

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.517 of 2016

ORDER :

The revision petitioners are respondent Nos.1 to 3 of DVC.No.1 of 2012 on the file of the Additional Junior Civil Judge-cum-Special Judicial First Class Magistrate (Mobile), Kamareddy, maintained against them by revision respondent Nos.2 to 4 viz., wife and 2 minor children of revision 1st petitioner, and revision petitioner Nos.2 and 3 are his parents and inlaws of revision respondent No.1 (DVC petitioner No.1).

2. This Criminal Revision Case is filed by the petitioners impugning the appeal dismissal judgment dated 30.01.2016 in CrI.A.No.135 of 2014 passed by the learned Judge, Family Court-cum-Additional Sessions Judge at Nizamabad, maintained by them aggrieved by the order dated 12.11.2014 in DVC.No.1 of 2012 passed by the Additional Junior Civil Judge-cum-Special JFCM (Mobile), Kamareddy, granting maintenance of Rs.7,000/- per month each to the DVC petitioner Nos.1 to 3 by DVC respondent No.1, Rs.3,00,000/- towards compensation and Rs.20,000/- towards legal expenses to the DVC petitioner No.1 by DVC respondent Nos.1 to 3, by not granting any further orders under Sections 18 and 19 of the Domestic Violence Act, 2005 (for brevity "the Act").

3. The contentions in the grounds of revision are, that the learned Sessions Judge *vis-à-vis* the learned Magistrate gravely erred in awarding Rs.7,000/- per month each to all the DVC

petitioners as monetary compensation or maintenance, for nothing made out of there is any material so to grant, besides the same is otherwise in excess and unsustainable, so also without any basis to award Rs.3,00,000/- as compensation for any harassment or domestic violence and even Rs.20,000/- awarded towards legal expenses, that too without any basis, and thereby the same is liable to be set aside.

4. The other contentions *vis-à-vis* submissions are that the DVC 1st petitioner developed illegal intimacy with one Chintala Balaraju and she was caught red-handed in the bed room on 18.01.2011 night, where the said Balaraju stated he was invited by her by opening the main door and there is a crime pending for the offences punishable under Sections 457, 497 and 506 IPC registered on the file of Mustabad Police Station, Nizamabad District, that the DVC 1st petitioner is doing business in sarees, also doing tailoring work and also doing money lending business and is earning sufficiently and thereby there is no need to award any monetary amount towards compensation or maintenance against the DVC 1st respondent, for he has to maintain his parents, the DVC respondent Nos.2 and 3 also, who are living in a village and that too, the DVC 1st respondent is only a daily wage earner, and thereby sought for setting aside the compensation amount *vis-à-vis* the legal expenses *vis-à-vis* the maintenance amount.

5. On the other hand, it is the submission of the learned counsel for the DVC petitioners/revision respondent Nos.2 to 4 in support of the orders of the Courts below in seeking to dismiss the revision

for nothing to interfere with the well considered orders of the Courts below.

6. Heard both sides and perused the material available on record.

7. In contesting the revision *lis*, the factual back ground necessary to mention is, that the marriage of DVC 1st petitioner and DVC 1st respondent took place 14 years prior to filing of DVC case under Sections 18 to 20 and 22 of the Act. It is her allegation that an amount of Rs.2,11,000/- was given as cash by her parents at the time of marriage, besides 10 tolas of gold, 2 kgs of silver, apart from household articles, including furniture and Splendid Motor Cycle to her husband, that they lived happily for 5 years and after the birth of two daughters, DVC petitioner Nos.2 and 3, she was subjected to harassment by her husband and parents-in-law to bring additional dowry of Rs.3,00,000/- and also 30 tolas of gold, saying she gave birth to two female children and she put up with hoping for a change, including the harassment and abuses attributing false allegations, despite mediations through elders, like Uppala Vidya Sagar, Vimala along with her maternal uncle Mallesham and brother-inlaw Thadumunoori Ramesh to treat her well, that on 10.05.2011, the respondents beat her and necked her out of the family by snatching away all her ornaments that were presented by her parents at the time of marriage, from which she came with her children to her parents' house and on 12.06.2011, all the respondents came to the house of her parents and demanded additional dowry and threatened to perform another marriage to the DVC 1st respondent unless the demand is meted,

