

HIGH COURT OF KARNATAKA

Date of Decision: 28th February 2024
Criminal Revision Petition No. 14 of 2019

SRI B V MOHAN BABU ...PETITIONER**Versus****SMT. BHAVYA A ...RESPONDENT****Legislation:**

Section 12, 18, 20 of the Protection of Women from Domestic Violence Act, 2005 (DV Act)

Sections 498A, of the Indian Penal Code (IPC)
3 and 4 of the Dowry Prohibition Act

Subject:

Petition seeking to quash the order by the LXXI Additional City Civil and Sessions Judge, Bengaluru, granting relief to the respondent under the DV Act, including maintenance and residence rights.

Headnotes:

Criminal Revision Petition – Dismissal – Domestic Violence Act, 2005 - Marriage and Dowry Allegations – Respondent's claim of marriage in 2006 and dowry payment of Rs. 5 lakh. Assertion of domestic violence and harassment by the petitioner and his family, leading to the filing of a DV Act petition and a criminal case under Section 498A of IPC and the Dowry Prohibition Act. [Paras 2, 3]

Trial Court Findings – Conclusion of domestic violence under the DV Act. Order for the petitioner to pay Rs. 25,000 monthly maintenance, cover 50% of the child's educational expenses, and prohibition from committing domestic violence or interfering with the respondent's residence. [Paras 4]

Appeals and Re-Appreciation of Evidence – Dismissal of appeal by the First Appellate Court, upholding Trial Court's findings. [Para 4]

Petitioner's Contentions – Challenge on grounds of erroneous application of DV Act, questioning maintenance amount, and readiness to provide accommodation. [Paras 5, 6]

Respondent's Defense – Emphasis on petitioner's non-involvement at the time of the child's birth and continued domestic violence, justifying the need for DV Act's protection. [Para 7]

High Court's Observation – Confirmation of the Trial Court's decision, considering the petitioner's income and the necessity of maintenance and residence rights under DV Act. No substantial legal error found in the Trial Court's and First Appellate Court's decisions. [Paras 8, 9]

Decision:

Revision petition dismissed, upholding the orders of the Trial and First Appellate Courts. [Para 10]

Referred Cases:
Not specified.

Representing Advocates:

Sri Mithun Gerahalli A for petitioner
Sri P Prasanna Kumar for respondent

ORDER

This matter is listed for admission. Heard the learned counsel appearing for the respective parties.

2. The factual matrix of the case of the respondent before the Trial Court while seeking the relief under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') that her marriage was solemnised in the year 2006 and thereafter she has joined the matrimonial home. It is also her case that her parents have paid an amount of Rs.5/- lakh as dowry to the petitioner herein and his family members and out of the said Rs.5/- lakh, 1.6 lakh was given through cheque bearing No542396 dated 16.08.2006 to the account of the father of the petitioner. It is also her case that all of them have residing in a matrimonial home situated at No.1054, 1st floor, 2nd Main, KHB Industrial area, Yelahanka New Town, Bengaluru. The said property is the self-acquired property of the husband and he had purchased the same vide sale deed dated 17.04.2003 and the said document is also marked as Ex.P14. A girl child was born out of the said wedlock. The husband and the family members did not visit the respondent to see the child. It was in fact the family members of the respondent who pleaded the petitioner and his family members to take back the respondent and her daughter. The petitioner denied to take back the respondent along his daughter till the respondent's parents gave a share of their house property in the name of the petitioner and his family members. It is also her case that

family members have continued to treat her and her daughter in a heinous manner causing severe harassment and hence, case is also filed under Section 498A of IPC along with Section 3 and 4 of the Dowry Prohibition Act and the petition is also filed for the divorce by the petitioner herein. When such being the situation, the respondent filed the petition seeking protection under the DV Act.

3. The learned counsel for the respondent appeared and filed the objection statement denying the averments made in the C.Misc.No.459/2011 and the respondent herein was examined as PW1 and got marked the documents at Ex.P1 to P63. On the other hand, husband also examined as RW1 and also got examined two witnesses as RW2 and RW3 and got marked the documents at Ex.R1 to R19.

4. The Trial Court having considered the material available on record comes to the conclusion that there is a case under the DV Act since the petitioner herein and his family members even did not go to see the child when the child was born and the same is also evident from the record and also comes to the conclusion that the respondent is not having any separate residence and hence, allowed the petition filed under Section 12 of the DV Act and ordered to pay an amount of Rs.25,000/- per month towards maintenance and directed to pay 50% of the educational expenses of his minor child till she attain the age of majority from the date of petition and the respondent or their men are prohibited from causing interference for possession of the petitioner over No.1054,

1st Floor, 2nd Main, KHB Industrial Area, Yelahanka New Town, Bengaluru and also the respondent or their men are prohibited from committing any act of domestic violence upon the respondent herein. Being aggrieved by the said order, an appeal is preferred in Crl.A. No.1440/2017 and the First Appellate

Court also on re-appreciation of both oral and documentary evidence placed on record comes to the conclusion that Trial Court has not committed any error in allowing the petition of the respondent and hence, dismissed the appeal. Being aggrieved by the concurrent finding of the Trial Court as well as the First Appellate Court, the present revision petition is filed before this Court.

