

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2919 OF 2017

JUDGMENT:

The revision petitioner herein is the 1st appellant in Criminal Appeal No.90 of 2013 on the file of the learned Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar and respondent No.1 in D.V.C. No.4 of 2012, on the file of the learned VII Metropolitan Magistrate, Cyberabad at Hayathnagar.

2. He preferred the present Civil Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code') questioning the order, dated 16.06.2015 in Criminal Appeal No.90 of 2013, whereby and where-under, the learned Sessions Judge, allowed the appeal in part by awarding Rs.10,000/- towards monthly rent for residential accommodation to respondent No.2 - wife herein and their minor child from the date of order, directing the revision petitioner to pay the said amount before 5th of every succeeding month, confirming the maintenance amount awarded by the learned Magistrate in D.V.C. No.4 of 2012, dated 07.02.2013, at Rs.5,000/- per month to the wife and Rs.10,000/- per month to the minor son from the date of petition and Rs.10,000/- per year towards school fee and clothing for their son payable in the month of June every year commencing from June, 2013 under Section 20 of Protection of Women from Domestic Violence Act, 2005 (for short 'Act, 2005')

and also confirming the amount of Rs.10,00,000/- compensation awarded under Section 22 of the Act, 2005.

3. So far as the protection orders granted against respondent No.1 i.e., revision petitioner herein, the same was revoked since the rent for residence was provided.

4. Further aggrieved over the said order though, partly favours him, the revision petitioner preferred the present Criminal Revision Case.

5. Heard Sri C. Damodar Reddy, learned counsel for the revision petitioner - husband, and Sri V.L. Surendra, learned counsel for respondent No.2 - wife.

6. The learned counsel for the revision petitioner would submit that the marriage between the parties took place on 15.06.2006; that a male child was born out of their wedlock on 03.08.2007; that husband filed O.P. No. 65 of 2009 on the file of the Judge, Family Court, Ranga Reddy District; and an *ex parte* decree was obtained on 01.07.2009 and, thereafter, the revision petitioner married Aishwarya Varma Rathod on 08.10.2009 and marriage was registered on 31.05.2010 and respondent No.2 - wife filed an application to set aside the aforesaid *ex parte* decree in divorce petition in the year 2011 and, thereafter, the DVC was filed and, therefore, he would submit that not only the wife and child are not entitled to any maintenance,

but even the Courts below did not properly consider the factual aspects, and thereby led to tender the findings, which are tainted with illegality and, therefore, to set aside the order passed by the Courts below.

7. The learned counsel for respondent No.2 - wife supports the order.

8. On perusal of the order passed by the Courts below and the material on record and the appreciation of evidence, it has to be concluded that the evidence on record was properly appreciated by the learned Magistrate in accordance with evidentiary rule, and the process of reasoning adopted by the learned Sessions Judge cannot be faulted. In fact, the learned counsel for the revision petitioner is absolutely unable to point out which of the findings recorded by the Courts below would suffer from patent illegality, warranting interference.

9. It is no doubt true, the decree was obtained dissolving the marriage between the parties, but again when an application for setting aside the *ex parte* decree was filed by the wife. Further, during the course of arguments, the learned counsel for respondent No.2 has also pointed out that the Family Court Appeal in F.C.A. No.224 of 2015 is filed by the wife challenging the decree of divorce granted by the Family Court, Ranga Reddy District in O.P. No.69 of 2009, and the same is still pending. So far as the marriage of the revision

petitioner with Aishwarya Varma Rathod is concerned, no comment can be made here. In case, he has to maintain her, it is his own liability, but, he cannot try to evade the maintenance amount to respondent No.2 - wife, unless he proves that the wife is either employed having adequate financial source on employment or otherwise remarried.

10. Therefore, all the questions in regard to whether the marriage with Aishwarya Varma Rathod took place beyond the time provided for preferring FCA and incidental issues will have to be agitated only in FCA and they are nothing to do with the *lis* in the present Criminal Revision Case or DVC. Thus, without going into details in regard to the second marriage as the remedy is elsewhere for the aggrieved party, holding that the findings recorded by both the Courts below are not tainted with any illegality, nor can be construed as absolutely utterly perverse, it does not warrant interference. Therefore, there is no merit in the present Criminal Revision Case.

11. Accordingly, the Criminal Revision Case is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

December 18, 2017.

Mgr