

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1111 of 2016

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code') by the unsuccessful appellant is directed against the judgment, dated 17.03.2016, of the learned Judge, Family Court-cum-Additional Sessions Judge, at Nizamabad, passed in Criminal Appeal No.109 of 2014.

1.1 By the aforesaid judgment, the learned Judge, Family Court, while dismissing the said appeal confirmed the orders, dated 22.07.2013, of the learned Additional Judicial Magistrate of First Class, Armour, passed in D.V.C.No.6 of 2012 filed by the 2nd respondent and her minor son under Section 12 of Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), ('the Act', for short). The said learned Magistrate having noted that the 2nd respondent is having a dependent minor adopted child, who is also one of the complainants in the DV case, partly allowed the DV case and granted maintenance @ Rs.5,000/- per month to the 2nd respondent herein besides Rs.1,00,000/- as compensation for mental agony, and, however, granted no relief in respect of separate accommodation after noting that the 2nd respondent is residing in Perkit village since a long time in the house provided by the petitioner herein.

2. I have heard the submissions of *Sri N. Sushman Reddy*, learned counsel appearing for the petitioner, and of *Sri N.Manohar*, learned counsel for the 2nd respondent. I have perused the material record. The parties in this revision shall hereinafter be referred to as the

complainants and respondent as arrayed in the DV case for convenience and clarity.

3. To begin with, it is necessary to refer to the pleadings of the parties as borne out by the record.

3.1 The case of the complainants, in brief, is this:

The 1st complainant is the wife of the respondent in the DV case. Her marriage with the respondent took place in or about the year 1966 when she and the respondent are nine years and fourteen years respectively. They lead marital life in Perkit village. The respondent pursued his education on the earnings of the 1st complainant and secured employment as a Government Teacher in the year 1989-90 and also purchased five acres of land at Fathepoor village. As the 1st complainant could not procreate children out of the lawful wedlock, the respondent married another woman, by name, Vijaya, during the subsistence of his marriage with the 1st complainant. Out of such illegal 2nd marriage, he gave birth to one daughter and a son. The marriages of the said daughter and son were already performed and they are residing with their respective families independently at far away places, i.e., at Hyderabad and USA respectively. Now and then, the respondent used to come to the house of the 1st complainant at Perkit village. On the demand made by this 1st complainant in the year 1978, the respondent having entered into an agreement with the 1st complainant, agreed to pay Rs.1,00,000/- towards her maintenance and another Rs.1,00,000/- towards construction and repairs of the house at Perkit village, where the 1st complainant is residing. He further agreed to give to her, two acres out of five acres of land in Fathepoor village as per the requirement of the 1st complainant and on the understanding that she

shall not claim any rights in the remaining properties or his service benefits. The said agreement was arrived at without her free Will and consent. At present, she is unable to maintain herself and also her adopted daughter, i.e., the 2nd complainant in the DV Case. In the circumstances stated, she is obliged to seek the reliefs mentioned in the DV Case including the relief of award of maintenance in a sum of Rs.5,00,000/- in lump sum and compensation of Rs.10,00,000/- for the mental agony caused to her by the respondent.

3.2 Per contra, the case of the respondent, in brief, is this:

The material allegations in the case of the 1st complainant are false. The said allegations are invented. This respondent paid permanent alimony in a sum of Rs.2,00,000/- to 1st complainant by virtue of the proceedings in M.C.No.16 of 1997 on the file of the learned Judicial Magistrate of First Class, Armoor. The said amount was paid towards full satisfaction and full & final settlement of the claims of the 1st claimant. The agreement in that regard is also placed before the Adalat. Under the said agreement, this respondent also agreed to give two acres of land in Perkit village, however, on the 1st complainant agreeing to forego her right over the remaining properties as well as the service benefits. In the said circumstances, the 1st complainant has no right whatsoever to file the DV Case and claim any reliefs against this petitioner.

4. At trial, the 1st complainant and her supporting witness were examined as PWs 1 and 2 and the respondent was examined as RW1. No documents were exhibited on her side. Exhibits R1 to R6 were marked on the side of the respondent.

