

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2128 of 2016

ORDER:

This revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 14.02.2016 passed in CrI.A.No.750 of 2013 by the Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar, whereby the order passed by the XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar, Ranga Reddy District in D.V.C.No.15 of 2011 was confirmed.

The petitioner herein is the respondent in D.V.C.No.15 of 2011 and the respondent herein is the aggrieved person.

For the sake of convenience, the parties to the revision will be referred hereinafter throughout the order as arrayed before this Court.

The respondent filed D.V.C.No.15 of 2011 under Section 12 of Protection of Woman from Domestic Violence Act (for short "the Act") claiming various reliefs including maintenance contending that her marriage with the petitioner was performed on 29.11.2009 at ANR Function Hall, Nacharam. Her parents spent Rs.3,50,000/- towards marriage expenses, besides presentation of cash of Rs.2,00,000/-, 35 tulas of gold ornaments, 2 ½ Kgs of silver articles, cloths, household articles, furniture etc. They were blessed with a female child, who was 8 years old by the date of filing petition. It is

specifically alleged that her in-laws were unhappy and started instigating the respondent to take her jewellery and upon that she gave all the jewellery to her in-laws believing their words that the same would be kept in locker. Her mother-in-law never allowed her husband to spend time with her even for 10 minutes and the petitioner acted as puppet in the hands of his parents and at their instigation; he used to pickup quarrels with the complainant on trival issues. The parents of the petitioner used to interfere with the family affairs of the petitioner and the respondent, thereby developed misunderstandings. Petitioner did not choose to take care of her and on the other hand, he used to support his mother and made her to work as maid servant and her in-laws harassed her for non-registration of plot promised by her father at the time of marriage and to get back the fixed deposits of Rs.4,50,000/- from her father. Thus, the respondent was subjected to domestic violence and they did not even provide maintenance for her, despite her request.

It is further alleged that the petitioner is a software engineer earning salary of Rs.1,00,000/- apart from other emoluments and the family of the petitioner possessed immovable property such as residential house in Ameerpet, L.B.Nagar and getting monthly rent of Rs.80,000/- and also possessed agricultural lands in Anantharam village and Pochampally village, Nalgonda District and getting income of not less than Rs.2,00,000/- and they also doing money

lending business and earning Rs.1,00,000/- per month. Hence, the respondent prayed for a direction to the petitioner to provide her rental accommodation at Ameerpet alternatively to pay Rs.10,000/- for accommodation and also prayed for a direction against the petitioner to return her Sthridhana property i.e. Rs.2,00,000/-, 85 tulas of gold ornaments, 2.5 kgs of silver articles, clothes worth Rs.1.2 lakhs, scooty worth Rs.45,000/- and also marriage expenses of Rs.4.25 lakhs. Finally, she claimed Rs.45,000/- per month towards maintenance of herself and her child and direct the petitioner to pay compensation or damages of Rs.5,00,000/-.

The petitioner herein filed detailed counter while admitting the marriage between him and the respondent herein, denied all the material allegations. The petitioner denied incurring of expenditure and presentation of dowry and other articles as stated in the complaint and they stated that the respondent though residing in Habsiguda, falsely shown her address as Nampally and Ghatkesar Mandal for the purpose of this case and she filed a criminal case mentioning the address at Habsiguda. It is further alleged in the counter that the respondent herein never discharged even the basic domestic duties and she preferred to bring food from outside and in fact the petitioner used to clean her vehicle and his mother used to wash her clothes and they never harassed her to encash the fixed deposits or otherwise. It is further alleged that the very purpose of filing the DVC is to extract amount in

