

HONOURABLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL PETITION No. 13710 of 2010

AND

CRIMINAL PETITION No. 13709 of 2010

COMMON ORDER:

Heard the learned counsel appearing for both parties.

Since in both the criminal petitions, the parties are one and the same, with the consent of both the counsel, this Court deem it proper to dispose of them by way of common order.

The prayer sought in the quash petition viz. CrI.P.No.13710 of 2010 is as under:

“To quash the proceedings dated 28.06.2007 passed in C.C.No.642 of 2006 on the file of the Court of the IV Additional Chief Metropolitan Magistrate, Hyderabad.”

The prayer sought in the quash petition i.e. CrI.P.No.13709 of 2010 is as under:

“To quash the orders dated 15.02.2007 passed in CrI.A.No.388 of 2006 on the file of the Court of the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad and also orders dated 2.11.2006 passed in M.P.No.5003 of 2006 in SR No.6498 of 2006 (C.C.No.642 of 2006) on the file of the Court of IV Addl.Chief Metropolitan Magistrate, Hyderabad, .”

The facts of the case are that originally the respondents 1 to 3 herein are the residents of Flat No.301 in House bearing No. 2-1-253, Megha Apartments, Nallakunta, Hyderabad owned by the mother of the petitioner herein who is no other than the maternal aunt of the respondents 1 to 3 herein. It appears that the grandmother of the respondents 1 to 3 died intestate leaving behind their mother and the petitioner herein as legal heirs. However, the petitioner

herein sent away the respondents 1 to 3 from the flat and rented out the same to the third party. But, from 2005 onwards the respondents 1 to 3 are residing in the said flat. However, the petitioner is continuously harassing them and trying to vacate them and in that process, he disconnected the water connection, electricity, gas cylinder pipe etc. Therefore, they filed a complaint before the IV Additional Chief Metropolitan Magistrate, Hyderabad under Sections 12(1)(2), 16, 17, 18, 19 and 20 of Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') seeking protection order, residential orders and orders restraining the petitioner herein from dispossessing them. The Court while issuing notice to the petitioner herein passed orders on 2.11.2006 in MP No.5003 of 2006 in SR No.6498 of 2006 to the effect that the petitioner herein is restrained from interfering with the peaceful life of the respondents 1 to 3 by entering into their house. Aggrieved by the said orders, the petitioner herein filed an appeal in CrI.A.No.388 of 2006 on the file of the Court of V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad. In the appeal, the petitioner herein assailed the orders in M.P.No.5003 of 2006 on the ground of maintainability for violation of the mandatory procedure as contemplated under Sections 12, 26(3) etc. of the Protection of Women from Domestic Violence Act, 2005. In the said appeal, the learned appellate Judge while discussing the facts of the case, was pleased to observe that the lower Court has not complied with the pre-condition laid down under Section 23(2) of the Act i.e. before granting ex parte order the Magistrate should be satisfied about the requirements of the order, which means that the Magistrate has to

state the reasons of his satisfaction, but the impugned orders does not spell out any reasons. However, the learned Metropolitan Sessions Judge on the ground of maintainability of the appeal, dismissed the appeal by orders dt.15.02.2007 by holding that the Court has no jurisdiction to entertain the appeal. Further, a direction is given to the petitioner herein to raise all his contentions before the lower court and he would not be foregoing the right of the appeal against any order that would be made by the lower court on merits. Questioning the said orders, dated 15.02.2007, the petitioner herein filed CrI.P.No.13709 of 2010 in this Court.

After disposal of CrI.A.No.388 of 2006, the trial court posted the matter on 28.06.2007. On that day, the petitioner being an advocate practising in this Court, was held up, up to 4.15 p.m. and could not reach the trial Court in time due to heavy traffic. The trial Court after observing that the counter is not filed till 5 p.m., passed the following orders:

“Petitioners present. Respondent absent. Counter not filed till 5 PM. Respondent’s right of filing counter is forfeited. Heard petitioners. Perused records. Ad-interim injunction granted on 2.11.2006 is made absolute, restraining the respondent from interfering with peaceful life, possession and enjoyment of Flat No.301, Megha Apartments, situated in Nallakunta, Hyderabad and petition is closed accordingly.”

Assailing the said orders, the criminal petition is filed vide CrI.P.No.13710 of 2010.

Though the notices are sent to the respondents 1 to 3, the office endorsement dated 21.10.2013 would indicate that the said notices are unclaimed. Therefore, this Court is of the opinion that it is a deemed service on the respondents 1 to 3.

