

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.240 of 2016

ORDER:

This revision is preferred by the DVC petitioner-wife against the DVC respondents 1 to 4-husband, father-in-law and mother-in-law of her (against R.4 the case is quashed by the High Court) impugning the order dated 11.12.2015 in CrI.A.No.228 of 2013 on the file of the IV Addl.District & Sessions Judge at Visakhapatnam, in setting aside the order dated 20.10.2013 in DVC No.7 of 2010 passed by the IV Addl.Chief Metropolitan Magistrate, granting maintenance of Rs.10,000/- to her and prohibiting respondents from committing any domestic violence acts against her and also from interfering with the possession of her parents plot No.108 at BHPV Housing Society, Sujathanagar, Visakhapatnam.

2. The averments in the revision are that the appellate Court wrongly observed that she admitted as if their marriage was not consummated though in her entire evidence there is no such type of admission by her, moreover there is pleading and in the evidence it is mentioned that the marriage was consummated and it is the evidence of her husband and in-laws with regard to attendance for the nuptials. The observation of the lower appellate Court that the wife lived short period with him and there is no possibility for the occurrence of domestic violence is erroneous, when she pleaded that the respondents have been harassing her and the same is also not denied by the respondents. The non-granting of maintenance to her basing on the reason that she is educated and earning by practicing as an advocate in High Court is erroneous, merely basing on she enrolled as an advocate in the Bar Association which does not mean that she has sufficient means to maintain herself. The observation of the lower appellate Court that the wife, being highly qualified, filing the cases one after one against the family members to grab the money from them is objectionable. Both

Courts below ought to have directed to return the dowry and other amounts given to the husband and his family at the time of marriage and also adapaduchu lanchanalu and also ought to have been granted compensation amounts under Section 22 of the DVC Act, when her chief affidavit contents are not denied by the respondents about the payment of dowry and other amounts which amounts to proof and therefrom both the Courts below erred in not granting the compensation for the injuries and mental torture. Hence, to set aside the judgment of the lower appellate Court and grant maintenance as prayed for.

3. Heard both sides and perused the material on record.

4. The relationship between the parties as wife and husband and in-laws is not in dispute. Before the learned Magistrate, 5 witnesses were examined on behalf of the wife including her as P.W.1 and three witnesses examined on behalf of the husband and in-laws who are respondents 1 to 3 as R.Ws. 1 to 3. On behalf of the wife Exs.P.1 to P.8 marked and no documents marked for husband and in-laws. Among Exs.P.1 to P.8, Ex.P.1 her report to the Mahila police Station on 07.11.2008 of the harassment and ill-treatment with demands for additional dowry etc., from which Ex.P.2 FIR was registered in Pendurty Police Station for the offence u/ sec.498-A IPC against them in Cr.No.170 of 2009. Exs.P.3 to P.6 are petitions and counters in matrimonial Petitions viz; O.P.No.1420 of 2008 and 904 of 2009 for divorce and restitution of conjugal life between the couple. She relied upon Ex.P.7 covering the bank transactions of the loan said to have been obtained for dowry and other marriage expenses and Ex.P.8 wedding photos. From said evidence it establishes that the marriage between the couple took place on 16.03.2008 as per Hindu law and custom and the couple went for honeymoon to Ooty and the wife joined the husband at in-laws house on 15.10.2008 at Ramnagar, Visakhapatnam, after

Ashadamasam, on the day of her joining at in-laws house, there was a galata and the couple shifted to rented house at M.V.P.colony on 17.10.2008. The trouble it appears arose between the couple from compelling the wife to convert into Christianity in their claiming as Christians from their attending every Sunday to churches for she was a Hindu having faith and performing daily poojas which is also the admission from cross-examination of the husband-R.W.1. R.W.3 also deposed about attending to the church and after marriage the couple were taken to the church on 11.08.2008 and she removed her bindi(Vermillion) whenever she goes to the church though wearing at rest of time. P.W.1, including in the cross-examination also deposed about the same that they were compelling her against her willingness to convert into Christianity and P.Ws. 2 and 3 also deposed in those lines being her parents. It appears that it resulted in a wide gap between the couple and thereafter the couple were living separately from 25.10.2008 with different version as to she was sent out and he did not take her back and according to him contra. The domestic violence mainly meted out by her is proved from the evidence of P.Ws. 1 to 5 and also from the cross-examination of R.Ws.1 and 3 which is concluded by the trial Magistrate in giving protection order u/ sec.18 of the Act, not to commit acts of domestic violence on her by the respondents and also in directing not to interfere with the possession and enjoyment of her parents plot No.108 at BHPV Housing Society, Sujathanagar, Visakhapatnam.

