

(2011) 11 AP CK 0049

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2733 of 2010

K. Veerabhadra Rao, K. Krishna Kumari and K. Niranjan Rao	APPELLANT
Vs	
State and G. Bharati	RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307, 498A
Protection of Women From Domestic Violence Act, 2005 — Section 12, 20, 20(1),
20(2), 20(3)

Citation : (2012) 2 ALT(Cri) 209

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; C. Praveen Kumar for 2nd Respondent, for the Respondent

Judgement

G. Bhavani Prasad

1. The criminal petition is directed against the proceedings in D.V.C.No.1 of 2006, on the file of the Judicial Magistrate of First Class, Madanapalle, against the petitioners who desire quashing of further proceedings against them in exercise of the inherent powers of this Court u/s 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C").

2. The second respondent filed a petition u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "the Act"), against all the three petitioners herein alleging that petitioners 1 and 2 approached the father of the second respondent with a proposal to get her married to the third petitioner in February, 2002, and the father of the second respondent agreed to give 500 grams of gold to the second respondent and 120 grams of gold to the third petitioner apart from 3 kgs of silver at the time of the marriage. After the fixation of the marriage, the petitioners were alleged to have put forward various demands towards "Adapaduchu Katnam", "Talli Katnam", "Laanchanaalu" to

relatives, valuable gifts to relatives and friends, etc., which were complied with by the father of the second respondent by paying Rs.60,000/- in cash and getting sarees worth Rs.40,000/-. The father of the second respondent spent Rs.3,98,000/- towards gifts and "Laanchanaalu" and after the marriage in June, 2002, at an expense of Rs.3,00,000/-, the second respondent went to Agiripalli, Krishna District, to the matrimonial home where all the ornaments were kept with petitioners 1 and 2 for safeguarding. The second respondent's father was claimed to have given various other presents shown in the Annexures attached to the domestic violence petition. The second respondent claimed that the third petitioner started torturing her since he put up the family at Chennai in September, 2002, and illegal intimacy developed by the third petitioner with one Vijaya Lakshmi, resulted in serious mental agony to the second respondent. The first and second petitioners did not respond to the request of the parents of the second respondent to set right the matrimonial life of the second respondent. The petitioners 1 to 3 were claimed to be quarrelling with the second respondent for petty things and to be not allowing her even to prepare food. An attempt against her life in the last week of November, 2002, by the petitioners was also alleged and in the second week of December, 2002, the second respondent was allegedly to be attempted to be killed by setting fire to cooking gas. The petitioners were alleged to be abusing the second respondent in filthy language and to be not even attending to her medical needs during sickness. Several Panchayats were claimed to have been held between the parties, but in vain. Crime No.31 of 2003 of II Town Police Station, Madanapalle, u/s 498A read with Section 307 of the Indian Penal Code, 1860, was claimed to have been registered on a complaint to the police against the petitioners herein and others. The petition by the accused to quash the proceedings was stated to have been dismissed by the High Court. The second respondent further claimed that the third petitioner failed to maintain her and in spite of being a qualified Chartered Accountant, she was disabled from carrying on her profession. The gold jewellery and other valuable articles were claimed to have not been returned and in view of the various acts of domestic violence, the second respondent sought for the reliefs of return of gold jewellery, silver articles and cash shown in Annexures -A to D, payment of travelling expenses shown in Annexure -E, monetary reliefs as shown in Annexure -F and punishment of the petitioners herein for the offences committed by them if they fail to comply with the orders of the Court.

3. The Magistrate taking cognizance of the domestic violence case and proceeding with it, is the subject of challenge by the petitioners herein contending that O.P.No.56 of 2007, on the file of the Senior Civil Judge, Madanapalle, at the instance of the second respondent, for divorce and permanent alimony and for return of gold jewellery, ended in an order on merits directing the third petitioner to pay Rs.10,00,000/- towards the value of the gold jewellery, silver ornaments, household articles, etc. C.M.A.No.1024 of 2009 by the third petitioner and C.M.A.No.1065 of 2009 by the second respondent against the said order are pending. The relief claimed in the domestic violence case and

in O.P.No.56 of 2007 is identical concerning the refund of the amount paid at the time of the marriage and when a competent civil Court adjudicated the matter, the domestic violence case is an abuse of process of law. Therefore, the petitioners desired the further proceedings in D.V.C.No.1 of 2006 to be quashed.

4. Sri O. Manohar Reddy, Learned Counsel for the petitioners and Sri C. Praveen Kumar, Learned Counsel for the second respondent and Sri Rudresh Deshpande, Learned Counsel representing the learned Public Prosecutor/the first respondent are heard.

5. The point for consideration is whether the further proceedings in the domestic violence case against petitioners 1 to 3 have to be discontinued in exercise of the inherent powers of this Court.

