

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Cases Nos.1453 and 1670 of 2016

COMMON ORDER:

Crl.R.C.No.1453 of 2016

The revision is preferred by the DVC respondents 1 to 3 (names of R.4 and R.5 are deleted in the lower Court as not necessary parties) against DVC petitioner arraying as 2nd respondent to the revision, by impugning the Judgment dated 12.04.2016 in Crl.A.No.83 of 2015 filed by the DVC respondents, on the file of the Spl. Sessions Judge for SC/ ST(POA) Cases cum-VII ADJ, Warangal, against the order dated 07.09.2015 in D.V.C.No.6 of 2015(DVC No.6 of 2012) by the learned III Addl. Judicial Magistrate of First Class, Warangal. The grounds in the revision vis-à-vis oral submissions of the learned counsel for the revision petitioners 1 to 3 are that the lower appellate Court erred in granting maintenance to the DVC petitioner though she is highly qualified and capable of doing job. The direction of the lower appellate Court to return an amount of Rs.10,00,000/- to the revision 2nd respondent/ DVC petitioner is unsustainable since she failed to prove anything to show that sthridhana or dowry amount kept with the revision 1st petitioner/ DVC 1st respondent through Shreedhana does not come under the purview of the Dowry Prohibition Act. The DVC petitioner also filed Sec.498-A of I.P.C. case against the Revision 1st petitioner which case is ended in acquittal after trial as the allegations were not proved. When such is the case, the DVC is nothing but a replica of Sec.498-A of IPC complaint, further the Calendar case is tried under warrant case procedure and whereas, the DVC is tried in a summary trial manner. As such the trial Court finding is contrary to law and basing on the acquittal recorded by the

trial Court, the findings given in the DVC shall not sustain and deserves to be set aside. Hence to set aside the orders of both the Courts below.

Orl.R.C.No.1670 of 2016

2. The revision is preferred by the DVC petitioner against the DVC respondents 1 to 5 viz; husband, in-laws, brother-in-law and sister-in-law of the DVC petitioner with the contentions in the grounds of revision vis-a-vis oral submissions of the counsel for the revision petitioner are that the lower appellate Court failed to properly appreciate the evidence and wrongly reduced the maintenance from Rs.10,000/- awarded by the trial Court to Rs.8,000/- and completely dismissing the claim of return of 20 tulas of gold awarded by the trial Court, on the premise that the DVC petitioner did not carry the gold ornaments with her to the in-laws house. The lower appellate Court erred in holding that there is variation in the evidence of P.Ws.1 and 2 in respect of presenting the gold ornaments though there is no cross-examination pointing out to that variation or at least suggestion denying of receiving the gold ornaments. Hence, to set aside the order of lower appellate Court impugned herein.

3. The contents of the petition in DVC Case filed under Section 12 of the Protection of Women from Domestic Violence Act(for short, 'the Act'), are that the marriage of the petitioner with the 1st respondent took place on 23.12.2010 at Vijaya Gardens, Keshavapur Road, Hasanparthy village and Mandal, Warangal district. At the time of marriage, the parents of the petitioner gave a cash of Rs.10,00,000/- towards dowry along with 20 tulas of gold, half tula gold ring and also Rs.15,000/- for the cloths to the 1st respondent and also incurring Rs.2,00,000/- towards marriage expenses. After marriage, the petitioner joined with the revision petitioner/ DVC 1st respondent and lived happily for about four months and thereafter, the 3rd respondent-mother of the 1st respondent started harassing the petitioner in

the name of dowry and ornaments as meager and unsatisfactory and to bring Rs.5,00,000/- additionally. All the respondents forced her to bring additional dowry of Rs.5,00,000/- otherwise to give consent for divorce and she informed the same to her mother, on whose arrival, all the respondents beat the petitioner and her mother. On 01.10.2011 all the respondents have beat the complainant indiscriminately and necked out her from their house with a warning to bring additional dowry within 24 hours. The complainant lodged a complaint before Hasanparthy police on 02.01.2012 who not registered a case and advised to settle the same before the elders. Then, panchayath was held at Godavari Khani in which the respondents demanded additional dowry of Rs.5,00,000/- in lumpsum. The complainant was forced to file complaint under Section 498-A IPC and under Sections 3 and 4 of the Dowry Prohibition Act and a case in Cr.No.173 of 2012 was registered at Hasanparthy Police Station. There onwards, the complainant is living with her old aged parents who are dependents on their sons. This amounts to negligence of 1st respondent who is a Government employee working in Sngareni Collieries at Godavari Khani gets more than Rs.30,000/- p.m. towards salary. The 1st respondent also having house plot at NTPC Prashanth Nagar, Godavari Khani and another plot at Mancherial of Adilabad District. The complainant is in need of square meal, shelter, medicine and treatment, clothes according to the status of the 1st respondent.