5. Coming to the maintenance out of the monetary claim concerned, P.W.1 stated that R.W.1 did his MBA and MCA and also working as professor in Raghu Engineering college. According to him only till 06.07.2009 and later claimed not doing the job. There is no proceedings filed by him that he was removed from job, if not, any voluntary resignation from prospective source of earnings by other employment or the like. That evidence is not forthcoming from him as observed by the learned Magistrate

in paras-31 to 34. The fact that she is enrolled as an advocate in High Court itself and therefrom capable of getting some earnings but there is nothing to show she is affluent in practice and getting substantial earnings to sustain herself. The learned Magistrate therefrom at para-41 awarded Rs.10,000/- p.m. to her towards maintenance claim from the date of DVC Petition. As observed supra, Rs.10,000/- is no doubt excessive. However the lower appellate Court without even any basis totally negated maintenance claim though her capability of getting some earnings being an advocate. Thus, the granting of Rs.10,000/- by trial Magistrate or setting aside it in toto by the lower appellate Court are *per se* unsustainable and it is just from the above to award of Rs.7,000/- p.m. towards maintenance from the husband to the wife as additional requirement by considering her source of earnings as an advocate also from the date of DVC petition. To that extent the order of the lower appellate Court is to be set aside and accordingly to be modified from what is ordered by the learned Magistrate.

6. Even for setting aside the protection order by the lower appellate Court, there is no basis much less by assigning any sustainable reasons stand to judicial scrutiny. Thus the trial Court's order is to be restored restraining the respondents from interfering with the possession of her parents plot No.108 at BHPV Housing Society, Sujathanagar, Visakhapatnam, until there is any other independent proceedings in relation thereto through any due process of law.

7. Coming to the compensation, the wife claims that her father spent huge amounts and that is reflected from the bank accounts of her father for a period between 05.03.2008 to 15.02.2009. The marriage was performed on 16.03.2008. Though it is the contention of the respondents that the petitioner's father renovated the house for which he availed loans and what the bank accounts reflects is for the same; it cannot be totally believed as

the bank account reflects from 05.03.2008 at least to the date of marriage and in the month of March, 2008 even relevant to be taken into consideration as it clearly shows the incurring of the amounts. In fact giving of dowry not being evidenced by any receipts or vouchers or by video or photo coverage, that too for the same constitutes an offence, otherwise. The trial Court and the lower appellate Court did wrong in rejecting the same. In fact, against said rejection, wife did not maintain any appeal and therefrom for this Court while sitting in revision against the appellate Court's order, there is nothing to award any monetary claim by compensation otherwise than for maintenance supra, for alleged refund of dowry or other amounts.

8. Having regard to the above and in the result, the revision is allowed in part by setting aside the lower appellate Court's judgment, and by modifying the maintenance awarded by the trial Court to the revision petitioner from Rs.10,000/- per month to Rs.7,000/-. The protection order granted by the trial Court that the respondents are restrained from interfering with the possession of her parents plot No.108 at BHPV Housing Society, Sujathanagar, Visakhapatnam, is restored, until there is no other independent proceedings in relation thereto through any due process of law. Further, the order of not to commit any domestic violence acts against the petitioner by the respondents is also restored.

Consequently, miscellaneous petitions, if any, pending in the revision, shall stand closed.

Date:24.04.2017.
Vvr.

Dr. B.SIVA SANKARA RAO J,