

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.1107 of 2018

ORDER:

The Criminal Petition is filed under Section 482 Cr.P.C. by the petitioner/ 2nd respondent seeking to quash the proceedings in I.A.No.170 of 2017 in I.A.No.909 of 2016 in D.V.C.No.27 of 2015, dated 09.01.2018 passed by the Special Judicial Magistrate of First Class(Prohibition and Excise), Kurnool.

2. The petitioner herein is the 2nd respondent and 3rd respondent herein is 1st respondent in D.V.C.No.27 of 2015 on the file of the Special Judicial Magistrate of First Class(Prohibition and Excise), Kurnool, besides 5 other respondents, total 7 originally filed. However, while taking cognizance, it was against respondents 1 to 5 and not taken cognizance so far as respondents 6 and 7 of D.V.C. by the learned Magistrate.

3. It is, after trial, the DVC was allowed in part, by order, dated 20.04.2016 granting the reliefs that i) protection order under Section 18 of the Act restraining respondents 1 to 5 therein to stay away from the dependants/ relatives/ any other person of the aggrieved person to prohibit violence against the 2nd respondent herein ii) residence order under Section 19 of the Act restraining respondents 1 to 5 from

dispossessing or throwing the complainant from the shared household, renouncing the rights in the shared household and directing to remove from the shared household and directing 1st respondent therein to secure same level of alternate accommodation or pay Rs.1,000/- p.m. for separate residence of PW.1 and her daughters and on failure to provide so, iii) monitory relief under Section 20 of the Act granting maintenance at the rate of Rs.6,000/- p.m. to PW.1 and her two daughters from 1st respondent from the date of petition before the Project Director, District Woman and Child Development Agency, Kurnool i.e. 29.12.2014, iv) granting compensation of Rs.5,00,000/- against respondents 1 to 3 v) granted time to pay arrears etc. and also to pay vi) regular maintenance respectively.

4. The said D.V.C. attained finality after appeal before the learned Sessions Judge and revision, against it, before this Court, which need not be discussed for the purpose of the petition as to what is the ultimate relief. Undisputedly, some relief granted there from.

5. It is, subsequently to enforce the said relief attained finality to the extent supra, I.A.No.909 of 2016 filed before the learned Magistrate in seeking under Order XXI Rules 66, 67 and 69 r/w Section 151 CPC for attachment of immovable

property of the three respondents i.e., 1 to 3 of which property according to the said respondents to the DVC claim, belongs to the 2nd respondent/ petitioner herein. There was an order therein for proclamation and sale and subsequently I.A.No.170 of 2017 filed in said I.A.No.909 of 2016 seeking to order fresh proclamation that was allowed by the impugned order dated 09.01.2018, which is the subject matter of challenge.

6. The docket order of the learned Magistrate in IA.No.909 of 2016 (CFR No.3530 of 2016), dated 16.08.2016 reads that heard the learned counsel for the petitioner. No representation for respondent Nos.1 and 2 among 3. Perused the petition and counter. The learned counsel for the petitioner relied on the judgment in Sagar Sudhakar Shendge v. Mrs.Naina Sagar Shendge and others(Criminal Writ Petition No.236 of 2013 dated 04.04.2013 of Bombay High Court) and that supports the case, thereby, I.A.No.909 of 2016 was registered and issued warrant of attachment for attachment of the property before payment of process. In fact, the said decision not before this Court nor discussed by learned Magistrate as to what it says, what he says is that also supports the case of the petitioner and nothing beyond mentioned.

7. There is no provision under the Act for execution to adopt the procedure for execution provided by order XXI CPC but for the Rules, if at all permits the procedure contemplated for maintenance claim under Cr.P.C. Hence, the original attachment order was fresh attachment order to proceed under Order XXI C.P.C. no way survives to sustain.

8. Accordingly, the Criminal Petition is allowed, setting aside the order dated 09.01.2018 in I.A.No.170 of 2017 in I.A.No.909 of 2016 in D.V.C.No.27 of 2015 passed by the Special Judicial Magistrate of First Class(Prohibition and Excise), Kurnool. However, it is not a bar for filing a proper execution petition by following the procedure contemplated by Sections 125 to 128 Cr.P.C read with other provisions of Cr.P.C., Domestic Violence Act and the rules made thereunder.

9. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.12.2018

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