the shape of compensation from the petitioner to complete her post graduation under management quota and he never forced her to go for operation and never harassed physically and mentally. It is further stated that the respondent left the matrimonial home without informing them and spent most of the time away from the petitioner as she wanted to marry after six months. It is alleged by the petitioner that most of the occasions, the respondent left the company of the petitioner by saying that she is MBBS doctor and preferred to marry a doctor but married the petitioner only to fulfil her post graduation wish and thus she left the company of the petitioner in the month of February 2010 and though the petitioner tried to get back her in the month of March 2010, the respondent and her parents ill-treated the petitioner and his parents by using filthy language and necked out them from the house at Habsiguda. It is alleged by the petitioner that the respondent threatened him to get her pregnancy aborted if failed to meet her expectation and later she filed a criminal case only to harass the petitioner and his parents, therefore, she is not entitled to claim any compensation or otherwise. It is further contended that the respondent mislead the Court by suppressing the facts relating to her property and income and that she is getting sufficient income to maintain herself and the child and the petitioner herein denied the earning of salary of Rs.1,00,000/- per month and he has to maintain the other

family members and there are no joint family properties and prayed to dismiss the petition.

During enquiry, respondent was examined as P.W.1 and marked Exs.P.1 to P.17. Petitioner herein was examined as R.W.1 and marked Exs.R.1 to R.33.

Upon hearing argument of both the counsel, considering the facts and circumstances of the case, the Metropolitan Magistrate by judgment dated 31.10.2013 concluded that the aggrieved person failed to prove that the petitioner herein ill-treated her during her stay at matrimonial home and committed domestic violence, on the other hand the aggrieved person herself left the company of the petitioner herein and thereby denied the compensation or damages as prayed for but granted maintenance of Rs.12,000/- to the minor daughter on or before 10th of every month while dismissing other claims.

Aggrieved by the order passed by the XIII Metropolitan Magistrate, Cyberabad in D.V.C.No.15 of 2011 dated 31.10.2013, both the parties preferred Criminal Appeal Nos.750 and 794 of 2013 before the Sessions Court. The Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Ranga Reddy District by order dated 14.02.2016 dismissed both the appeals confirming the order passed by the XIII Metropolitan Magistrate, Cyberabad.

In paragraph No.12 of the common order, the appellate Court concluded that the respondent herein failed to establish that she was subjected to domestic violence and declined to

grant relief claimed in the petition before the trial Court, but confirmed grant of maintenance to the child at the rate of Rs.12,000/- per month.

Aggrieved by the order dated 14.02.2016 passed in Crl.A.No.750 of 2013 by the Additional Metropolitan Sessions Judge, the present revision is filed by the petitioner herein questioning the maintenance awarded to the child on various grounds.

The main contention raised before this Court is that when the Magistrate and Metropolitan Sessions Judge having found that the respondent failed to establish that she was subjected to domestic violence, she is not entitled to claim maintenance even to the child and the remedy open to the respondent is to claim maintenance under Section 125 of Cr.P.C. or under the provisions of Hindu Adoption and Maintenance Act. When the respondent failed to establish the domestic violence, no relief under the Act can be granted and prayed for dismissal of D.V.C.No.15 of 2011 while setting aside the orders passed by the XIII Metropolitan Magistrate, Cyberabad in D.V.C.No.15 of 2011 and Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar in Crl.A.No.750 of 2013.

During hearing Sri G.Rama Lakshmi reiterated the said grounds and contended that when both the Courts concluded that the respondent failed to establish that she was subjected to Domestic Violence, she is not entitled to claim maintenance

even to the child since the remedy open to her is file appropriate petition under Section 125 of Cr.P.C. but not under the provisions of the Act. In support of her contention, she placed reliance on the judgment of this Court rendered in “**Kuppili Sridhar Kumar v. Kuppili Siva Santoshi**”¹ and judgment of High Court of Bombay rendered in “**Koushik v. Sangeeta Koushik Gharami**”²

Learned counsel for the petitioner contended on the strength of judgment of this Court (referred supra) that the Metropolitan Magistrate and Metropolitan Sessions Judge committed grave error, which warrants interference of this Court by exercising power under Section 397 and 401 of Cr.P.C. since the finding recorded by the trial Court and the appellate Court are manifestly perverse and apparently erroneous and contrary to the law declared by this Court in “**Kuppili Sridhar Kumar v. Kuppili Siva Santoshi**” (referred supra)

Per contra, Sri Rakesh Sanghi, learned counsel for the respondent, would contend that the child is entitled to claim maintenance though mother of the child failed to establish that she was subjected to domestic violence, since, the child is not responsible for any of the acts committed by the respondent herein. Therefore, the order passed by the trial Court and the appellate Court is inconsonance with the object of the Act and prayed to confirm the order passed by the

¹ 2013 (2) ALT (Crl.) 346 (A.P.)

