

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No. 716 of 2012

O R D E R:

This criminal revision case is filed by the petitioner aggrieved by the order dated 29.02.2012 passed in CrI.A.No.175 of 2002 by the I Additional Metropolitan Sessions Judge, Visakhapatnam, dismissing the appeal by confirming the order dated 04.12.2009 passed in DVC No.4 of 2009 by I Additional Chief Metropolitan Magistrate, Visakhapatnam, granting an order in favour of respondent Nos.1 to 3 herein to the effect that the petitioner herein shall not cause any domestic violence to them and not to dispossess them from the shared house where they are residing at present and the petitioner shall pay maintenance at the rate of Rs.4,000/- per month to each respondent payable on or before 10th of every month and also directing him to pay compensation of Rs.1,00,000/- to them within three months from the date of receipt of the said order.

The parties in this criminal revision case are referred to as they stood before the trial court in DVC No.4 of 2009.

The petitioners filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 seeking relief of restraining the respondent from dispossessing them from the house where they are residing and to direct him to pay maintenance and to pay compensation to them for causing mental and physical torture.

The brief facts of the case as narrated in the DVC are that, the marriage of petitioner No.1 with respondent was performed on 20.11.1999 and immediately after the marriage they lived at Visakhapatnam. During their wedlock, they were blessed with one daughter and son, who are petitioners 2 and 3 respectively. At the time of marriage, respondent was working as Senior Superintendent in Airport Authority of India, Visakhapatnam and he availed house loan from his employer, which was subsisting as on the date of filing DVC. It is stated that respondent developed illicit intimacy with another woman and leading luxurious life and when petitioner No.1 questioned, he grew wild and used to beat her. Further, respondent indebted to various persons and the father of petitioner No.1, discharged those debts. The respondent is trying to alienate the house property during subsistence of the loan availed by him. If he is allowed to sell the house, the petitioners will become destitutes. Though, respondent is getting monthly salary of Rs.35,000/-, he neglected to maintain the petitioners besides not paying school fee to the children and attending household needs.

Respondent filed counter and opposed the petition *inter alia* contending that in the year 1999 he constructed a house by availing loan from his employer and also by taking loans from private persons and he is paying interests to them every month. Besides, he has been looking after the needs of his children by paying their school fee. Petitioner No.1 is objecting him from paying interests to private financiers and thereby he has been facing threats from them; she is

forcibly taking amounts from him and sending the same to her parents. The petitioner and respondents are living under one roof and he has been looking after their needs and therefore, the petitioners are not entitled to the reliefs as claimed in the DVC.

The trial court having considered the fact that the parties are living under one roof and the respondent is claiming that he is looking after the educational expenditure of his children and he has been working as Senior Superintendent in Airport Authority, Visakhapatnam, and getting a monthly salary of more than Rs.30,000/- and also having considered the pathetic condition of the lady, who has two little children, allowed the DVC by order dated 04.12.2009 and directed the respondent not to cause any domestic violence to the petitioners and not to dispossess them from the shared house where they are residing at present and also directed to pay maintenance of Rs.12,000/- per month to petitioner Nos.1 to 3 (at the rate of Rs.4,000/- to each petitioner) on or before 10th of every month and further directed to pay compensation of Rs.1,00,000/- to the petitioners within three months from the date of receipt of the copy of the said order.

Aggrieved, respondent filed CrI.A.No.175 of 2010 before I Additional Metropolitan Sessions Judge, Visakhapatnam. However, the said appeal was dismissed by confirming the order of the trial court in DVC No.4 of 2009. Being unsuccessful in both the courts below, the instant criminal revision case is filed by respondent.

Heard.

The main argument advanced by learned counsel for revision petitioner is that even as per the observations made by the trial court in its order, he is looking after the needs of his children as well as his wife and admittedly all of them are living under one roof and in such situation, there was no pressing requirement for passing any order granting compensation of Rs.1,00,000/- to the wife and children. However, the trial court without taking into consideration the factual scenario, passed the order. Further, the lower appellate court without appreciating the facts and the evidence available on record, simply confirmed the order of the trial court. He, thus, prayed to allow the criminal revision case by setting aside the orders of the courts below.

