

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.776 OF 2015

ORDER:

This Criminal Revision Case is filed against the common order dated 02.05.2015 passed in CrI.A. Nos.124 and 127 of 2015 by the learned II Additional Metropolitan Sessions Judge at L.B Nagar, Ranga Reddy District confirming the order passed on 20.01.2015 in CrI.M.P. No.1937 of 2014 in DVC No.21 of 2013 by the learned XIII Metropolitan Magistrate, Ranga Reddy District L.B Nagar.

2) Heard both sides.

3) The revision petitioner is respondent No.1 out of three respondents in D.V.C. No.21 of 2013, which was maintained by wife, who is revision 1st respondent. Pending disposal of the D.V.C, that was taken cognizance under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'the Act'), there were two interim applications viz., CrI.M.P. Nos.1937 and 1938 of 2014 filed by wife against husband and his parents, that was covered by common disposal after contest from the pleadings in the affidavit vis-à-vis counter of respondent No.1, even no separate counter filed by other respondents by a common order dated 20.01.2015 in granting right in the shared residence or in the alternative of Rs.4,000/- p.m. (under Section 19 of the Act) and interim maintenance at Rs.6,000/- p.m. from the date of filing the interim maintenance application pending disposal of the DVC case (Section 20 (d) of the Act) though provisions wrongly quoted as if Section 17 and 19 of the Act respectively. It is

impugning the same, the revision petitioner (DVC 1st respondent) preferred Crl.A. Nos.124 and 127 of 2015 under Section 29 of the Act on the file of II Additional Metropolitan Sessions Judge, R.R. District and went unsuccessful on 02.05.2015 by common order. As he went unsuccessful in the both the Courts below, he maintained the present revision only against Crl.M.P. No.1937 of 2014.

4) From the pleadings with reference to the rival contentions, coming to the admitted facts, the relationship between the couple is not in dispute, so also the couple stayed for some time in the joint family house or the house of her in-laws, as the case may be. It is during that period, she also complained about the domestic violence by her husband and her in-laws, the DVC respondents 1 to 3, among other family members, and it is her allegation that she was practically necked out from the house and was admitted in a private hostel against her will and even her husband filed O.P. No.870 of 2010 seeking restitution of conjugal rights and she also filed her counter therein. Subsequently, he withdrawn the said O.P. as not pressed and filed another O.P. for divorce and the main pleadings show the said O.P. initially ended in dismissal and later the same was restored and pending. Leave about all and it is not necessary to go further. Once the domestic relationship is not in dispute as wife and husband and in-laws as contemplated by Section 2(f) of the Act, the only thing to consider from the combined reading of Sections 2(g), 3 (1) and 12 (1) of the Act is that there must be some domestic violence or mental harassment, which may constitute domestic violence from the contents contained in the provisions referred to

supra, from the facts the trial Court as well as the lower appellate Court rightly came to the conclusion that the wife suffered domestic violence in the hands of husband and also in the hands of her in-laws.

5) No doubt, the records show from her contest that the house belongs to her husband and she is entitled to share in the said house. According to her husband's contest, the said house is a self acquired property of his father and the same was transferred in the name of his mother, after his death and he is no way concerned with the said property. Thus, it is a matter to be decided ultimately as to the decision prone to award any shared residence therein or not as, *prima facie*, wife could not produce any document in the name of her husband much less in the name of the joint family, even for wife purchased from the source, if any to claim the shared residence.

6) Now coming to the quantum of maintenance and from awarding of Rs.6,000/- p.m. as husband went unsuccessful in interim maintenance including in the revision lis concerned, though the news paper publication is not a substantive piece of evidence but for corroborated piece, that too, without proving the contents atleast by examination of desk reporter and what is the source of him to secure and publish the news to ascertain its correctness therefrom, if at all, to rely. However, the fact remains that once that is not in dispute, undisputedly the facts need not be further proved even taken the same from the observations of the trial Court Magistrate and the lower appellate Court with what interest securing the certain amount seized from the hands of respondent No.1 practically in the petty scam case and in all his properties and resources seized therein.

7) Now coming to the source of income, while he was staying in the jail with any fixed source of income concerned, prima facie there is no material but for to decide in the main matter.

8) Subject to that would be ultimately decided after full dressed trial, after controversial facts though in case of interim maintenance, the wife is entitled to the equal status of husband, once the relationship between them is not in dispute as to his means, including for some time undisputedly he was in jail. It is hardly believable that during the period he was undergoing imprisonment either as a pre-trial or post-trial, there could be no income worth to provide compensation towards maintenance, but for, if at all from his hard earned labour.

9) However, even there is no specific reason in this revision, once that ground is taken, apart from the Court got not only the powers of revision but also inherent powers, which inheres under Section 482 Cr.P.C, apart from the continuous proviso under Section 483 Cr.P.C., it can consider the case, once the DVC respondent No.1 is in jail during that period, the question of ordering maintenance does not arise in the absence of showing that he got other means, subject to that ultimately decided, by setting aside the shared residence it is also left open ultimately to decide without prejudice to the contest in the main matter on merits, an amount of Rs.6,000/- p.m. towards interim maintenance is to be upheld, even otherwise able bodied has to bound by it. However execution of it, it is out of maintenance awarded from the date of filing of interim maintenance application in the pending D.V.C supra shown for any period in jail

from the record he has to produce the best evidence available with him or by securing it, for that to say interim maintenance is not entitled. None of the observations shall prejudice the rights of both the parties in ultimate decision of the main DVC.

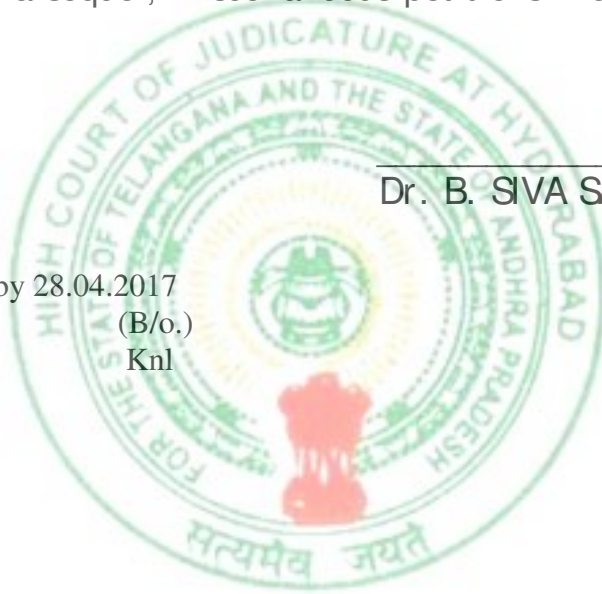
10) With these observations, the Criminal Revision Case is disposed of, directing the trial Court to dispose of the main D.V.C within four (4) months from the date of receipt of a copy of this order.

11) As a sequel, miscellaneous petitions if any pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt. 24.04.2017

Note: Issue C.C. by 28.04.2017
(B/o.)
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Date:24.04.2017

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