

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD
CORAM:**

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN
+ CRIMINAL PETITION NOS.2085 AND 2086 OF 2019**

% Delivered on: 11-03-2022

Both Criminal Petitions:

Between

S.Kumara Swamy

.. Petitioner

Vs.

\$ The State of Telangana, rep.by its Public Prosecutor
T.S. High Court, Hyderabad & another

.. Respondents

! For Petitioner : Sri P.Vamsheedhar Reddy,
Lr.Counsel.

^ For Respondent No.1 : Sri Khaja Vizarath Ali
Asst. Public Prosecutor

For Respondent No.2 : Smt.S.A.V.Ratnam
Lr.Counsel

< Gist :

> Head Note :

? Cases Referred :

THE HON'BLE SRI JUSTICE K.LAKSHMAN**CRIMINAL PETITION NOS.2085 AND 2086 OF 2019**

Lis involved in both these Criminal petitions is one and the same and parties are common, these petitions are being heard in common and disposed of with the following

COMMON ORDER:

1-a. The Crl.P.No.2085 of 2019 is filed under Section - 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the order dated 01.10.2018 passed in Crl.M.P.No.586 of 2018 in DVC No.17 of 2011 pending on the file of the Judicial Magistrate of First Class/Special Mobile Court-Cum-XI Metropolitan Magistrate, Cyberabad, Ranga Reddy District. Whereas, the Crl.P.No.2086 of 2019 is filed to quash the order dated 01.10.2018 passed in Crl.M.P.No.584 of 2018 in the said DVC.

2. Heard Sri P.Vamsheedhar Reddy, learned counsel for the petitioner, learned Public Prosecutor representing State and Smt. S.A.V.Ratnam, learned counsel for the 2nd respondent herein. Perused the record.

3. The 2nd respondent herein, the wife of the petitioner, had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act') vide DVC No.17 of 2011 seeking certain reliefs against the petitioner herein. Vide order dated 18.03.2013, the Court below has allowed the said application in part and directed the petitioner herein to return the dowry amount of Rs.5,00,000/-, pay an amount of Rs.5,00,000/- towards compensation to the 2nd respondent herein within two months from the date of the order, further directed the petitioner herein to pay an amount of Rs.10,000/- to the 2nd respondent towards maintenance and also towards procuring a residential accommodation by her. The petitioner herein is further directed to pay the said amount of maintenance from the date of the petition and on or before 5th of every succeeding month.

4. Feeling aggrieved and dissatisfied with the said order, the petitioner herein, filed a revision vide Crl.R.C.No.1107 of 2015. This Court vide order dated 09.02.2016 modified the

said order dated 18.03.2013 in DVC No.17 of 2011 and directed the petitioner herein to pay an amount of Rs.5,00,000/- towards compensation as directed by the Court below on or before 25.03.2016 and as far as the maintenance granted by the Court below the same is reduced to Rs.10,000/- to Rs.9,000/- per month payable by the petitioner herein from the month of March, 2016, continue to pay the same regularly on or before 10th of every succeeding month and the remaining order of the Court below, is unaltered.

5. The petitioner herein had filed four applications vide Crl.M.P.No.584 of 2018, 585 of 2018, 565 of 2018 and 765 of 2018 under Section 125 (3) of Cr.P.C. read with Section 31 of the Act, seeking to punish the petitioner herein for non-compliance of the order dated 18.03.2013 passed in the DVC, as modified by order dated 09.02.2016 in Crl.R.C.No.1107 of 2015. The applications vide Crl.M.P.No.585 of 2018 and 765 of 2018 were closed since the petitioner herein has complied with the said order insofar as the payment of costs and

arrears of maintenance. The Crl.M.P.No.584 of 2018 and 586 of 2018 are filed seeking to punish the petitioner for non-compliance of the order dated 18.03.2013 as modified by order dated 09.02.2016 by non-paying dowry amount and compensation amount. Vide docket orders both dates 01.10.2018, learned Magistrate issued N.B.W. against the petitioner herein on the ground that the petitioner refused to receive the notice.

6. Challenging the said orders, both dated 01.10.2018, the petitioner herein filed the present criminal petitions seeking to set aside the said docket orders.

7. Sri P.Vamsheedhar Reddy, learned counsel for the petitioner would submit that the very petitions filed by the 2nd respondent under Section 125 of Cr.P.C. alleging non-compliance by the petitioner herein of the order dated 18.03.2018 passed in DVC as modified vide order dated 09.02.2016 in Crl.R.C.No.1107 of 2015 for payment of dowry amount and compensation are not maintainable. The 2nd respondent has to file a suit for recovery of the said amount

or any other proceedings but she cannot file applications under Section 125(3) of Cr.P.C. Without considering the said fact, the learned Magistrate issued N.B.Ws. against the petitioner herein. The said docket orders both dated 01.10.2018 are in violation of the procedure laid down under the Act and also the Protection of Women from Domestic Violence Rules, 2006 (for short, 'the Rules'), more particularly procedure laid down under Rule 12 of the Rules. According to him, learned Magistrate erroneously issued N.B.Ws against the petitioner herein. With the said submissions, he sought to quash the docket orders both dated 01.10.2018.

