

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.2391 OF 2017

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. challenging the order dt.24.07.2017 in DVC Appeal No.355 o 2017 passed by the IV ddI.Metropolitan Sessions Judge, Hyderabad confirming the order dt.13.02.2017 in D.V.C.No.109 of 2016 passed by the IV Metropolitan Magistrate (Traffic Mobile Court), Hyderabad.

2. The petitioner and the first respondent are the husband and wife. The first respondent filed DVC No.109 of 2016 and obtained order for various reliefs including maintenance in DVC No.109 of 2016 and the respondents 1 and 2 filed Crl.M.P.No.2030 of 2016 in DVC NO.109 of 2016 under Section 23(1) of Protection of Women from Domestic Violence Act to direct the petitioner to pay monthly maintenance of Rs.30,000/- p.m. to the first respondent and Rs.10,000/- p.m. to the second respondent till disposal of main D.V.C.

3. The petitioner alleged that the first respondent is the wife and the second respondent is the son and whereas the petitioner is the government servant drawing Rs.40,000/- per moth and also earning Rs.20,000/- per moth from other sources. As the petitioner deserted the first respondent and failed to maintain both the first respondent and second respondent since 12.01.2016, she is staying away along with her parents and depending upon her parents.

4. It is also alleged that the first respondent was subjected to harassment and filed main DVC for various reliefs. At the time of marriage, the parents of the first respondent provided jahez articles besides dowry and not satisfied with the same, the petitioner subjected the first respondent to cruelty both physically and mentally demanding additional dowry. The petitioner neglected and

refused to maintain the respondents 1 and 2 and necked her out from the house on 12.01.2016. Therefore, she filed DVC for various reliefs.

5. The trial Court upon hearing argument of both the learned counsel, awarded interim maintenance of Rs.10,000/- per month to the first respondent and Rs.5,000/- per month to the second respondent while directing the petitioner to pay the same from the date of filing petition i.e. 25.11.2016 and continue to pay the same till further orders.

6. Aggrieved by the impugned order, the petitioner-husband filed an appeal i.e. DVC Appeal No.355 of 2017 which ended in dismissal confirming the order passed by the trial Court.

7. Aggrieved by the impugned judgment passed by the appellate Court, the present revision is filed on various grounds.

8. The first and foremost contention raised in the revision is that the first respondent is the divorced wife, under Muslim Law, she is disentitled to claim maintenance. The second ground urged is that the Domestic Violence Act has no application after divorce and thereby she is disentitled to claim maintenance. The courts below did not take into consideration the actual income of the petitioner and committed an error in awarding interim maintenance at Rs.15,000/- p.m. to the respondents 1 and 2.

9. At the stage of admission, the counsel for the petitioner reiterated the grounds urged before the courts below and mainly stressed on disentitlement of the first respondent to claim maintenance after divorce.

10. Admittedly, the petitioner and first respondent were the husband and wife. The petitioner/husband allegedly obtained divorce from the competent authority, thereby the first respondent is disentitled to claim maintenance.

11. But, in the judgment in *Shamima Farooqui Vs. Shahid Khan*¹ the Apex Court clarified that even the divorced wife is entitled to claim maintenance. In view of the law declared by the Apex Court in *Shamima Farooqui Vs. Shahid Khan* case, this contention cannot be sustained in the revision.

12. In *Shamima Farooqui Vs. Shahid Khan* case, the Apex Court considered the factors to be taken into consideration for assessing the maintenance payable to the wife and children.