which made her to file a Criminal Case under Sections 498-A and 406 IPC against them. Her further allegation is that the respondents are having Acs.5.00 of agricultural land at Ponnala village, besides 700 square yards of open plot near Mustabad Bus Stand, apart from residential house at Mustabad and also 3 mulgies opposite to Old Bus Stand, Mustabad, which fetches a rent of about Rs.15,000/- per month for each mulgi and the respondents are doing Kirana business and getting an income of Rs.1,00,000/- per month and also got a Cloth Shop with an income of Rs.50,000/- per month, besides doing money lending business, hence to grant the reliefs of compensation of Rs.10,00,000/-, maintenance of Rs.10,000/- each to the petitioners, and Rs.20,000/- towards legal expenses.

8. Respondent Nos.1 to 3, in opposing the DVC claim, filed counter by denying all the above averments attributed against them or giving of any dowry or cash or gold or silver items at or before or after the marriage or any harassment much less to bring additional dowry after the birth of two daughters or sending her out from the matrimonial house by withholding any of her ornaments, but for two children to take by her. It is averred that she developed illegal intimacy with one Chintala Balaraju and on 18.01.2011 night, she was caught hold by DVC 1st respondent, where the said Chintala Balaraju was in the bed room of 1st respondent's elder brother in their house and the said Balaraju also admitted of DVC 1st petitioner invited him into the house by opening the main door, which is the subject matter of a criminal case in JFCM Court, Siricilla against the DVC 1st petitioner and Chintala Balaraju and that Section 498-A case filed by the DVC 1st petitioner is also

pending, where there is no stay of further proceedings granted by the High Court. It is their further contention that they do not have any agricultural land or any open plot near Bus Stand, Mustabad, or any mulgies in the village much less with any fetching rent of Rs.15,000/- per month each as alleged. It is contended that the allegation of getting income of Rs.1,00,000/- and Rs.50,000/- from Kirana business or Cloth Shop, respectively, is also false. The 1st respondent to the DVC case contended as residing in a rented room at Mustabad and a daily wage earner getting Rs.100/- per day and he is away to his parents' house in the village and he is also responsible to maintain his parents, of whom DVC 3rd respondent is paralytic and that DVC 1st petitioner is doing saree business and also doing tailoring work and earning more than Rs.500/- per day and also doing money lending business and hence sought to dismiss the aforesaid claim.

9. It is from these pleadings and from the evidence adduced by the DVC 1st petitioner as PW.1 and 2 more witnesses, including the alleged mediators as PWs.2 and 3, and that the DVC 1st respondent was examined himself as RW.1, with no documentary evidence adduced by either side, the learned Magistrate passed orders as referred supra.

10. The observations to the conclusion in the order of the learned Magistrate in granting maintenance, compensation and legal expenses supra are by reiterating the facts supra, and besides PW.1 and PW.2 also supported her version regarding her harassment and the relationship not in dispute, though it is the evidence of DVC 1st respondent as RW.1 that there is no

harassment meted and it is a false claim, PWs.1 to 3 deposed that all the petitioners were necked out by the DVC respondents, their demand for additional dowry with a threat not to enter the house without meeting the same, else to perform another marriage to their son, RW.1 deposed that he filed criminal case against PW.1 and Ch. Balaraju regarding the alleged illegal intimacy between them, but no record is filed in proof thereof, so also of the alleged recorded version of Ch. Balaraju over Cell Phone when allegedly caught red-handed and not even examined the so called person present or informed about the issue to the said Matta Raji Reddy, if true, as one of the alleged Panchayat elders to believe the version and to neglect the petitioners to their mercy, and RW.1 also admitted in the cross-examination that the petitioners are away to him since January, 2011 and he did not send even a pie for their maintenance and it shows that it is a rouse in setting up the alleged intimacy of Ch. Balaraju with PW.1 with no basis. Even the DVC petitioners could not file any document regarding the alleged properties owned by the DVC respondents and the income therefrom, as she is away to the respondents having been deserted by him, once the DVC 1st respondent is able to earn, being an able bodied person, he is bound to maintain the wife and children in so awarding the maintenance and in saying also entitled to the compensation amount, besides legal expenses.

