

(2014) 08 KAR CK 0061

In the Karnataka High Court

Case No : Criminal Petition Nos. 6389 of 2013 and 795 of 2014

Dayanand Y.S.

APPELLANT

Vs

Manjula M.
 Manjula M. Vs Dayanand Y.S.

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Evidence Act, 1872 — Section 45

Protection of Women From Domestic Violence Act, 2005 — Section 12, 29

Citation : (2014) 08 KAR CK 0061

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : Subhas Reddy Y. and S.P. Kulkarni, Advocate for the Appellant; S.P. Kulkarni and Subhas Reddy Y, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Jawad Rahim, J.—The petitioner-husband has brought in question the judgment in CrI.A. No. 679/2012 preferred by the respondent-wife u/s 29 of the Protection of Women from Domestic Violence Act, 2005.

2. At the initial stage of hearing during admission, interim stay has been granted by this court directing the stay of the judgment of the trial court. The interim maintenance payable to the respondent wife towards her and the child's maintenance is fixed by the court-below at Rs. 10,000/-. This court while staying the order, directed the petitioner to pay or deposit Rs. 5,000/-.

3. Learned counsel, Mr. S.A. Kulkarni submits taking advantage of lack of clarity in the interim order the petitioner has not made any payment and thus respondent is severely prejudiced.

4. Learned counsel for the petitioner would submit that his client has been consistently contending before the trial court that the respondent is earning at least Rs. 40,000/- per month whereas the petitioner has to discharge the liability of loan and maintain his parents and other family members. In the circumstances

he was ordered to pay the monthly maintenance of Rs. 10,000/- to her.

5. He would then submit that the respondent had on her volition is referring to live with him and that the petitioner has been very loving husband. He submits that petitioner has not shied away from maintaining the child born to the couple. The amount is very heavy. He submits that petitioner has filed an application u/s 45 of the Evidence Act. He submits that signature on petition papers and on the vakalath are to be verified to know whether it is by the respondent or by somebody else, who has signed it. He submits that it would indicate that the appeal was not at the instance of the respondent. He would submit that the trial court instead of determining the maintenance payable at Rs. 5,000/- or 6,000/- has fixed at Rs. 10,000/- without any material available on record and therefore justifiably this court has stayed the order.

6. It could be seen that proceedings before the trial court are u/s 12 of the Domestic violence Act. victim or aggrieved person can seek such an action Such action could be initiated even by a Protection Officer or anybody interested in the welfare of the aggrieved person. In that view it becomes irrelevant whether the appeal action u/s 12 or 29 is by respondent or anybody interested in her.

7. Be that as it may, the petitioner has side tracked the issue by filing an application u/s 45 of the Evidence Act for verification of the signature on appeal memo which was not an issue relevant for consideration. We are now concerned with the order of the appellate court against the interim order of the trial court. The Trial court had fixed Rs. 6,000/- as maintenance to be given to the respondent wife for maintenance of her and child who is admittedly the genetic child of the couple. Rs. 6,000/- as determined by the trial court has been found by appellate court as unreasonable. The contention that the respondent is earning Rs. 40,000/- per month has not been substantiated by the petitioner.

8. Be that as it may, she is said to be an advocate in the chamber of a senior and therefore it is difficult to accept that she would be having a stipend of more than Rs. 40,000. Anyway on this issue, the trial court has to decide based on the material on record.

9. Admittedly, the petitioner is drawing a salary of Rs. 1,80,000/-. Even if we deduct Rs. 35,000/- towards liability for loan for his house and the expenses to maintain his parents, the available amount will be sufficient for him to pay the amount of Rs. 10,000/- fixed by the court-below as interim maintenance which is a reasonable amount. Rs. 10,000/- is fixed by trial court by way of interim order i.e., subject to the final order and thus I do not find no legal or factual errors committed by the appellate court in enhancing the interim amount from Rs. 6,000/- to 10,000/-. No grounds worth acceptance is made in this petition to entertain the petition which is disposed of confirming the orders passed by the appellate court subject to further orders to be passed by trial court at the trial.

10. The respondent is directed to cooperate in expeditious disposal of the case before the trial court and she shall not cause any impediment or procrastinate

the proceedings.

11. The trial court is directed to dispose of the matter within the outer limit of six months from the date of receipt of copy of this order.

12. In view of this order, the petition filed by the respondent wife seeking further enhancement is disposed of reserving her liberty to question during final adjudication.

The interim order shall date back to the filing of this petition. Further as of now the petitioner is directed to pay Rs. 10,000/- from the date of order of the appellate court and he shall pay 50% of the arrears within an outer limit of four months.