

HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE No.127 of 2017

ORDER:

Heard the learned counsel for the parties.

The present revision case is filed questioning the orders in CrI.A.No.648 of 2016 dated 28.11.2016 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad, confirming the orders passed in CrI.M.P.No.480 of 2014 in DVC.No.58 of 2014 on the file of the Court of the IV Metropolitan Magistrate (Traffic Mobile Court), Hyderabad, in granting interim maintenance @ Rs.15,000/- per month to the 1st respondent and her two children.

The facts in brief are that respondent No.1 filed DVC.No.58 of 2014 against the petitioner claiming various reliefs. Pending the DVC case, respondent No.1 filed CrI.M.P.No.480 of 2014 under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (for short, "the Act"), to direct the petitioner herein to pay interim maintenance @ Rs.25,000/- per month and further sum of Rs.20,000/- towards expenses. It is her case that the petitioner is running business in the name and style of S.V. Computers Services, Vidhya Nagar, Hyderabad as well as Sri Vinayaka Computer World. He is having land to an extent of 160 square yards at Nagaram at Central Excise Colony and also works as LIC Agent and is earning about Rs.1,50,000/- per month. The petitioner filed his counter denying all the allegations made in the said petition. He specifically contended that out of love and affection towards respondent No.1, he was doing business, wherein respondent No.1 was made as Proprietor and now all the firms are

closed because of her non-cooperation. As such, there is no income for him from any source. The Court below, after considering the contentions advanced by both the parties, passed orders on 24.03.2016, allowing the petition in part, by granting Rs.15,000/- per month towards interim maintenance for respondent No.1 and her two children. Aggrieved by the said orders, the petitioner filed an appeal in CrI.A.No.648 of 2016 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad. The lower appellate Court, after hearing, was pleased to dismiss the appeal by judgment dated 28.11.2016. Aggrieved by the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner contended that the judgment of the lower appellate Court is contrary to law and vitiated by material irregularity. The Court below erred in not considering all the facts and drew conclusions on surmise and conjectures. The income of the petitioner is not at all sufficient to pay the interim maintenance awarded against him. In fact, the lower appellate Court failed to consider that under Section 23 of the Act, an order has to be made only after a *prima facie* case of domestic violence is made out. Both the Courts below failed to observe that the 1st respondent being a practicing advocate, it is for her to prove the sufficiency or otherwise of the income of the petitioner for claiming the relief sought for.

The learned counsel appearing for respondent No.1 justified the impugned orders.

Having heard both the counsel and a perusal of the material on record it is revealed that the 1st respondent filed DVC.No.58 of 2014 against the petitioner and pending the same, she filed

Crl.M.P.No.480 of 2014 claiming interim maintenance @ Rs.25,000/- per month. Though she claimed that the petitioner is earning about Rs.1,50,000/- per month, no evidence is produced. The petitioner, while denying the said aspect, submitted that he has closed all his businesses because of non-cooperation of respondent No.1. However, in the absence of any such proof, the same cannot be believed. Therefore, the fact remains that both the Courts below have not appreciated anything on the financial aspects of both the parties, particularly, the capacity of the petitioner to pay the interim maintenance to the 1st respondent. Be that as it may, when the petitioner was running business in the name and style of S.V. Computers Services as well as Sri Vinayaka Computer World, it cannot be said that he is not in a position to pay the interim maintenance @ Rs.15,000/- per month to the 1st respondent and her two children. The interim maintenance awarded is only as a temporary measure so as to enable the 1st respondent to sustain herself and the children during the pendency of the main D.V.C. case. It has not adjudicated the rights with regard to the financial status of the parties finally. If that be so, this Court is not inclined to interfere with the orders passed by the lower appellate Court confirming the orders dated 24.03.2016 in Crl.M.P.No.480 of 2014 in DVC.No.58 of 2014.

However, taking in to consideration the facts and circumstances of the case, the criminal revision case is disposed of directing the petitioner to pay a sum of Rs.12,000/- (Rupees Twelve thousand only) towards interim maintenance to the 1st respondent till the disposal of DVC. The arrears of interim maintenance accrued till date shall be paid by the petitioner to the

1st respondent within two weeks at the rate as indicated above from the date of receipt of a copy of this order, failing which it is open for the 1st respondent to take steps for recovery of the same as per law. However, in view of the above, the learned IV Metropolitan Magistrate (Traffic Mobile Court), Hyderabad, is directed to dispose of the main DVC itself within three months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, shall also stand disposed of.

Date: 27.06.2018.
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P. KESHA RAO, J

