

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRL.R.C. Nos.2805, 2807, 2783 and 2784 OF 2017

COMMON JUDGMENT:

All these Criminal Revision Cases have been filed by the revision petitioners - wife and children questioning the orders, dated 10.08.2017, passed by the learned Judge, Family Court - cum - VI Additional Sessions Judge, Khammam, in Criminal R.P. Nos.79 of 2016, 81 of 2016, 82 of 2016 and 80 of 2016, respectively, filed by respondent No.2 - husband, whereby and whereunder, the learned Judge, Family Court, allowed all the Criminal Revision Petitions setting aside the orders, dated 08.07.2016, passed by the learned II Additional Judicial Magistrate of First Class, Khammam in Criminal M.P. Nos.894 of 2015, 1578 of 2015, 316 of 2016 and 896 of 2015 filed in D.V.C. No.4 of 2008.

2. In D.V.C. No.4 of 2008, the revision petitioners herein - complainants have filed Criminal M.P. No.894 of 2015 under Section 311 of the Code of Criminal Procedure, 1973 (for short 'Code') to recall PW.1 for marking the documents; Criminal M.P. Nos.1578 and 316 of 2015 under Section 294 of the Code to receive the documents and compact disc, respectively; and Criminal M.P. No.896 of 2015 to implead Smt. Samineni Hymavathi, maternal aunt of respondent No.2 (husband) and Smt. Tejavath Kalyani, wife and concubine of respondent No.2 (husband), respectively, as respondent Nos.2 and 3 in

the aforesaid D.V.C. The learned Magistrate, in fact, allowed all the four applications originally, by the order dated 08.07.2016.

3. Aggrieved over the said orders, respondent No.2 - husband preferred the aforesaid Criminal Revision Petitions before the learned Judge, Family Court, and the learned Judge, Family Court allowed the same setting aside the orders dated 08.07.2016 passed by the learned Magistrate in the aforesaid Criminal M.Ps., by the order dated 10.08.2017.

4. Challenging the said orders dated 10.08.2017 passed by the learned Judge, Family Court, the revision petitioners - wife and children, preferred the present Criminal Revision Cases.

5. Heard Sri Ramakrishna Pativada, learned counsel for the revision petitioners.

6. All these Criminal Revision Cases are taken up for disposal at the admission stage itself.

7. The learned counsel for the revision petitioners would submit that earlier respondent No.2 - husband preferred Criminal Revision Case No.2840 of 2016, challenging the very same order, dated 08.07.2016 in Criminal M.P. No.894 of 2015 in D.V.C. No.4 of 2008 passed by the learned Magistrate, and this Court, by the order, dated 10.11.2016, while granting permission to withdraw the Criminal

Revision Case, had given liberty to avail remedies available to him under law and, accordingly, dismissed the said revision as withdrawn. Therefore, it is his submission that respondent No.2 - husband once again moved the learned Judge, Family Court, by filing Criminal Revision Petition Nos.79 of 2016, 81 of 2016, 82 of 2016 and 80 of 2016, and the learned Judge, Family Court, allowed the same setting aside the orders passed in the aforesaid Criminal M.Ps. That has been the reason why, the revision petitioners approached this Court by filing the present Criminal Revision Cases.

8. All the four Criminal Miscellaneous Petitions were allowed by the learned II Additional Judicial Magistrate of First Class, Khammam, by the orders dated 08.07.2016 at the stage when the judgment was to be pronounced by the DVC Court.

9. Aggrieved by the aforesaid orders, the respondents in DVC questioned them by filing Criminal Revision Cases. One such order in Criminal M.P. No.894 of 2015, which order was challenged before this Court, is submitted during the course of arguments. The order reflects that when the said criminal revision case was taken up for hearing, learned counsel for the revision petitioner therein (respondent No.2 herein - husband) sought permission of the Court to permit him to withdraw the Criminal Revision Case with liberty to avail the remedies available to him under law. This Court granted permission and dismissed it as withdrawn granting liberty, as prayed for.

What all the respondents in DVC have done pursuant thereto was, they approached the Judge, Family Court - cum - VI Additional District and Sessions Judge, Khammam, by preferring Criminal Revision Petition Nos.79, 80, 81 and 82 of 2016 respectively. He succeeded before the revisional Court as the revisional Court allowed the revision petition setting aside the orders passed by the DVC Court in the Criminal M.Ps.

10. Aggrieved over the dismissal orders, the petitioners in DVC filed the instant Criminal Revision Cases. All these revisions are taken up at the admission stage itself.

11. Sri Ramakrishna Patiwarda, learned counsel for the revision petitioners in all these revision cases, would hardly contend that the revisional Court was wrong in setting aside the orders passed by the DVC Court for the reason that the said Tejovath Kalyani is the second wife of respondent No.2 herein viz., P. Krishna Mohan and living in his house along with his close relative Smt. Samineni Hymavathi and they are necessary parties to the DVC and the documents filed referred to in the above relate to the birth given by Tejovath Kalyani through respondent No.2 and the revisional Court without proper appreciation of the matters in controversy set aside the orders, despite the fact that this Court, in fact, dismissed the revision case filed by respondent No.2 earlier and the said factum of dismissal was totally overlooked by the revisional Court and the revisional Court has not at

all adverted to the dismissal orders in earlier Criminal Revision Cases and, therefore, the orders under challenge in all these criminal revision cases are liable to be set aside.

12. Initially it would be appropriate to refer to the submission that the revisional Court has not referred to the orders passed by this Court in the earlier criminal revision cases preferred by respondent No.2 before this Court.