8. Smt. S.A.V.Rathnam, learned counsel appearing for the 2nd respondent, would submit that there is no separate mechanism in the Act and the Rules made thereunder for executing the order passed by the Magistrate in any application filed under the provisions of the Act. She would further submit that the 2nd respondent/wife can ask for different reliefs under Section 12 of the Act and accordingly she has filed the said applications vide DVC No.17 of 2011.

Learned Magistrate has granted several reliefs to the 2nd respondent vide order dated 18.03.2013 in DVC. The petitioner herein, instead of complying with the said order, filed the revision vide Crl.R.C.No.1107 of 2015 wherein this Court vide order dated 09.02.2016 modified the order dated 18.03.2013 passed by the learned Magistrate. Even then, the petitioner herein did not comply with the said order. Therefore, the 2nd respondent herein had rightly filed the above said four applications under Section 125(3) of Cr.P.C. read with Section 31 of the Act, seeking to punish the petitioner herein for violation of the said order dated 18.03.2013 as modified vide order dated 09.02.2016. Two applications filed for alleged violation of non-payment of costs and arrears were closed since the petitioner has complied with the same but the petitioner herein has not complied with the order dated 18.03.2013 to return dowry amount of Rs.5,00,000/- and payment of compensation of Rs.5,00,000/-

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9. Referring to the Section 31 of the Act, Rule 6(5) and Rule 12 of the Rules, Smt. S.A.V.Ratnam, learned counsel appearing for the 2nd respondent would submit that the said applications filed by the petitioner under Section 125(3) read with Section 31 of the Act are maintainable. Referring to memo, dated 06.09.2018, she would further submit that when the 2nd respondent tried to serve notice on the petitioner herein as per the directions of the learned Magistrate, when the petitioner appeared before XIV Metropolitan Magistrate for the offence under Section 498-A of IPC, he refused to take the notice and the Advocates appeared in the Court have witnessed the same. Even the Advocate on record refused to take the notice on the pretext that the respondent had instructed his counsel not to accept the said notice. The Advocate by name Sri G.Venkateshwara Rao had signed the said memo in proof of the same. Therefore, there is no violation of procedure much less procedure laid down under Rule 12 of the Rules by the learned Magistrate while passing

orders both dated 01.10.2018 by issuing N.B.W. against the petitioner herein.

10. She would further submit that though the order is dated 18.03.2013 in DVC No.17 of 2011 and the same was modified by this Court vide order is dated 09.02.2016 in Crl.R.C.No.1107 of 2015, the petitioner herein failed to comply with the said order. The petitioner herein, instead of complying with the said order, filed the present criminal petitions only to drag on the proceedings. With the said submissions, she sought to dismiss both the criminal petitions.

11. In view of the rival contentions, it is relevant to mention that Chapter-IV of the Act deals with the procedure for obtaining orders of reliefs. Section 12 of the Act deals with the application to the Magistrate and as per the said proviso, the aggrieved person can seek several reliefs against the husband. Accordingly, the petitioner herein had filed any application under Section 12 of the Act vide DVC No.17 of 2011 and the same was ordered by the learned Magistrate on

18.03.2013, granting the above said reliefs to the 2nd respondent herein. The petitioner herein had filed Crl.R.C.No.1107 of 2015 and this Court on 09.02.2016 had modified the order dated 18.03.2013 to the extent indicated above. The petitioner herein had filed the above four applications under Section 125(3) of Cr.P.C read with Section 31 of the Act, complaining violation of the above said orders by non-return of dowry amount and non-payment of compensation as awarded by the learned Magistrate and confirmed by this Court vide order dated 09.02.2016.

12. In view of the rival submissions, it is relevant to extract Sections 23, 31 and 32 of the Act and Rule 6(5), 7 and 12 of the Rules which are as follows:-

Sec. 31. Penalty for breach of protection order by respondent.—

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

Sec. 32. Cognizance and proof.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

Sec.23:- Power to grant interim and *ex parte* orders.—

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

Rule 6 (5) of the Rules:-

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973.

Rule 7 of the Rules:-Affidavit for obtaining *ex-parte* orders of Magistrate.—

Every affidavit for obtaining ex-parte order under sub-section (2) of section 23 shall be filed in Form III.

Rule 12 of the Rules:- Means of service of notices.—

(1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of person concerned.

(2) The service of notices shall be made in the following manner, namely:—

(a) The notices in respect of the proceedings under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person, as the case may be.

(b) The notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises.

(c) For serving the notices under section 13 or any other provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted.

(d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of the Civil Procedure Code, 1908 (5 of 1908) or Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

(3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorised to serve the notices under the Act, that service has been effected appropriate orders shall be passed by the court on any pending application for interim relief, after hearing the complainant or the respondent, or both.

