

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

* * * *

HONOURABLE SRI JUSTICE E.V.VENUGOPAL

Criminal Revision Case No.1509 of 2009

Between:

N.Praveen Kumar

...Petitioner

v.

Smt. N.Madhu Sailaja & Another.

...Respondents

JUDGMENT PRONOUNCED ON: 13.07.2023

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

E.V.VENUGOPAL, J

*** THE HON'BLE SRI JUSTICE E.V.VENUGOPAL**

+ Criminal Revision Case No.1509 of 2009

% 13.07.2023

Between:

Bitra Venkateswara Rao & Another

...Petitioners

v.

The State Anti Corruption Bureau,
Hyderabad Range,
Rep. by Special Public Prosecutor

...Respondent

! Counsel for Petitioner

: Ms.Kiranmayee representing on
behalf of M/s. D.Sangeetha Reddy

^ Counsel for the respondents

: Sri Nazeer Khan, for R.1
The learned APP for the State

<GIST:

> HEAD NOTE:

? Cases referred

¹ (2012) 3 SCC 183

THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL REVISION CASE No.1509 OF 2009

ORDER:

1 This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed by the petitioner, challenging the judgment, dated 03.06.2009, passed in Criminal Appeal No.178 of 2009 by the learned Additional Metropolitan Sessions Judge, Cyberabad, NTR Nagar, Hyderabad, whereunder and whereby the order dated 07.07.2007 passed in DVC No.3 of 2007 on the file of the Court of the III Metropolitan Magistrate, Cyberabad at L.B.Nagar insofar as the present petitioner was set aside partly.

2 Heard Ms. Kiranmayee, learned counsel appearing on behalf of M/s.D.Sangeetha Reddy, learned counsel for the petitioner and Sri Nazeer Khan, learned counsel for the first respondent herein and the learned Public Prosecutor for the respondent - State. Perused the record.

3 The facts germane for filing of the present criminal revision case, succinctly, are that the first respondent herein who is the aggrieved person filed DVC No.3 of 2007 on the file of the Court of the III Metropolitan Magistrate, Cyberabad at L.B.Nagar under Sections 20, 22 and 23 of Protection of Women from the Domestic Violence Act, 2005 for awarding maintenance, compensation and damages and also for granting interim relief in her favour and the

minor son. The case of the aggrieved person was that she is the legally wedded wife of the petitioner herein. Sometime after the marriage, the petitioner herein and his parents harassed her mentally and physically. When she conceived pregnancy, the petitioner and his parents threatened her that they will desert her if female child is born. During pregnancy, the petitioner used to harass her sexually and used to commit sodomize on her under force due to which she developed perianal abscess which was operated and drained and would was kept open for a period of one and half years. She had to undergone six major operations including colostomy and she suffered lot of physical and mental harassment. Subsequently, she gave birth to a male child who also developed heart problem. The petitioner and his parents did not even pay expenditure for the treatment of her son and insister her parents to pay. The petitioner is having extramarital relationship with another woman. The petitioner attempted to commit suicide on 02.10.2006. The first respondent lodged a complaint against the petitioner and his parents under Section 498-A of IPC wherein except the petitioner his parents were arrested. The petitioner and his parents retained the gold ornaments and streedhana with them. Since the first respondent was unable to maintain herself apart from her son, she filed the above DVC for the reliefs sought for.

4 The petitioner resisted the petition filed by the first respondent on various grounds. The main contention of the petitioner was that the first respondent went to her parents' house for delivery and stayed there for one and half years without any reasonable cause. After the marriage the first respondent forced the petitioner to put up a separate residence and even after he put up a separate residence, the first respondent went on harassing the petitioner due to which he consumed sleeping pills and attempted to commit suicide. It is further submitted that the first respondent left the company of the petitioner on her volition and hence she is not entitled to maintenance.

5 During the course of trial, on behalf of the aggrieved person i.e. the first respondent herein she herself was examined as P.W.1 apart from her father as P.W.2 and got marked Exs.P.1 to P.22. On behalf of the petitioner, the petitioner himself got examined as R.W.1 and exhibited Exs.D.1 to D.15.

6 After full-fledged trial, the learned trial Court dismissed the DVC No.3 of 2007 mainly on the ground that the Domestic Violence Act came into force on 26.10.2006 and the Act has no retrospective effect and that the alleged accusations with regard to the harassment are prior to 03.10.2006 and so the Act, 2005 has no application to the case on hand.

7 Aggrieved, the first respondent preferred CrI.A.No.178 of 2009 on the file of Additional Metropolitan Sessions Judge, Cyberabad, NTR Nagar, Hyderabad. The learned appellate Court, by judgment dated 03.06.2009, allowed the appeal insofar as against the petitioner herein and directed the petitioner herein to pay Rs.5,000/- p.m. towards maintenance of the aggrieved person and her child from the date of filing of the petition in DVC No.3 of 2007. The appellate Court further directed the petitioner herein to pay an amount of Rs.50,000/- to the first respondent herein for causing physical injuries and mental agony. However, the appellate Court dismissed the DVC as against the respondent Nos.1, 2 and 4 before it. Hence the present criminal revision case.

8 The learned counsel for the petitioner argued that the appellate court failed to consider the fact that the Act 2005 has no retrospective effect and since the acts alleged to have been committed by the petitioner were prior to 26.10.2006, the trial Court has rightly dismissed the DVC. But without taking into consideration the said fact, the appellate Court erred in allowing the appeal insofar as the petitioner herein is concerned.

