of the first petitioner to first respondent. It is specifically contended that father of the first petitioner demanded the first respondent to transfer the house in favour of the first petitioner as he came to know that the grand mother of first respondent has executed a will in favour of second respondent. On 30.04.2014 father of the first petitioner and others came to the house of the respondents and demanded for the 'will' for which a petty quarrel took place and the respondents lodged a complaint against the first petitioner with the police, Kachiguda in Crime No.194 of 2014 and that the first respondent is a cobbler and not earning Rs.80,000/- per month on business, Rs.40,000/- as rent from the house and that he was earning Rs.3,000/- to Rs.3,500/- per month and prayed for dismissal of the revision.

8. During enquiry, no evidence was adduced either oral or documentary. Upon hearing argument of both the counsel, the trial

Court awarded interim maintenance of Rs.3,000/- per month to the first petitioner and Rs1,000/- p.m. to the second petitioner from the date of order, payable on or before 10th of every month. Aggrieved by the order, dt.17.05.2015 passed by the I Metropolitan Magistrate, Hyderabad FAC III Metropolitan Magistrate, Hyderabad, an appeal No.541 of 2016 was filed by the petitioners herein dissatisfied with the amount awarded towards interim maintenance. But, the appeal was allowed in part enhancing the interim maintenance from Rs.3,000/- to Rs.5,000/- p.m. to the first petitioner and from Rs.1,000/- to Rs.2,000/- p.m. to the second petitioner from the date of the order of the court i.e. 7.11.2016. Again, the petitioners having dissatisfied with the quantum of interim maintenance awarded by the appellate court, the present revision is filed and similarly, the first respondent also filed revision challenging the enhancement of interim maintenance by the appellate court.

9. The contentions of both the petitioners in revision petitions, the maintenance awarded by the trial court is not commensurate with the standard of living with her husband at her matrimonial house and the court failed to take into consideration the income from two different sources i.e. business and rental income and committed an error in granting meagre amount and prayed to award interim maintenance as claimed in the petition, granting 1/4th of the income of the first respondent as maintenance.

10. Whereas, the first respondent filed revision questioning the order of enhancement on the ground that he was only cobbler not earning any amount except Rs.3,000/- to Rs.3,500/- per month and apart from that the first petitioner did not admit the second

petitioner in any school and in the absence of any evidence about admitting the second petitioner in any school, enhancement of interim maintenance from Rs.1,000/- to Rs.2,000/- per month to the second petitioner is erroneous and prayed to set aside the order passed by the appellate Court.

11. During hearing, both the counsels reiterated the grounds urged before the court in the grounds of revision and requested to pass appropriate order.

12. There is no dispute regarding the relationship of the first petitioner and the first respondent in the D.V.C. but only dispute is with regard to quantum of interim maintenance. According to the petitioners, the first respondent was earning Rs.80,000/- per month from business and receiving Rs.40,000/- per month towards rent every month having four shops out of four shops two shops were let out to two different tenants, while occupying two shops carrying on chappal business in those two shops. But, curiously, none of the parties produced any evidence to establish that the first respondent was carrying on chappal business in two shops, let out two shops to other tenants who are in occupation. But, it is an undisputed fact that the first respondent own four shops in a busy locality of Hyderabad and therefore, even if those shops were let out for commercial purpose, he would get not less than Rs.40,000/- per month. Therefore, granting interim maintenance @ Rs.5,000/- to the first petitioner and Rs.2,000/- to the second petitioner is challenged now before this court and whereas, the first respondent also disputed the enhancement of maintenance.

13. According to Section 12 of the Protection of Women from Domestic Violence Act, 2005 the petitioners are entitled to claim various reliefs including monetary relief, [residence order](#), [protection order](#) etc. as contemplated under Sections 18, 19, 20 and 22 of the Act.

14. The maintenance claimed by the petitioners would come within the definition of monetary relief under Section 2(k) of the Act which reads as under:

“k) “monetary relief” means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;”

15. But, when this court adverted to Section 20 of the Act which deals with monetary relief and it includes clause (d) and it made clear that the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force may also be granted and the monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

16. While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay

monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may

direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

17. Thus, Section 20 of the Act is exhaustive and the order of maintenance i.e. monetary relief under Section 20(d) shall be fair and reasonable. While granting of maintenance, the court has to borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 Cr.P.C. provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 Cr.P.C. are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 Cr.P.C. clearly is that the wife, child and parents should not be left in helpless state of distress destitution and starvation.

18. In CHATURBHUJ v. SITA BAI¹, the Apex Court made it clear that grant of maintenance under Section 125 Cr.P.C. is measure of social justice and is specially enacted to protect women and children and as noted by Apex Court in Captian Ramesh Chander Kaushal v. Veena Kaushal² falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to

¹ (2008) 2 SCC 316

² (1978) 4 SCC 70

achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speed remedy for the supply of food, clothing to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. Therefore, for grant of maintenance as interim measure during the pendency of the D.V.C. is permissible under law, since D.V. Act is a remedial legislation for the benefit of aggrieved person to grant immediate relief in summary manner.

19. As far as quantum is concerned, the petitioners claimed huge amount of interim maintenance without producing any document to substantiate that the first respondent was earning Rs.80,000/- per month from business and Rs.40,000/- per month from rental income. But, the first respondent contended that he is only a cobbler earning Rs.3,000/- to Rs.3,500/- per month. None of the parties produced any material to substantiate their contentions. Even if the contentions of the parties are ignored, it is clear that the first respondent is able bodied person having sufficient property for himself and expected to receive rent if two shops are let out. Therefore, taking into consideration the standard of living which the petitioners are able to lead and by strictly adhering clause 2 of Section 20 (d) of the Act, I find that interim maintenance awarded by the appellate court is just and fair while disbelieving the contention of the counsel for the respondents that the first respondent was only a cobbler. However, taking into consideration of facts and circumstances of the case, it is appropriate to direct the III Metropolitan Magistrate, Hyderabad to

decide the DVC as expeditiously as possible in any event not later than six months.

20. With the above direction, the order passed by the appellate court is hereby confirmed.

21. In the result, both the revision cases are dismissed. Miscellaneous petitions, if any, pending in both the revisions shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:09-08-2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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