

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.2581 of 2014

ORDER:

Heard the learned counsel for the petitioner and the 1st respondent.

The present revision case is filed challenging the judgment passed in CrI.A.No.189 of 2013 dated 30.09.2014 on the file of the Special Judge for Trial of Cases under SCS and STS (POA) Act-cum-VI Additional Sessions Judge, Kurnool, remanding D.V.C.No.72 of 2012 to the lower Court with a direction to dispose of the same within a period of three months from the date of receipt of the judgment by giving opportunity to both the parties to lead evidence, if any, and dispose of the D.V.C. afresh without being influenced by the observations made by it.

The facts in brief are that the 1st respondent herein filed D.V.C.No.72 of 2012 against the petitioner and others on the file of the Special Judicial Magistrate of First Class, Prohibition and Excise, Kurnool. After full-fledged trial, the said DVC was allowed in part by orders dated 07.08.2013 directing the petitioner to pay maintenance to the three children @ Rs.1,000/- each per month (total Rs.3,000/-) from 02.11.2012. Aggrieved by the said orders, the 1st respondent filed an appeal in CrI.A.No.189 of 2013. During the pendency of the appeal, the 1st respondent filed CrI.M.P.No.307 of 2014 under Section 391 Cr.P.C., requesting the lower appellate Court to receive the 14 registered documents as additional evidence. In the petition, the 1st respondent has categorically

stated that she could not file those documents as she was unable to know the details of the properties of the petitioner to show and prove his and others financial status. In fact, non-production of the said documents was neither intentional nor deliberate. For receiving the said documents, the counsel for the petitioner also reported No Objection. Though No Objection has been reported by the counsel for the petitioner in the lower appellate Court, the counsel for the 1st respondent submitted that further evidence in support of those documents is very much relevant to prove the case. In this context, it is relevant to mention that marking of documents will not amount to proving the same. When the 1st respondent relied on the 14 registered documents for the purpose of proving the financial status of the petitioner and when they were already made part of the record, the lower appellate Court by judgment dated 30.09.2014 remanded the DVC to the lower Court for fresh disposal. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that the 1st respondent is not entitled for maintenance, since she voluntarily deserted the conjugal society of the petitioner without any reasonable cause. Though the 1st respondent failed to prove the domestic violence, the lower Court granted maintenance. The findings arrived at by both the Courts below are not on any evidence placed on record. The reasoning given by the lower Court for awarding the maintenance is not justified.

Per contra, the learned counsel appearing for the 1st respondent supported the impugned judgment and contended that when once 14 registered documents were brought on record, evidence is very much relevant and material to prove the said documents. Therefore, there is no irregularity or illegality in the order passed by the lower appellate Court in remanding the matter back to the lower Court.

Having heard both the counsel and from the perusal of the material on record, it is revealed that during the pendency of the appeal before the lower appellate Court, the 1st respondent filed Crl.M.P.No.307 of 2014 under Section 391 Cr.P.C., requesting the lower appellate Court to receive 14 registered documents as additional evidence. In the petition the 1st respondent has stated that during the course of the trial, the said documents were not within her knowledge and she was unable to know the details of the properties of the petitioner so as to prove his financial status. In fact, non-production of the said documents before the lower Court was neither deliberate nor intentional. Importantly, the counsel appearing for the petitioner herein reported no objection to consider the said documents in the appeal. However, the learned counsel appearing for the 1st respondent submitted that for proving the documents, evidence is very much relevant and material in support of the said documents. In fact, no relief was granted in favour of the 1st respondent in the Court below. The petitioner and the 1st respondent are living separately since 2012. That apart, it is evident from the record that the petitioner is not paying any

maintenance to the 1st respondent. Therefore, to prove the 14 registered documents and to establish the financial status of the petitioner, further evidence on behalf of the petitioner is very much relevant. In the absence of the same, the issue relating to the financial status of the petitioner cannot be decided. Therefore, this Court is of the opinion that there is no irregularity or illegality in the order passed by the lower appellate Court in remanding the matter back to the Court of the Special Judicial Magistrate of First Class, Prohibition and Excise, Kurnool, for fresh disposal. Further, even if the 1st respondent produces any evidence relating to the said 14 registered documents, an opportunity of cross-examination is also available to the petitioner. As such, no prejudice will be caused to him. Even on this ground also there is no force in the contention of the learned counsel for the petitioner that the impugned order suffers from any irregularity. There are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed. Interim stay granted on 29.12.2014 stands vacated.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 26.09.2018.

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