

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.493 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as the respondents.

The present revision case is filed questioning the judgment passed in CrI.A.No.307 of 2017 dated 13.07.2017 on the file of the Court of the XVI Additional Sessions Judge's Court-cum-XVI Additional Metropolitan Sessions Judge's Court-cum-III Additional Family Judge's Court, Ranga Reddy District at Malkajgiri, confirming the orders passed in CrI.M.P.No.820 of 2016 in DVC.No.15 of 2016 dated 21.02.2017 on the file of the XX Metropolitan Magistrate, Cyberabad at Malkajgiri.

The facts of the case are that originally the 1st respondent herein filed a case in DVC.No.15 of 2016 against the petitioner and others on the file of the XX Metropolitan Magistrate, Cyberabad at Malkajgiri. It is her case that she is legally wedded wife of the petitioner. Their marriage was performed on 26.04.2001 and out of wedlock, they were blessed with two children, namely, Durga Sai and Durga Bhavani. At the time of marriage, her parents gave 18 tulas of gold and articles worth Rs.70,000/- and Rs.20,000/- cash towards dowry as per the demand of the petitioner and his parents. However, the petitioner and his parents tortured her and her kids physically and mentally to get additional dowry. In fact, her mother-in-law used to provoke and encourage her husband to beat her even on petty issues. On 30.05.2004, her husband with an

intention to kill her beat her with an iron rod and broke her four upper and three lower teeth. On 10.05.2008, the petitioner and his parents tried to kill her in the kitchen by leaking the gas. In those circumstances, in the month of August, she left the conjugal society of the petitioner. Pending the DVC, she filed CrI.M.P.No.820 of 2016 claiming a sum of Rs.30,000/- per month towards interim maintenance for herself and her children and Rs.15,000/- towards litigation expenses. The petitioner along with others filed a counter affidavit and contested the same. After hearing, the Court below was pleased to allow the said petition partly by orders dated 21.02.2017 directing the petitioner to pay maintenance of Rs.10,000/- per month to the children from the date of the order. Aggrieved by the said orders, the petitioner filed an appeal in CrI.A.No.307 of 2017 on the file of the XVI Additional District and Sessions Judge, Malkajgiri. After hearing, the said appeal was dismissed by judgment dated 13.07.2017 confirming the orders passed by the Court below. Aggrieved by the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner contended that both the Courts below committed an irregularity in allowing the application though no material was placed on record to show that the petitioner is having income as stated in the petition. Both the Courts below have not considered the evidence placed on record by the petitioner with regard to the conduct of the 1st respondent in deserting the petitioner. It is also contended that the petitioner is working as a junior advocate and he is earning Rs.3,000/- per

month and this aspect has not been controverted by the 1st respondent except stating that the petitioner is having properties and getting income. Finally, he submitted that unless the financial status of the petitioner has been adjudicated, maintenance cannot be awarded. On these grounds, he sought allowing of the revision case.

Learned counsel for the 1st respondent supported the judgment of the lower appellate Court.

A perusal of the judgment of the lower appellate Court reveals that there is no discussion about the financial status and income of the petitioner. On the other hand, it is brought on record that the 1st respondent is working as a Teacher in a private school. In fact, the petitioner is not providing any amounts towards maintenance to the 1st respondent and her children. The lower appellate Court relying on Section 23 of the Protection of Women from Domestic Violence Act observed that the Court has power to pass interim monetary relief. The said aspect is not disputed. However, unless a *prima facie* case is made out even for awarding interim maintenance vis a vis the financial status of the petitioner and the income, on mere assumption and presumption, maintenance cannot be awarded.

Be that as it may, the interim maintenance awarded is only a temporary measure during the pendency of the main DVC. The said order is not binding on any of the parties on the merits of the case.

Having regard to the fact that there is no appreciation with regard to the income of the petitioner, this Court is inclined to reduce the maintenance from Rs.10,000/- per month to Rs.6,000/- per month towards interim maintenance to the children of the 1st respondent from the date of the order.

In the result, the criminal revision case is disposed of directing the petitioner to pay a sum of Rs.6,000/- (Rupees Six thousand only) per month towards interim maintenance to the children of the 1st respondent from the date of the order of the trial Court and the petitioner is further directed to pay the maintenance on or before 5th of every month. It is needless to observe that the petitioner has to pay the arrears of maintenance @ Rs.6,000/- per month within one month from the date of receipt of a copy of this order. However, the learned XX Metropolitan Magistrate, Cyberabad at Malkajgiri, is directed to dispose of the main DVC within a period of four months from the date of receipt of a copy of this order.

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

Date: 19.06.2018.
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P. KESHAVA RAO, J