5. Now the points for determination in the Criminal Revision Case are as under:

- 1) Whether the 1st complainant/ 2nd respondent herein is entitled for the reliefs granted to her in the DV case by the learned Additional Judicial Magistrate of First Class, Armour?
- 2) Whether the judgment impugned of the appellate Court confirming the order of the learned Magistrate is unsustainable under facts and in law as contended by the respondent/ petitioner herein?
- 3) Whether the 1st complainant is not entitled to any reliefs granted to her in the DV case, in the facts and circumstances stated by the respondent/ petitioner herein?
- 4) To what relief?

6. POINTS:

6.1 A perusal of the pleadings and the evidence brought on record reflects that the 1st complainant is the legally wedded wife of the respondent. It is not in dispute that during the subsistence of his marriage with the 1st complainant, he contracted a second marriage with another woman, by name Vijaya, and gave birth to a son and daughter and that the said son and daughter born to him through his illegal 2nd marriage are by now married and are settled at their respective places with their families. It is also undisputed that the 1st complainant has not given birth to any children under her lawful wedlock with the respondent. The 2nd complainant in the DV case is the adopted minor daughter of the 1st complainant. The 1st complainant, who is living at Perkit village along with her adopted daughter submits that now and then, the respondent used to visit her house and that in the year 1997, she made certain demands and that on that both the parties entered into an agreement and that by virtue of the said agreement, the respondent agreed to pay Rs.1,00,000/- to her towards her maintenance

and another Rs. 1,00,000/- towards construction and repairs of the house and to give two acres of land out of five acres. But, at the same time, she further contends that the said agreement was not entered into with her free Will and consent. However, the case of the respondent is that under the settlement arrived at between the respondent and the 1st complainant and the agreement executed between them, he agreed to give Rs. 1,00,000/- towards permanent alimony and another Rs. 1,00,000/- towards repairs and construction of the house and also two acres of land out of five acres on the petitioner foregoing her rights to claim maintenance or any other reliefs against the respondent and also her rights to claim a share in his service benefits and remaining properties. His further case is that after the settlement, a compromise petition was filed before the Lok Adalat in the pending MC 16 of 1997 on the file of Judicial Magistrate of First Class, Armoor, and that at the time of compromise petition filed before the Lok Adalat, the 1st complainant issued receipts for the amounts as per the settlement and that in view of the said compromise before the Adalat and the fact that the 1st complainant had given up and waived her right to claim any maintenance or other reliefs, she is not entitled to any reliefs claimed in the DV case.

6.2 It is to be first noted that the 1st complainant contends that she is a house wife and that after the respondent married a second time and started living with his second wife and family, she is living separately from the respondent and that she has no income and sources of income and that the settlement was not arrived at with her free Will and consent and that she was neither paid the amounts nor was given the landed property by way of conveyance as allegedly agreed upon and that she has remained unmarried and that as the respondent married a

second time during the subsistence of her marriage with him and neglected to main her, she is entitled to claim maintenance from the petitioner, who is her husband and that the Courts below are justified in awarding maintenance and compensation for mental agony. It is not the case of the respondent that the 1st complainant is either employed or is having income or sources of income. In support of his contention that the 1st complainant is not entitled to claim maintenance and compensation, the only contention of the respondent is that the 1st complainant earlier filed M.C.No.16 of 1997 on the file of the Judicial Magistrate of First Class, Armour, and that the said maintenance case ended in settlement and that pursuant to the said settlement, a sum of Rs.2,00,000/- was paid to her towards full & final settlement and full satisfaction of all her claims and that at that time, he also agreed to give two acres of land at Fathepoor village on the 1st complainant agreeing to forgo her rights in the remaining properties and also service benefits of the respondent and that in view of the said understanding, the 1st complainant is not entitled to claim either maintenance or compensation for the alleged mental agony. In support of the said contentions, the respondent filed material papers before this Court. One of the documents is the photocopy of the agreement, dated 22.11.1997, which is marked as exhibit R1 before the trial Court. The said agreement was signed by both the parties and was attested by witnesses. He also filed a copy of the compromise petition, dated 16.07.1999. The original of the same was marked as exhibit R2 in the DV case. The same was signed by the 1st complainant alone. It was not signed by her counsel and also by the respondent and his counsel. Further, exhibits R4, R5 and R6 are copies of receipts, dated 03.06.1998, 06.01.1999, 06.01.1999 for Rs.50,000/- Rs.25,000/- and Rs.50,000/- said