² 2014ALLMR(Cri)2398

Courts below and he relied on the judgment of the Apex Court rendered in “**Commissioner of Income Tax v. M/s.Hindustan Bulk Carriers**³”

The respondent filed D.V.C.No.15 of 2011 and lost all her claims, except, succeeding in getting maintenance for her child having failed to establish that she was subjected to any amount of domestic violence. The trial Court and the appellate court having held that she failed to establish that she was subjected to domestic violence, granted maintenance to the child at the rate of Rs.12,000/- per month under Section 20 (1) (d) of the Act and failure to provide maintenance to the child is economic abuse as defined in clause (iv) of Explanation I of Section 3 of the Act.

The order passed by the Metropolitan Magistrate though questioned the petitioner herein failed in his attempt to get the order set aside on the ground that the respondent is not entitled to claim maintenance even to the child as she failed to establish the domestic violence. But the appellate Court turned down his contention without assigning any reason and confirmed the order passed by the trial Court.

In view of the rival contentions, it is apposite to extract the relevant findings of the Metropolitan Magistrate and the Sessions Judge hereunder.

³ AIR 2003 SC 3942

The Metropolitan Magistrate recorded specific finding in paragraph No.20 of the order and it is as follows:

“In the light of the above discussion, it is very much clear that the complainant has failed to prove that the respondents ill-treated her during her stay in the matrimonial house and thereby they committed domestic violence towards her. On the other hand, it is clear that the complainant herself left the company of the respondents, and hence, the complainant is not entitled for any compensation or damages as prayed for, from the respondents. The point is answered accordingly.”

Similarly, the Sessions Judge recorded his finding in paragraph No.12 as follows:

“Considering the evidence of the petitioner and the R1 and pendency of Ops for divorce and restitution of conjugal rights, it is very clear that the petitioner has failed to establish the domestic violence against the respondents and in the absence of such proof, the question of granting the relief of maintenance, separate residence or compensation does not arise. The lower Court, rightly considered the same and passed orders and there are no reasons to interfere with the orders passed by the learned trial Judge, and therefore, the appeals are liable to be dismissed.”

Aggrieved by the findings recorded by the Sessions Judge, the respondent herein did not prefer any independent revision challenging the said findings. Therefore, this Court while exercising jurisdiction under Section 397 and 401 of Cr.P.C. cannot disturb the fact findings recorded by the trial Court and the appellate Court in view of the limited jurisdiction conferred on this Court by Section 397 and 401 of Cr.P.C. Normally, this Court would not interfere with the concurrent fact findings recorded by both Courts except where the Court finds that the concurrent fact findings recorded by

both the Courts below are manifestly perverse or apparently erroneous.

In the present case, the person aggrieved – respondent herein did not prefer any revision. Therefore, propriety does not permit this Court to interfere with concurrent fact findings recorded by both the Courts. Hence, fact findings recorded by both the Courts that the respondent herein failed to establish that she was subjected to domestic violence is hereby confirmed.

The main grievance of the petitioner herein is that even child is not entitled to claim maintenance in view of the specific findings recorded by both the Courts.

No doubt, under Section 20 (1) of the Act, the Court is competent to pass appropriate order of maintenance both for the person aggrieved and the children. The term “child” is defined under Section 2 (b) of the Act, which is as follows:

Section 2 (b) - “child” means any person below the age of eighteen years and includes any adopted, step or foster child.

At the same time, ‘economic abuse’ is defined under clause (iv) of explanation I of Section 3 of the Act, which is as follows:

Clause (iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.”

The term “monetary reliefs” is defined under Section 20 of the Act, which is as follows:

“20. Monetary reliefs.—(1) 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 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.”

According to Section 20 of the Act, 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.