5. The main contention of the counsel for the petitioner is that both the Courts have committed an error in appreciating the evidence on record. The counsel would vehemently contend that no material is placed before the Court to invoke Section 12 of the DV Act seeking a prohibitory order under Section 18, residence order under Section 19, monetary relief under Section 20 including household expenses. Even gone to the extent of granting an amount of Rs.25,000/- per month as maintenance though not granted any compensation. The counsel also would vehemently contend that the respondent has not produced any documentary evidence to establish the allegation of assault by the petitioner and his parents along with his sister on 21.08.2008 and the complaint was lodged on 29.11.2010 and case is registered for the offence punishable under Section 498A of IPC read with Section 3 and 4 of DV Act. The counsel would vehemently contend that both the Courts have failed to understand the intent of DV Act wherein the said Act applies only to aggrieved person who is victim of Domestic Violence and the virtue of which, she requires protection and where, she has been neglected to be maintained. Under such circumstances, not warranted to invoke Section 12 of DV Act. But here is the case that the petitioner is willing to take care of the respondent even ready to buy a house.

6. The counsel also would vehemently contend that when the petitioner was already gifted the property in favour of his sister and when the petitioner himself is not having any right to continue with the property and he

is staying separately and even now also, he is ready to purchase a house but respondent has put a condition that the petitioner has to buy a house without any loan on the apprehension that the petitioner may purchase the property and may leave the respondent and there cannot be such apprehension. The petitioner is ready to make provision for the respondent for comfortable stay. It is also contended that both the Courts without considering the admission of the respondent that she was drawing the salary of Rs.23,000/-, awarded an amount of Rs.25,000/- towards maintenance and the same is erroneous. The counsel also would vehemently contend that when revision petitioner is ready to take her back and provide her accommodation by purchasing the house, both the Courts ought not to have invoked the provisions of the DV Act and thereby, committed an error in allowing the petition of the respondent.

7. Per contra, the learned counsel appearing for the respondent would vehemently contend that both the Courts have taken note of the admission of the parties. It is the specific case of the respondent that when she gave birth to a girl child, none of the family members of the petitioner have visited her and same is also admitted in the evidence of RW1 and RW3 before the Trial Court and the same has been discussed by both the Courts and reasoned order has been passed. The counsel further submits that Section 498A case is registered and the same is also challenged and even discharge application is also filed and the same is also rejected and both the Courts taking note of the material available on record particularly the admission that when she gave birth to a girl child, none of the family members of the petitioner visited her and the same is elicited in the cross-examination of RW3 also that he himself and his son never visited the house of the respondent. Apart from that even admitted that after panchayath only she was taken back to the matrimonial home. But the fact that the respondent is staying in some of the portion of the premises of matrimonial home where

she has resided after the marriage and the said fact is not in dispute. The counsel also submits that when the petitioner allowed his parents to stay in the very same building, they making an attempt to remove the respondent from the said residence and hence, the Court has to take note of the very intention of the revision petitioner. The Trial Court also taken note of the admission on the part of RW1 that he is drawing salary of Rs.1,70,000/- and awarded an amount of Rs.25,000/- towards maintenance to the respondent and also to take care of the daughter and other provision is made to meet 50% of the educational expenses and also ordered not to interfere with the right of residence of the respondent thus, reasoned order is passed by the Trial Court and the same is confirmed by the First Appellate Court.

8. Having heard the learned counsel appearing for the respective parties, it discloses that no dispute that marriage was performed in the year 2006 and also the document at Ex.P14 clearly discloses that property was purchased in the name of the petitioner in the year 2003 itself that is prior to the marriage and now the contention is that very same property was gifted in favour of his sister in the year 2009 that is after the marriage of the respondent. When the respondent is residing in the matrimonial home after the marriage and also even material discloses that when RW1 and RW3 given admission that they did not visit the house of the respondent when she gave birth to a female child, the Court has to take note of the said fact into consideration. Apart from that criminal case also initiated against the petitioner and present petition is also filed and when the cases are pending against the petitioner, M.C. petition also filed by the petitioner seeking divorce and apart from that restitution of conjugal rights proceeding also initiated between the parties. Now, the contention that he will take care of the respondent and said contention cannot be accepted when all these material available on record.

9. The Trial Court also while considering the material available on record taken note of the admission on the part of the petitioner herein that he is drawing salary of Rs.1,70,000/- per month and out of that amount, only Rs.25,000/- was awarded in favour of the respondent and her daughter. The counsel for the respondent also submits that now the daughter is pursuing 11th standard and this petition was filed in the year 2011. Both the Courts taken note of the material available on record to invoke Section 12 of the DV Act and apart from that other aiding provision to give protection to her and to meet 50% of the educational expenses since an amount of Rs.25,000/- is awarded to meet the expenses of the wife as well as the child who is pursuing education. Hence, I do not find any error committed by both the Courts in considering the material available on record. Even regarding maintenance is concerned, inspite of evidence that she is earning Rs.23,000/-, the scope of the revision is also very limited. Only, if an order passed by the Trial Court and the First Appellate Court suffers from any legality and its correctness, under such circumstances, the Court can exercise the revisional jurisdiction. But in the case on hand, I do not find any error committed by the Trial Court even granting right of residence as well as maintenance as well as directing the petitioner to meet 50% of the educational expenses taking into note of the cost of the education and the First Appellate Court also confirmed the order of the Trial Court. Under such circumstances, I do not find any grounds to interfere with the findings of the Trial Court as well as the First Appellate Court by exercising the revisional powers and no grounds are made to admit the petition and to interfere with the finding of both the Courts.

10. In view of the discussions made above, I pass the following:

ORDER

The revision petition is dismissed.



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