13. The observations of the Apex Court in *Shamima Farooqui Vs. Shahid Khan* supra, the Apex Court considered the jurisdiction of Family Court and observed that “the Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

a) The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions Under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the

¹ (2005) 5 SCC 705

procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.

b) When the aforesaid anguish was expressed, the predicament was not expected to be removed with any kind of magic. However, the fact remains, these litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. It occurs either due to the uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the Courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the Court. As regards the second facet, it is the duty of the Court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands "still" on some unknown bank of the river. It cannot allow it to sing the song of the brook. "Men may come and men may go, but I go on for ever." This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs. There has to be a proactive approach in this regard and the said approach should be instilled in the Family Court Judges by

the Judicial Academies functioning under the High Courts. For the present, we say no more.

c) Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuji v. Sita Bai* MANU/SC/8141/2007 : (2008) 2 SCC 316, it has been ruled that:

d) Section 125 Code of Criminal Procedure is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* MANU/SC/0067/1978 : (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter 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. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* MANU/SC/0193/2005 : (2005) 3 SCC 636.

e) This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

f) In this context, I may profitably quote a passage from the judgment rendered by the High Court of Delhi in *Chander Prakash Bodhraj v. Shila Rani Chander Prakash* MANU/DE/0028/1968 : AIR 1968 Delhi 174 wherein it has been opined thus:

g) An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-

bodies person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

h) From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.” In view of law declared by the Apex Court la muslim wife is entitled to claim maintenance after divorce.

i) The second contention raised by the learned counsel for the petitioner is that when the alleged domestic violence is subjected prior to divorce, the domestic relationship between the petitioner and first respondent ceased to subsist, thereby the first respondent is disentitled to claim maintenance. But, this question is squarely covered in *JUVERIA ABDUL MAJID PATNI v. ATIF IQBAL MANSOORI*² wherein the Apex Court on facts held that the alleged domestic violence took place between January, 2006 and 6th September, 2007 when F.I.R. was lodged by the wife against her husband and his relatives. The High Court quashed the F.I.R. But, in the SLP, the Apex Court held that petition under Section 12 of Domestic Violence Act, 2005 is maintainable though the divorce is obtained by the husband during pendency of proceedings and made it clear

² (2014) 10 SCC 736

that an act of domestic violence once committed, the subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20. Child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”

14. In the present case, the petitioner allegedly obtained divorce without disclosing the date of divorce and it is not known whether it is prior to domestic violence complained against the petitioner or subsequent date. But, such question cannot be decided at this stage when no date of divorce is disclosed by the petitioner before the court below. Therefore, by applying the principles in the above judgment, it is difficult to accept this contention. The petitioner can raise this contention during final disposal of the DVC before the court below.

15. The last contention is that the petitioner is not drawing Rs.40,000/- as contended by the respondents 1 and 2 and thereby grant of maintenance at Rs.15,000/- per month to the respondents 1 and 2 is excessive.

16. Admittedly, the petitioner is government employee. But, the petitioner did not disclose the nature of employment and did not produce the salary slip to establish that he was not drawing salary of Rs.40,000/- per month as contended by the petitioner. In the absence of any material before the court, it is difficult for me to reduce the maintenance awarded by the court below holding that it is excessive.

17. As per Sections 397 and 401 Cr.P.C. this court is having limited powers and this court cannot interfere with the concurrent fact findings recorded by the courts below, unless, this court finds that there is manifest perversity or apparent error in the findings recorded by the courts below.

18. Here in this case, the courts below concluded that the divorce was allegedly obtained during the pendency of the DVC. Learned counsel for the petitioner Dr.Sofia Begum fairly conceded that due to harassment and filing false DVC by the first respondent-wife, he obtained divorce. Therefore, the trial Court and the appellate Court rightly applied the provisions of D.V.Act as there is no bar to invoke the provisions of Act and similarly, there is no material to establish that the petitioner was not drawing salary of Rs.40,000/- per month and being a government servant he did not produce any salary slip or any other evidence. Therefore, I find no material to interfere with the concurrent findings recorded by the courts below in the revision in view of limited jurisdiction conferred on this court by exercising powers under Sections 397 and 401 Cr.P.C. and consequently, the revision is liable to be dismissed as it is devoid of merits.

19. In the result, the criminal revision case is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

DATE:04-09-2017
ccm

M.SATYANARAYANA MURTHY,J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CPLRC. NO.2391 OF 2017

Date:04.09.2017

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