4. On the other hand, the Revision 1st respondent-husband herein filed counter and the others adopted said counter and the contents of the same are that he though admitted the marriage with the petitioner, denied the presentation of dowry, gold, clothes at the time of marriage, harassment alleged against him and his family members, the alleged acts of domestic violence committed on the petitioner, the demand of additional dowry of Rs.5,00,000/- and getting salary Rs.40,000/- p.m. as employee in Sngareni

Calories but stated as the petitioner is a qualified of MBA Finance and she can maintain herself and sought for dismissal of the DVC case.

5. The trial Court got examined the petitioner as P.W.1 and her mother as P.W.2 and got marked Exs.P.1 to P.10 viz; Salary certificate, property tax receipts, salary slips for the months of May, June, August, September and November,2014 and from respondent side, the 1st respondent-husband was examined as R.W.1 and no documents were got marked. From the above evidence and on hearing both sides, the learned Magistrate partly allowed the DVC Case by order dated 07.09.2015 by directing the respondents 1 to 5 not to commit any acts of domestic violence u/ sec.18 of the Act, against the petitioner. The 1st respondent is directed to pay Rs.10,000/- p.m. to the petitioner towards her maintenance, as monitory relief u/ sec.20 of the Act, from the date of order and also to provide shared household in which the petitioner wants to reside and also restraining them from entering into such portion u/ sec.19 of the Act. The 1st respondent is also directed to return Shreedhana amount of Rs.10,00,000/- and 20 tulas gold ornaments to the petitioner.

6. When said order of the learned Magistrate is impugned before the appellate Court in CrI.A.No.83 of 2015 by the respondents, the learned Sessions Judge after hearing both sides, by its judgment dated 12.04.2016 partly allowed the appeal dismissing the DVC case No.6 of 2015 against 4th and 5th respondents and by reducing the quantum of monetary relief from Rs.10,000/- to Rs.8,000/- from the date of order of the Court below and by dismissing the claim for return of 20 tulas of gold ornaments. Further the order of the learned Magistrate in DVC No.6 of 2015 to the extent of directing the respondents 1 to 3 not to commit any act of domestic violence u/ sec.18 of the Act against the petitioner, to provide shared household in which the petitioner wants to reside and restraining them from entering

into such portion u/ sec. 19 of the Act and the direction to the 1st respondent to return Sthridhana amount of Rs. 10,00,000/- and 20 tulas gold ornaments to the petitioner is confirmed.

7. It is impugning the said lower appellate Court's order supra, both the parties aggrieved maintained two revisions with the contentions raised in the grounds vis-à-vis oral submissions referred supra.

8. Heard common arguments in both the revisions for common disposal since outcome of same order impugned herein and perused the material on record.

9. Undisputedly the scope of revision is very limited to go into the necessary factual details in deciding the correctness of the impugned order of the lower appellate Court for not an appellate Court for re-appreciation of entire factual matrix from the pleadings and evidence afresh. From the above, coming to decide the revision lis, the evidence of petitioner/ P.W.1 with reference to other witness P.W.2 (mother of P.W.1) speak the acts of domestic violence the DVC petitioner meted out in the hands of the DVC respondents within the meaning of Section 12(1) of proviso r/ w. Section 3 and 2(f) & (g) of the Act. Thus, there is nothing to interfere with the order granted by the Courts below under Section 18 of the Act, for not to commit any acts of domestic violence against the petitioner by the respondents.

10. Coming to the claim regarding 10 lakhs cash said to be paid to the DVC 1st respondent by the DVC petitioner's parents and its entitlement or not, as the case may be concerned, undisputedly there is no documentary evidence much less by production of any bank account of parents of the DVC petitioner. No doubt, the giving and taking of dowry is prohibited by law with penal consequence and the Court cannot ignore without taking notice of certain facts within its judicial notice of the ordinary prevalence of that could be with no audio or video coverage for no prospective groom

and his parents could accept if it is to their knowledge of covering by any sort of evidence therefrom particularly from the provisions of the Dowry Prohibition Act (for short, 'the DP Act') which covers even a demand prior to the performance of marriage including for any marriage engagement as such. It is thereby the Court has to appreciate only from the evidence available on record. No doubt, what P.Ws.1 and 2 speaks is giving of cash of 10lakhs and the same is with respondents. Except the evidence of P.Ws.1 and 2, there is no other evidence on record to prove that they presented cash at the time of marriage towards dowry. In fact, it cannot be ignored of the fact that the parents of the bride usually by beg or borrow meets the demand for any dowry or cash payment to perform the marriage to the extent possible with any little pomp and show in anticipating welfare of the daughter in the in-laws house so also by presenting any gold in sending his daughter to the in-laws house on marriage to live with her husband happily and comfortably with no little sorrow to see on her face of any neglect or any possibility of facing any troubles in the in-laws house. However, there must be some basis to consider any proof by preponderance of probabilities which is lacking here for no any mediator or other relative or elder of the marriage is examined to corroborate. Thus, it cannot be concluded safely of 10lakhs given towards dowry to the respondents at the time of marriage by the parents of the DVC petitioner. Thus, both the Courts below went wrong in allowing the claim for refund of 10lakhs and the same is to be set aside in the absence of any evidence.