to have been received by the 1st complainant from the petitioner. Though it is the case of the respondent that the matter was settled before the Adalat, admittedly, the compromise did not fructify and eventually, neither the compromise was recorded by the Court nor was an award was passed by the Adalat. Thus, the compromise, if any, has not culminated into a compromise decree of the Court or of an Award of the Lok Adalat. Even assuming for a moment that there was such settlement and the respondent paid Rs.1,25,000/- to the 1st complainant as is evident from exhibits R4 to R6, however, from the material borne out by the record it is clear that he did not pay the full amount of Rs.2,00,000/- as agreed to between the parties and also did not convey two acres of land to the 1st complainant by executing a legally valid deed of conveyance like a sale deed. Further, the total amount of Rs.1,25,000/- was said to have been paid by the respondent to the 1st complainant long time back, i.e., in June 1998 and January 1999, i.e., about thirteen years prior to the filing of the DV case in the year 2012 by the 1st complainant. The respondent cannot be heard to say that the said amount, if any, paid about 13 years back would absolve him from his liability to pay maintenance to the 1st complainant. As already noted, the respondent could not establish that the 1st complainant is having independent income or source of income and that therefore, she is not entitled to claim any maintenance. Simply because the 1st complainant could not beget children, the respondent married a second time during the subsistence of his marriage with the 1st complainant and deserted her and opted for a comfortable life with the other woman whom he illegally married. Though he was making occasional visits to the house of the 1st complainant, it is not his case that he is paying any maintenance regularly to her since the date of desertion till date. His

only contention is that he paid, in all, Rs.1,25,000/- by way of receipts about thirteen years back. Simply because some amount was thus paid long time back to the 1st complainant and assuming that she received the said amount, she cannot be denied the relief of maintenance in a case filed in the year 2012, more particularly when the amount that was said to have been paid is not adequate for a woman for life long maintenance. Any permanent alimony paid by her husband to a deserted and neglected woman should be sufficient for that woman to live in reasonable comfort and with dignity for the rest of her life. In the case on hand, as already noted, the amount paid about thirteen years back cannot be equated to permanent alimony which disentitles the wife to claim maintenance from the year 2012 onwards, which is required for her sustenance. The admitted relationship between the parties and the undisputed facts that during the subsistence of his marriage with the 1st complainant, the respondent contacted a second marriage illegally with another woman and also gave birth to a son and daughter are sufficient to come to a safe conclusion that the 1st complainant is entitled to live separately and claim maintenance. In the facts and circumstances of the case and for the reasons assigned *supra*, there is no reason to deny award of maintenance to the 1st complainant.

7. Now, coming to the quantum of maintenance, it is to be noted that the maintenance awarded shall be adequate for sustenance, food, clothing and shelter and essential incidental expenses. The law is well settled that the maintenance has to be awarded keeping in view the social status and the economic condition of the husband and the reasonable amount which the wife would require for her sustenance and upkeep. The provision for maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for

maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of maintenance under the Code of Criminal Procedure is subject to final determination of their rights in a civil court. The respondent retired as a Government Teacher. He is having five acres of land and he did not convey by executing a registered document, two acres of land, to the 1st complainant as per the agreement, which he relies upon. Considering the plight of the 1st complainant and the circumstances in which she is placed, the learned Magistrate awarded maintenance @ Rs.5,000/- which is a just and fair amount in the facts and circumstances of the case.

8. Dealing now with the aspect of the 1st complainant's entitlement for compensation for mental agony, the fact that the respondent deserted her for her inability to procreate and had married a second time during the subsistence of his marriage with her and failed to maintain her and made her to seek maintenance for her sustenance, are all reasons sufficient enough to safely conclude that she is entitled to claim compensation for mental agony.

9. On the above analysis and for the aforesaid reasons, this Court finds that the learned Additional District Judge is justified in dismissing the appeal and in confirming the order of the learned Additional Judicial Magistrate of First Class, Armoor, passed in the DV case.

10. Viewed thus, this Court finds that there is no merit in the revision and the revision is liable to be dismissed.

11. Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

23rd August, 2017
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