(4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.

13. As stated above, Section 31 of the Act deals with the penalty for breach of protection order by the respondent. As per Rule 6(5) of the Rules, the applications under Section 12 of the Act shall be dealt with and the orders enforced in the same manner laid down, under Section 125 of the Cr.P.C. Therefore, it is clear that the orders that are passed under Section 12 of the Act shall be enforced in the same manner laid down under Section 125 of the Cr.P.C. Thus, the language in Rule 6(5) of the Rules, is very clear with regard filing of applications in enforcement of the orders passed under Section 12 of the Act. In this regard, it is relevant to extract Section 125(3) of Cr.P.C.:-

If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Thus, the aggrieved person can file applications under Section 125 of Cr.P.C. for enforcement of the orders passed by the learned Magistrate under Section 12 of the Act.

14. In view of the same and also the language used in Rule 6(5) of the Rules and Section 31 of the Act, the contention of the learned counsel for the petitioner that the petition filed by the 2nd respondent under Section 125(3) of the Cr.P.C. alleging non-compliance of the orders passed under Section 12 of the Act is not maintainable is unsustainable.

15. According to this Court, the applications filed by the 2nd respondent under Section 125(3) of the Cr.P.C. complaining violation of orders passed by learned Magistrate in DVC 17 of 2011 dated 18.03.2013 as modified by this Court vide order

dated 09.02.2016 in CrI.R.C.No.1107 of 2018 are maintainable.

16. As stated above, the grievance of the 2nd respondent is that the petitioner failed to return dowry amount of Rs.5,00,000/- and not paid an amount of Rs.5,00,000/- towards compensation as ordered by the learned Magistrate in DVC No.17 of 2011 dated 18.03.2013 modified by order dated in CrI.R.C.No.1107 of 2015. Therefore, the said applications vide CrI.M.P.Nos.584 and 586 of 2018 in DVC No.17 of 2011 filed by the 2nd respondent under Section 125(3) of Cr.P.C. complaining violation of the orders both dated 18.03.2013 in DVC No.17 of 2011 as modified by this Court vide order dated 09.02.2016 in Cr.R.C.No.1107 of 2015 are maintainable.

17. With regard to other contention of the learned counsel for the petitioner that the Court below without serving notice on the petitioner herein in compliance of the procedure laid down under Section 12 of the Act issued N.B.W. against the petitioner herein. As stated above, the Rule 12(3) of the

Rules deals with the procedure to serve notice. According to the learned counsel appearing for the petitioner, learned Magistrate did not serve notice on the petitioner in Crl.M.P.Nos.584 of 2018 and 586 of 2018 in DVC No.17 of 2011 and issued N.B.Ws. on the strength of the memo filed by the 2nd respondent. According to the learned counsel for the 2nd respondent, the learned Magistrate has permitted/directed the 2nd respondent to serve notice on the petitioner herein. When the 2nd respondent tried to serve notice on the petitioner on his appearance in Calendar Case filed against him for the offence under Section 498-AIPC pending on the file of the XIV Metropolitan Magistrate, he refused to receive the said notice and the Advocates who were present in the open Court have witnessed the same. Even the Advocate on record appeared for the petitioner in the said Calendar Case also refused to take notice on the pretext that his client instructed not to accept the said notice.

18. The 2nd respondent has filed a copy of the memo dated 06.09.2018 to the said effect. In the said memo, one

G.Venkateshwara Rao, Advocate, signed as witness stating that the petitioner refused to receive the notice. The said fact would reveal that notice was not served on the petitioner in terms of Rules 12(2) of the Rules. Whether the petitioner refused to receive the notice is a question of fact. However, the order passed by the learned Magistrate under Section 12 of the Act, dated 18.03.2013 in DVC No.17 of 2011 is modified by this Court vide order dated 09.02.2016 in Cr.R.C.No.1107 of 2015,

19. Considering the said facts and to give an opportunity to the petitioner herein, these Criminal Petitions are disposed of. Both docket orders both dated 01.10.2018 passed Crl.M.P.Nos.586 and 584 of 2018 in DVC No.17 of 2011 pending on the file of the Judicial Magistrate of First Class/Special Mobile Court-Cum-XI Metropolitan Magistrate, Cyberabad, Ranga Reddy District herein are quashed. The matter is remanded back to the learned Magistrate to pass appropriate orders in accordance with law in Crl.M.P.Nos.584 and 586 of 2018 in DVC No.17 of 2011. The petitioner shall

appear before the learned Magistrate in Crl.M.P.No.584 and 586 of 2018 in DVC No.17 of 2011 on the next date of hearing without fail. If the petitioner fails to appear before the learned Magistrate on the next date of hearing, the learned Magistrate is at liberty to take steps in accordance with law. The petitioner shall cooperate with the learned Magistrate in disposing of the above said two applications on merits in accordance with law.

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

K. LAKSHMAN, J

Date: 11.03.2022.

Note: L.R.copy to be marked.
b/o.Vvr.