13. Firstly, the learned counsel for the revision petitioners is not clear whether any of the earlier revision cases, similar order like the order in Criminal Revision Case No.2840 of 2016 were passed or not. However, in Criminal Revision Case No.2805 of 2017, the learned Judge, Family Court, while dealing with Criminal R.P. No.79 of 2016, in which the order passed in Criminal M.P. No.894 of 2015 was challenged by the husband, adverted to Criminal R.C. No.2840 of 2016 earlier filed and liberty sought while withdrawing it. None of the counsel appears to have brought it to the notice of the Court, but, still the Court finding it from the record, referred to the orders passed by this Court in Criminal R.C. No.2840 of 2016 stating that Criminal R.P. No.79 of 2016 was filed, pursuant to the liberty granted by this Court. Therefore, it is not correct to contend by the learned counsel for the revision petitioners that the revisional Court totally omitted to look into or refer to the orders passed by this Court in the earlier criminal revision cases.

14. On merits, in assessing whether the order passed by the revisional Court in Criminal R.P. No.79 of 2016 is liable to be set aside or can be sustained, certain important aspects require advertence.

15. The DVC was filed in the year 2008 registered as DVC No.4 of 2008. When revision petitioners filed DVC, revision petitioner No.1 made her husband as the sole respondent. She allowed the DVC to go on by examining herself and thus, the trial was completed in DVC. Arguments were also heard by the learned Magistrate and reserved the DVC for orders. At that juncture, all the four Criminal M.Ps. were filed for reopening the case, recalling PW.1 for further examination, for receiving the documents and for impleadment of the said Samineni Hymavathi and Tejovath Kalyani on the main ground that they also joined her husband in subjecting her to harassment. It appears that revision petitioner No.1 even intended to project the said Tejovath Kalyani as the second wife of her husband. When the DVC was filed in the year 2008, the situation obtaining as on that day or the right that was available as on that day against a particular individual alone, is the criteria. When it is her specific allegation in DVC that Samineni Hymavathi and Tejovath Kalyani were residing in the same house and they have harassed her, nothing precluded her from referring to certain allegations or the acts constituting the offence of domestic violation. Having failed to do so,

when DVC was filed, she cannot, at the stage of pronouncement of judgment, come and contend that both of them are necessary parties and to implead them. Even otherwise, she has not placed any material to show that the said Tejovath Kalyani is the second wife of her husband. During the course of arguments, the said Tejovath Kalyani was even referred to as a concubine. When such is the situation, certainly, the revision petitioner - wife cannot be permitted to implead the said Hymavathi and Kalyani.

16. Adverting to third Criminal M.P. relating to receiving documents referred to by the learned counsel for the revision petitioners, perhaps, the birth extract of the child so as to show the names of the parties i.e., respondent No.2 herein was sought to be filed and consequently to reopen the case and to recall PW.1. Absolutely, they cannot be construed as relevant documents in deciding the DVC application. When evidence is sought to be let in, in case with reference to the changed circumstances, the revision petitioner has to get the pleading amended incorporating the relevant pleas touching the parties whom she intends to implead. It appears in the petition for adding parties under Section 319 of the Code, nothing is mentioned in that direction or the part played by the said Hymavathi and Kalyani constituting harassment meted out to the revision petitioner.

17. The law is well settled that a concubine cannot be a party to the DVC proceedings. In such an event, documents sought to be received which relate to the birth of a child cannot be received. When the orders passed by the learned Magistrate in Criminal M.Ps. are perused, she did not assign reasons as to relevancy of these documents nor as to how the said Hymavathi and Kalyani could be added as parties in the array of respondents under Section 319 of the Code. The law is also well settled that request to add a person or party as an accused in case of criminal proceedings can only be made when chief-examination of a particular witness is recorded even before proceeding with the cross-examination. It is not so in the present case. When the DVC was heard and was posted for pronouncement of judgment, these four applications were filed by the wife - revision petitioner herein. Thus, viewed in that angle, certainly, the learned Magistrate was not right in allowing all the four criminal M.Ps. The learned revisional Court is right in setting aside the said orders. Even the observations made by the learned revisional Court are to the effect that the remedy open to the revisional petitioners is to proceed against the parties sought to be impleaded for the offence of bigamy, in case Tejovath Kalyani is considered to be the second wife, having been married by respondent No.2 herein.

18. Therefore, it is to be said that no error crept in the orders passed by the revisional Court warranting interference to view that the orders are either irregular or patently illegal.

19. No doubt, the learned counsel for the revision petitioners made much emphasis on the dismissal of earlier criminal revision case contending that when earlier criminal revision case itself was dismissed by this Court, the revisional Court was not right in entertaining the criminal revision petitions. To answer the said submission, it is not as though that this Court in earlier criminal revision cases decided the dispute on merits, but only permitted to withdraw by dismissing them granting liberty. In case, no liberty was granted to the revision petitioner then, certainly, respondent No.2 herein is precluded to move the Sessions Court. It is needless to mention that the revisional power is as well available to the Sessions Court, perhaps, that may be the reason, respondent No.2 herein withdrew the criminal revision cases filed earlier by seeking such liberty. It is not the submission of the learned counsel for the revision petitioners that the criminal revision cases are not maintainable before the Sessions Court under Section 397 of the Code. Thus, viewed from any angle, there is no merit in the present criminal revision cases, and therefore, they are dismissed affirming the orders passed in the aforesaid criminal revision petitions by the revisional Court.

As a sequel thereto, Miscellaneous Petitions, if any, pending in these revision cases stand dismissed.

A. SHANKAR NARAYANA, J

November 27, 2017.
PV