11. The lower appellate Court in dismissing the appeal and confirming the trial Court's order, observed by reiterating the same and nothing more any new.

12. Now, coming to the scope of revision, from the above impugned orders of both the Courts below, legality and correctness, for the allegation of PW.1 was caught red-handed with one Chintala Balaraju in the house of elder brother of RW.1 in the bed room or PW.1 invited the said Balaraju, as per the version of the said Balaraju and the same was recorded in a cell phone or it was placed before the elders, like Raji Reddy, in dispute, or that the criminal case filed against PW.1 and the said Balaraju, but for *ipsi-dixit* version of RW.1 orally during enquiry to support that pleading, there is no basis or no scrap of paper or document, that no other independent witness and not even any explanation to withhold such a material cell phone recorded and documentary evidence, if at all there is any truth, for no prudent person keep quiet without production of the same, if really available, to draw necessary inference adversely against the DVC 1st petitioner. To substantiate the conclusion, though not in so many words, by the learned Magistrate and by the learned Sessions Judge of the said version is rouse to get over and of there is a basis to arrive at a conclusion of she was necked out with the children, for even from the evidence of RW.1, she is away to him at her parents' house with the children from January, 2011 without even sending a pie for their sustenance and without bothering for their care and welfare, being a dutiful husband and father. Suffice it to say that the same is nothing but domestic violence from over-all appreciation of the facts supra, to the entitlement of the claim for maintenance and for grant of compensation.

13. From the above, it is now to consider whether the quantum of compensation is reasonable or not?

14. The DVC petitioners did not produce any record, but for oral evidence of PWs.1 to 3, including regarding cruelty or ill-treatment and the means of the DVC respondents as to the doing of any Kirana and Cloth businesses by respondent No.1 or with his parents and brothers in joint family to make the joint family also liable, if at all, so also of no proof, but for owning residential house and of owning of 3 mulgies and getting any income therefrom or any landed property, which is not a difficult task, if at all, atleast to obtain recorded proof from the Panchayat and Revenue authorities. The fact established from the evidence available is that the respondents are of a business family and it is hardly believable of 1st respondent getting Rs.100/- per day as wages. He did not even mention who is his employer and what type of work he is doing, if at all true to say that he is doing some business and getting some income, though not there is no proof and though not in so many words in this regard, as rightly concluded by the learned Magistrate and also as confirmed by the learned Sessions Judge.

15. From this, coming to the quantum respectively impugned concerned, it is just to reduce the maintenance of Rs.7,000/- to Rs.4,000/- per month each, as respondent Nos.3 and 4 herein are school going children and by upholding the compensation against the respondents, as the attribution suspecting the chastity of PW.1 is without any basis, which is a matrimonial cruelty and domestic violence prone to throw away. However, so far as the legal expenses of Rs.20,000/- are concerned, it requires to be reduced to a sum of Rs.10,000/-.

16. Accordingly and in result, this Criminal Revision Case is allowed in part by upholding the compensation amount of Rs.3,00,000/- (Rupees three lakhs only) against the respondents, however, reducing the maintenance amount of Rs.7,000/- per month each to Rs.4,000/- (Rupees four thousand only) per month each to respondent Nos.2 to 4 herein and also by reducing the legal expenses from Rs.20,000/- to Rs.10,000/- (Rupees ten thousand only), while upholding the order of both the Courts below in all other respects.

17. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

08.02.2017
Msr



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