The language used in sub-section (1) of Section 20 of the Act is clear that direction for payment of any amount under various heads must be as a result of domestic violence, but both the trial Court and the appellate Court having found that the respondent – aggrieved person failed to establish that she was subjected to domestic violence, but awarded maintenance in favour of the child. Even to grant any of the reliefs covered by clauses (a) to (d) of sub-section (1) of Section 20 of the Act, there must be domestic violence against aggrieved person and that she suffered losses or incurred expenditure on account of domestic violence. In the absence of proof of loss suffered by the aggrieved person and any loss suffered by the child of the aggrieved person as a result of domestic violence, the

Magistrate is not competent to award maintenance under Section 20 (1) (d) of the Act. But both the trial Court and the appellate Court did not appreciate this contention with reference to language used in sub-section (1) of Section 20 of the Act and committed serious error, which warrant interference of this Court, since, the aggrieved person or child failed to establish that the aggrieved person was subjected to domestic violence and suffered loss either by her or child as a result of domestic violence, hence either the child or aggrieved person is not entitled to claim any relief even under clause (d) of sub-section (1) of Section 20 of the Act.

Learned counsel for the petitioner placed reliance on the judgment of this Court rendered in “**Kuppili Sridhar Kumar v. Kuppili Siva Santoshi**” (referred supra). In the said judgment, the single Judge of this Court while deciding an application under Section 482 of Cr.P.C. held that one of the main ingredients which has to be prima facie established before claiming reliefs under the provisions of the Act is that there should be domestic violence as contemplated under Section 3 of the Act. On reading of the complaint, it disclosed that no specific instance of domestic violence as contemplated under Section 3 of the Act is attributed except making an omnibus allegation that the respondents therein went to the house of complainant and demanded additional dowry. In those Circumstances, the single Judge of this Court held that

the aggrieved person is disentitled to claim any relief and quashed the proceedings in a petition filed under the Act.

Similar view was expressed by the High Court of Bombay in “**Koushik v. Sangeeta Koushik Gharami**” (referred supra). This judgment is directly on the present issue and the point that arises for consideration in the said judgment was “whether the minor children of the aggrieved person are entitled for maintenance under Section 20 of the Act if the trial Magistrate has come to a conclusion that the domestic violence has not been proved”. The High Court of Bombay made it clear that the monetary relief is available for the children of the aggrieved person if the monetary relief is required to meet the expenses incurred by the aggrieved person as a result of domestic violence. The monetary relief is also permissible in case losses are suffered by the aggrieved person as a result of the domestic violence. The monetary relief is available to children of the aggrieved person under Section 20 of the Act. However, the aggrieved person is under obligation to establish that she had to meet the expenses incurred and losses suffered due to domestic violence on the part of the respondent. If this principle is applied to the present facts of the case, the Magistrate is required to record a finding that the aggrieved person incurred expenses and suffered loss due to domestic violence on the part of the petitioner herein. Even to award maintenance to the child, the Metropolitan Magistrate and the Sessions Judge did not record

any finding as to meeting of expenditure by the respondent herein or loss suffered by the respondent due to domestic violence in maintaining the child.

In the absence of such finding, the orders passed by the Metropolitan Magistrate and the Metropolitan Sessions Judge are erroneous.

Learned counsel for the respondent would contend that the provisions of the Act have to be interpreted to secure the object of the Act, since the Act was enacted to provide additional benefit to the aggrieved person as defined under Section 20 of the Act, having felt that the existing legislation is not sufficient to provide necessary relief to the person aggrieved i.e. woman when she was subjected to domestic violence and drawn the attention of this Court as to how such statutes have to be interpreted placing reliance on “**Commissioner of Income Tax v. M/s.Hindustan Bulk Carriers**” (referred supra) where the Apex Court had an occasion to discuss about the construction of provisions of Income Tax Act and referred to Maxwell interpretation of statutes and several other judgments of the Apex Court and concluded that a construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible,

and carry into effect the intention of the parties. (See Broom's Legal Maxims (10th Edition), page 361, Craies on Statutes (7th Edition) page 95 and Maxwell on Statutes (11th Edition) page 221.) A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See Whitney v. Commissioner of Inland Revenue (1926) AC 37 p. 52 referred to in Commissioner of Income Tax v. S. Teja Singh [1959]35 ITR 408(SC) , Gursahai Saigal v. Commissioner of Income Tax, Punjab [1963] 1 ITR 48(SC). The Courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe (1886) 11 AC 627 p. 634 (PC), Curtis v. Stovin (1839) 22 CBD 513 referred to in S. Teja Singh's case (Supra).