9 On the other hand, the learned counsel for the first respondent vehemently contended that the impugned judgment does not warrant any interference from this Court as it is based on sound reasoning.

10 Adverting to the primary objection raised by the learned counsel for the petitioner that since the DVC Act came into force with effect from 26.10.2006, and since the harassment allegedly meted out by the petitioner was earlier to 26.10.2006, the complaint is not maintainable, the Madras High Court in the case of Mr.R.Seran Vs. Mrs.R.Vijayabharathi held as under:

5. Section 2(a) of the Act includes within its ambit a woman who is or has been in a domestic relationship with the respondent and has allegedly been subjected to domestic violence by the respondent. Section 2(f) of the Act defines domestic relationship. The words used are a relationship between two persons who live or have, at any point of time, lived together in a shared household. In V.B.Bhanot Vs. Savita Bhanot reported in (2012) 3 SCC 183, it has been held by the Honourable Supreme Court that the language employed in Section 2(f) indicates that two persons shall be deemed to be in a domestic relationship if they had lived together at any point of time, even prior to coming into force of the Act and are not living together, after coming into force of the Act. It is also held that the use of words who live or have at any point of time lived together in the section is an indicator of the legislative intent and makes it quite explicit that a person will be deemed to be in domestic relationship even if he had lived together with the respondent at a point prior to coming into force of the Act and it would be sufficient to say that domestic relationship means a relationship between two persons.

6. The Honourable Supreme Court further held that the definitions of domestic relationship as set out under 2(f) of the Act, includes a relationship in the nature of marriage[¶] which is held to be a relationship akin to common law marriage as set out in D.Velusamy Vs. D.Patchaiamma reported in AIR 2011 SC 479 and therefore, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the Act does not arise.

7. In fact, the domestic relationship as laid down in Section 2(f) of the Act includes any relationship either living at the present moment or have at any point of time in the past lived together in a shared household. The question, whether a woman, who was in domestic relationship with the respondent and was subjected to domestic violence prior to coming into force of the Act falls within the definition of aggrieved person [¶] so as to make her entitled to invoke the jurisdiction of the court under Section 12 of the Act for various reliefs provided for under the Act, was specifically dealt with by the Honourable Supreme Court in Savita Bhanot's case (cited supra). It is also clearly held that the protection of women from Domestic Violence Act has retrospective effect.

8. Learned counsel appearing for the petitioner relied on a decision in V.Pounraj and others Vs. Pckia Lakshmi @ Vani reported in 2008(1) MLJ (Crl.) 984, in which a single Judge of this court has held that Divorced wife is not entitled to file a complaint under the provisions of Protection of Women from Domestic Violence Act, 2005 because the complainant should have domestic relationship with the respondent to file a complaint. In the light of the decision rendered by the Honourable Supreme Court in V.B.Bhanot Vs. Savita Bhanot reported in (2012) 3 SCC 183, the above said ruling rendered by a single bench of this court cannot be applied.

11 Further, in **V.D.Bhanot Vs. Savita Bhanot**¹, the Hon'ble Apex

Court held as follows:

5. Before the Delhi High Court, the only question which came up for determination was whether the petition under the provisions of the PWD Act, 2005, was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26th October, 2006. After considering the constitutional safeguards under Article 21 of the Constitution, vis-à-vis, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. The learned Judge, accordingly, set aside the order passed by the Additional Sessions Judge and directed him to consider the appeal filed by the Respondent wife on merits.

8. The attitude displayed by the Petitioner has once again thrown open the decision of the High Court for consideration. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.

¹ (2012) 3 SCC 183

12 Having regard to the principle laid down by the Madras High Court as well as the Hon'ble Apex Court I am of the considered opinion that the complaint is maintainable even though the alleged act of harassment took place even before the Act, 2005 came into force. This point is answered accordingly.

13 As seen from the record, it is the categorical evidence of the first respondent that the petitioner herein with the active connivance of his parents subjected her to both physical and mental harassment. Of course, it may be a contention of the petitioner that there is no proof of such harassment. But, just to implicate the petitioner in an offence, no married woman can dare to explain the things that happened within the four walls of their matrimonial home in public and lodged a complaint on that allegation. The first respondent categorically deposed that the petitioner used to commit unnatural offence against her sexually that too when she was pregnant, because of which she suffered a lot. Ex.P.11 medical report and Exs.P.12 t P.15 discharge summaries amply prove the oral evidence of P.W.1 This itself shows the cruelty and malevolence of the petitioner towards his wife, which forced the first respondent to live separately from the petitioner. The learned trial Court simply relied on the technicalities and observed that since the Act came into force only on 26.10.2006 and since the alleged cause of action was prior to it, the petitioner is not liable to pay maintenance to his wife.

However, being not able to bear with the harassment meted out by the petitioner, the first respondent is justified in living separately from her husband and in-laws. The learned appellate Court by observing that in the given circumstances the petitioner is liable to maintain his wife and son. Non-payment of maintenance amount is a domestic violence within the meaning of Section 3 of the Act and it is a continuing offence. Admittedly, the petitioner filed the petition for payment of maintenance as per Section 20 of the Act, 2005.

14 As there is no definite proof with regard to the income of the petitioner, the direction of the appellate court to the petitioner to pay an amount of Rs.5,000/- p.m. to the first respondent and her son towards maintenance also does not call for interference.

15 Taking the totality of circumstances into consideration, this criminal revision case is devoid of any merit and is accordingly dismissed.

16 Miscellaneous petitions if any pending in this criminal revision case shall stand closed.

E.V.VENUGOPAL, J.

Date: 13.07.2023
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