The learned counsel appearing for the petitioner would contend that the trial court committed a material irregularity in passing the impugned orders in violation of the mandatory procedure as contemplated under Sections 23(23) and 26(3) of the Act. Apart from the same, the learned counsel also brought to the notice of the court about the previous litigation between the parties before the civil court vide O.S.No.1430 of 2005 filed by the respondents 1 to 3 against the petitioner, O.S.No.2553 of 2006 filed by the petitioner herein against the respondents 1 to 3. As far as the O.S.No.2553 of 2006 is concerned, it is a suit for injunction simplicitor filed by the petitioner against the respondents 1 to 3. On contest, the said suit was decreed in favour of the petitioner against the respondents 1 to 3 restraining them, their agents, or any other person on their behalf from interfering with the peaceful possession over the suit schedule property. As far as the suit in O.S.No.1430 of 2005 is concerned, it is a suit for partition for the suit schedule property filed by the respondents 2 and 3 against the petitioner which include the subject property in the present criminal petitions. Basing on them, the learned counsel for the petitioner submitted that the respondents 1 to 3 have suppressed these aspects in C.C.No.642 of 2006 filed before the IV Addl.Chief Metropolitan Magistrate, Hyderabad under the provisions of the Act. Therefore, he sought to quash the proceedings in both the criminal petitions.

A perusal of both the criminal petitions and material on record, the undisputed facts are that the respondents 1 to 3 herein filed a complaint under the provisions of the Act against the petitioner herein and obtained an ex parte interim order on

2.11.2006 in MP No.5003 of 2006 in SR No.6498 of 2006. Thereby, the petitioner herein was restrained from interfering with the peaceful possession of the respondents 1 to 3 by entering into their house. Aggrieved by the same, the petitioner filed an appeal in CrI.A.No.388 of 2006 before the V Metropolitan Sessions Judge (Mahila Court), Hyderabad. On 15.02.2007 the said appeal was dismissed by the learned Sessions Judge, however giving liberty to the petitioner to raise all his contentions before the lower court as the impugned order in the appeal is only an ex parte order and it is always open for the petitioner herein to bring all the facts before the court below and invite an order on merits. After dismissal of the appeal, the impugned orders dated 28.06.2007 came to be passed as there was no representation on behalf of the petitioner herein.

On a careful perusal of the provisions of the Act would reveal that under Section 12 of the Act, the Magistrate should take into consideration any domestic incident report. Under Section 23(2) of the Act, the Magistrate has to state reasons of his/her satisfaction before granting an interim order. Under Section 26(3) of the Act, it is incumbent upon the aggrieved person to inform the Magistrate in case any relief has been obtained in any proceedings and for non-mentioning of the same the aggrieved party is guilty of suppression of facts. A perusal of the interim orders passed in M.P.No.5003 of 2006 dated 2.11.2006 as well as the final orders passed in C.C.No.642 of 2006, dated 28.06.2007 would reveal that the Court below miserably failed to observe and appreciate any of these pre-conditions, thereby, a mistake has been crept in, in the orders passed by the court below. Further, even in the judgment of the

lower appellate Court vide CrI.A.No.388 of 2006, the learned appellate Judge, was pleased to observe as under:

“The appellant did not assail the order on its legality. But, a perusal of the lower Courts order would nevertheless show that it has not complied with the pre-condition laid down under Section 23(2) of the Act. Before granting an ex parte order, the Magistrate should be satisfied about the requirements of the order, which means that the Magistrate has to state the reasons of his satisfaction. But, the impugned order does not spell out any reasons. A question arises whether the court can go into the aspect of such legality without any assailment of the order.”

Even after the said orders, the lower court once again passed the final orders without any reasoning. Even on 28.06.2007 though a counter is not filed on behalf of the petitioner herein, nothing precluded the lower court from going into the merits of the case as put up by the respondents 1 to 3 herein, and after appreciating the same with reference to the evidence available and pass an appropriate order. Even other wise, for non-appearance of the petitioner herein though the ad-interim injunction granted on 2.11.2006 ex parte was made absolute, the main petition itself could not have been closed without giving any reasons. Thus, there is an error apparent in the orders passed by the Court below and the same is liable to be set aside. This Court feels that without going in to the merits of the case, on this ground alone CrI.P.No.13710 of 2010 is liable to be allowed.

Accordingly, CrI.P.No.13710 of 2010 is allowed thereby quashing the orders passed in C.C.No.642 of 2006 dated 28.06.2007 on the file of the IV Additional Chief Metropolitan Magistrate, Hyderabad. It is needless to mention that in view of the orders

passed in CrI.P.No.13710 of 2010, no further cause would survive in CrI.P.No.13709 of 2010 and accordingly it is closed.

Miscellaneous petitions, if any, pending in these criminal petitions shall stand closed.

P. KESHAVA RAO,J

Date:17.04.2018
Ccm



HONOURABLE SRI JUSTICE P. KESHA VA RAO



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