On the other hand, learned counsel for respondent Nos.2 to 4/petitioners while supporting the orders of the courts below would submit that except the fact that both the parties lived under one roof, petitioner never looked after his wife and children well and he only provided their bare necessities and considering the fact that mere meeting the educational expenditure was not sufficient, the trial court rightly awarded maintenance and compensation and directed respondent not to dispossess the petitioners from the shared house. Learned counsel sought to project that subsequent to passing of the impugned order, series of events have taken place viz., the petitioner left the house and his whereabouts are practically not known and since he is not complied with the order of

the trial court, and interim order dated 04.06.2012 passed by this court in the above revision case, the trial court issued NBW against him, which is yet to be executed because the whereabouts of the petitioner/ respondent are not traced out even as on today. The main point that is urged by the learned counsel is that petitioner has executed different ostensible sale deed dated 27.08.2012 in respect of the house property in favour of one Penumatsa Srinivasa Rao, who is none other than his own brother and also his General Power of Attorney, so as to neck out the respondents from the shared house. Due to these subsequent events, respondents are facing much hardship. He thus, prayed to dismiss the criminal revision case.

The point for consideration is:

“Whether there are any merits to allow the criminal revision case ?”

POINT:

As already stated, the main ground on which the petitioner seeks cancellation of the orders of the courts below is that he has been looking after all the requirements of respondents and they are all residing under one roof and there was no need or requirement for granting separate maintenance or compensation to them. Admittedly, a shared accommodation was there for parties. However, the ground realities, which are narrated by the counsel for respondents are altogether different.

It is true that the trial court noted that the petitioner was looking after the educational expenditure of his children and all of

them were residing under one roof. However, the reality is that in order to get away from the order of the trial court, petitioner had executed a registered sale deed dated 27.08.2012 in favour of his brother, namely, Penumatsa Srinivasa Rao, who is also his General Power of Attorney Holder in respect of the house property and the purchaser it appears, threatens the respondents to vacate the premises so as to nullify the order of the trial court as per which the petitioner was directed to provide shared accommodation in the house. Therefore, as rightly submitted by the learned counsel for respondents, if the order of the trial court is cancelled by allowing the criminal revision case, virtually, respondents will be thrown out of the house and they will be rendered shelterless.

So far as the maintenance aspect is concerned, no doubt, at the time of enquiry in DVC, it appears, the petitioner submitted before the trial court that he was looking after the educational expenditure of his children. Considering the same, the trial court thought fit to provide some financial assistance to wife and children and accordingly, awarded maintenance of Rs.4,000/- per month to each of the respondents. The reality now appears to be that the petitioner is not paying the said amount also. At the time of enquiry in DVC No.4 of 2009, petitioner was working as Superintendent in Airport Authority, Visakhapatnam and was getting Rs.30,000/- per month. In that view, the trial court granted Rs.12,000/- per month to his wife and children, which cannot be said to be exorbitant. Now the tragedy is that the petitioner is not paying any amount as

awarded by the trial court and it appears NBW was issued against him, which is pending execution. On a holistic view of the matter, if the criminal revision case is allowed, the respondents will become destitutes and thereby, the very object of DVC Act will be defeated. Therefore, this Court finds no merits in the criminal revision case.

Accordingly, the criminal revision case is dismissed by confirming the order dated 04.12.2009 passed in DVC No.4 of 2009 by the I Additional Chief Metropolitan Magistrate, Visakhapatnam and confirmed by I Additional Metropolitan Sessions Judge, Visakhapatnam, by order dated 29.02.2012 passed in CrI.A.No.175 of 2002.

Miscellaneous Petitions, if any, pending in this criminal revision case shall stand dismissed.

Dt.23.11.2018
Mjl/*

U.DURGA PRASAD RAO, J