It is further held that if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries (1940) 3 All E.R. 519 (CL) referred to in Pve v. Minister for Lands for NSW (1954) 3 All ER 514 (PC). The principles indicated in the said cases were reiterated by

this Court in Mohan Kumar Singhania v. Union of India : (AIR 1992 SC 1). The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare clause with other parts of the law and the setting in which the clause to be interpreted occurs. [See R.S. Raghunath v. State of Karnataka and Anr. (AIR 1992 SC 81)]. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the Court to avoid a head on clash between two sections of the same Act. [See Sultana Begum v. Prem Chand Jain AIR 1997 SC 1006]. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or 'dead letter' is not a harmonised construction. To harmonise is not to destroy.

Basing on the principles of construction, learned counsel for the respondent contended that the object of the enactment is to provide quicker remedies to the aggrieved person, but the Court adopting pedantic approach cannot deny the relief to the minor child, who has suffered on account of subjecting the respondent to domestic violence by the petitioner. There is no quarrel regarding interpretation of statutes has held by the Apex Court and the intention of the legislation in enacting the present Act. To claim relief, the requirement is establishment of domestic violence as defined under Section 3 of the Act. But here both the trial Court and the appellate Court recorded a fact finding that the respondent failed to establish that she was subjected to any domestic violence, thereby declined the relief. The prime requirement to grant relief under the Act is proof of domestic violence. Even to claim maintenance to the child of aggrieved person, the minimum requirement is proof of domestic violence by the aggrieved person. In the present case, both the Courts recorded a specific finding that the respondent failed to establish the domestic violence and denied relief to her. In such case, she is not entitled to claim maintenance even to her child under the provisions of beneficial legislation i.e. the Protection of Women from Domestic Violence Act. If such relief is granted, it is nothing but circumventing the provisions of beneficial legislation and permitting the parties to claim reliefs, which they are entitled under different enactment by adopting liberal interpretation in favour of the child of the

aggrieved person, such liberal interpretation is not permissible in view of the law laid down by this Court in “**Kuppili Sridhar Kumar v. Kuppili Siva Santoshi**” (referred supra) and persuaded by the judgment of High Court of Bombay rendered in “**Koushik v. Sangeeta Koushik Gharami**” (referred supra).

Even to conclude that the child is entitled to claim maintenance, the respondent herein has to establish that she was subjected to domestic violence as defined under the Act. When the trial Court and the appellate Court concurrently held that the respondent herein failed to prove that she was subjected to domestic violence, hence she is not entitled to claim any relief under the provisions of the Act.

Applying the principles laid down by this Court in “**Kuppili Sridhar Kumar v. Kuppili Siva Santoshi**” (referred supra) and the judgment of High Court of Bombay rendered in “**Koushik v. Sangeeta Koushik Gharami**” (referred supra)

I am unable to sustain the order passed in D.V.C.No.15 of 2011 by the XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar, Ranga Reddy District and the order passed in Crl.A.No.750 of 2013 by the Additional Metropolitan Sessions Court, Cyberabad at L.B.Nagar, Ranga Reddy District as the respondent miserably failed to establish the prime requirement to claim such relief under the Act. Hence, the criminal revision case is liable to be allowed.

In the result, the criminal revision case is allowed. The D.V.C.No.15 of 2011 is hereby dismissed, setting aside the order dated 31.10.2013 passed in D.V.C.No.15 of 2011 by the XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar, Ranga Reddy District, which was confirmed in Crl.A.No.750 of 2013 by the Additional Metropolitan Sessions Court, Cyberabad at L.B.Nagar, Ranga Reddy District. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

25.10.2017
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JUSTICE M. SATYANARAYANA MURTHY