11. Now coming to the 20 tulas of gold and half tula of gold ring to the respondents alleged as presented by the parents of the DVC petitioner and the same are with the DVC respondents is concerned, there is no any coverage by evidence or video and either at the marriage or in the marriage performance while presenting to the bride either by her parents or by the

husband and in-laws respectively, as the case may be. In the DVC petition, it is not specific of where it is kept in her in-laws house and why left there and what are the type of ornaments and with what weight. Further, there must be at least some evidence as to where the gold purchased or it is an old gold if at all available at house by changing or preparing ornaments, if so, through whom. Even if she was necked out, what prevented much less to serve a notice asking return of said gold ornaments or its leaving there. This probability belies the version of the petitioner as to 20 tulas of gold left at the house of the respondents. In this regard, there is no evidence on record to show that the gold if at all that was presented to the petitioner was left with the respondents.

12. Now so far as the compensation/damages claimed of Rs.1,00,000/- for incurring marriage expenses by the parents of the DVC petitioner is concerned, there is no worth material to pass any order in this regard, but for if at all to include therein, the incurring of marriage expenses and to compensate for the marriage almost broken down on short period of living with him, this Court feels it is just to grant compensation as prayed for.

13. So far as protection order of properties of respondents to be used and utilized by the petitioner for her own purpose and to direct the DVC respondents not to transfer or alienate any of them is concerned, a perusal of the record, the Exs.P.2 to P.5 clearly shows there are two houses stood in the name of the father of the DVC 1st respondent and two other houses in the name of his mother and sister and the R.W.1 also stated that he and P.W.1 lived together in house bearing No.6-1-83/ 18 at Prashanthnagar and their family is a joint family and the properties are not partitioned. Thus, there is nothing to interfere with the relief granted by the trial Court and confirmed by the lower appellate Court, to the petitioner to provide shared

household in which the DVC petitioner wants to reside and restraining the DVC respondents from entering in said portion of her shared residence by any way interfering with it and with the amenities of it.

14. The claim for maintenance sought is at Rs.15,000/- p.m. Record shows the DVC 1st respondent is an employee in Singareni Collaries Company Limited, Godavarikhani and Exs.P.6 to P.10 salary slips for the months of May, June, August, September, November, 2014, clearly shows his net salary of Rs.27,843/- for the Month of September and Rs.22,614/- for November, 2014. But the petitioner pleaded as Rs.30,000/- p.m. but Salary certificate filed by P.W.1 for the month of December, 2013 shows his salary of Rs.25,024/-. Though he claimed that she completed her M.B.A. course and capable of earning, in the absence of proving that she is doing job and earning mere possessing of M.B.A. qualification, no way suffice to say she is capable of earning therefrom and the same cannot be taken into consideration. It is his bounden duty to provide maintenance and she is entitled under the provisions of the Act for the claim of maintenance. Since the DVC 1st respondent is having house property, the DVC petitioner is entitled for maintenance and Rs.10,000/- p.m. as held by the trial Court.

15. In the result, both the revisions are partly allowed by:-

i) granting maintenance to the DVC 1st petitioner at Rs.10,000/- p.m., from the date of order by setting aside the modified order of the lower appellate Court and confirming the order of trial Court.

ii) the protection order directing the DVC 1st respondent to provide any portion of the shared household in which the DVC petitioner wants to reside and also restraining the DVC respondents from entering in such portion and interfering with the same and its amenities granted by trial Court and confirmed by the lower appellate Court is confirmed.

iii) the order granted by trial Court and confirmed by the lower appellate Court of not to commit any acts of domestic violence against the DVC petitioner by the DVC respondents is also confirmed,

iv) confirming the dismissal order of the lower appellate Court for the grant of return of gold as granted by the trial Court for presentation of gold is not proved,

v) the order of the grant of Rs.10,000,00/- stated as presented to the DVC 1st respondent as dowry granted by the trial Court and confirmed by the lower appellate Court is set aside for not proved.

vi) further an amount of Rs.1,00,000/- towards compensation/ damages as prayed by the DVC petitioner and not considered by both the lower Courts is hereby granted from the DVC respondents to the parents of the DVC petitioner for they incurred more than that towards marriage expenses.

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

Date: 26.04.2017
Vvr

Dr. B. SIVA SANKARA RAO, J