6. The order in O.P.No.56 of 2007, on the file of the Senior Civil Judge, Madanapalle, dated 17.08.2009, shows that among the reliefs claimed by the second respondent herein was the relief for return of the gold jewellery given to her husband on the occasion of the marriage. The entitlement of the second respondent to the return of the jewellery and articles allegedly given at the time of the marriage was the subject of the third point dealt with by the civil Court in its order and the civil Court found, from Exs.A-6 and A-14-Photographs, Exs.A-4, A-5 and A-7-slips from the jewellery shop and Exs.A-10 to A-12-compact discs, produced by the second respondent, that the second respondent was wearing good number of genuine gold ornaments and when she joined the matrimonial home with the ornaments as per the custom, the non-return of all the ornaments kept in the custody of the matrimonial house, as spoken to by P.Ws.1 to 4 and stated in Exs.A-1 and A-2, makes the husband liable to pay the value of the gold ornaments in the absence of any evidence in rebuttal on his behalf. The civil Court also found that sufficient documentary evidence was filed to substantiate that necessary household utensils, silver vessels and furniture were purchased by the parents of the second respondent. After careful appreciation of the market value of the properties and gold ornaments at the relevant time and considering the depreciation in their value over eight years, the civil Court felt that ends of justice will be met by directing payment of Rs.10,00,000/- towards gold ornaments, silver articles, utensils and furniture. The civil Court also dealt with the request for permanent alimony made by the second respondent and considered her to be not entitled to the same.

7. Again in the present D.V.C.No.1 of 2006 which was, of course, instituted prior to the institution of O.P.No.56 of 2007, a relief was sought for to direct, not only the husband but also his parents, to return the gold jewellery, silver articles and cash as shown in Annexures -A to D, to the second respondent which were stated to have been given by the father of the second respondent not only to the petitioners herein but also their relatives at the time of marriage and on other occasions.

8. Sri O. Manohar Reddy, Learned Counsel for the petitioners referred to the

decision in Kothamasu Nagavenkata Suresh Babu Vs. Kothamasu Suneetha 2009 (3) ALT (CrI.) 242, wherein it was observed that where rights and liabilities arising out of relationship in marriage or by blood or by adoption crystallized into a final and irrevocable judicial decision concluding and foreclosing the legal obligations sought to be enforced through the subsequent proceedings, the decision may militate against the maintainability and continuance of the subsequent proceedings on established principles of law. The impact of the finality of an earlier adjudication of the same issues on the legality and sustainability of such subsequent proceedings may make them amount to an abuse of the process of the Court. It was considered in the said decision that such rights and liabilities pursued under different provisions of law in different proceedings are not prohibited from being so pursued, but where there is a final adjudication of such rights, it has been held that any subsequent proceeding between the same parties on the same issues may amount to an abuse of process of law, not necessarily on the ground of mere inconvenience of multiplicity of proceedings. Section 26(3) of the Act mandates that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, the aggrieved person shall be bound to inform the Magistrate of the grant of such relief. The effect of this provision was also considered in the same decision as being relevant for the purpose molding the ultimate relief to be granted in the domestic violence case by taking note of the relief granted in the other proceedings. Therefore, in the light of the said principles and in the light of the adjudication by the competent civil Court in O.P.No.56 of 2007 about the value of the gold jewellery, silver ornaments, household articles, etc., left by the second respondent at the house of the third petitioner which has to be returned by the third petitioner by payment of Rs.10,00,000/- , the said order should govern the request of the second respondent in the domestic violence case also. Subject to the result of the civil miscellaneous appeals said to be pending against the order of the Senior Civil Judge, Madanapalle, in O.P.No.56 of 2007, the result of O.P.No.56 of 2007 should, therefore, bind the parties in so far as the gold jewellery and silver articles covered by Annexures -A and B of the domestic violence case.

9. Coming to the amounts claimed in Annexures -C to E towards cash given, actual marriage expenses and travelling expenses, Sri O. Manohar Reddy, Learned Counsel for the petitioners forcefully argued that they do not constitute any component of economic abuse which has been made a part of domestic violence as defined in Section 3 of the Act and, therefore, they cannot be the subject of any relief under either Section 20 or Section 22 of the Act or the subject of any interim order u/s 23 of the Act. The inclusive definition of the word "economic abuse" does not seem to cover, in any manner, the types of claims made by the second respondent in Annexures -C to E. Annexure -C covers various expenses incurred for purchase of clothes to the bridegroom, for making cash presentations to the family members, for purchase of utensils or sarees, etc., and the claims made towards actual marriage expenses include the

expenditure incurred right from getting the wedding cards printed till the expenses for catering and food materials. These expenses do not appear to have been made recoverable by any provision of the Protection of Women from Domestic Violence Act, 2005, and more particularly, under any of the provisions under which a relief can be granted. Either a protection order or a residence order or a custody order undoubtedly do not cover such a claim. Even monetary reliefs that can be granted u/s 20 of the Act were specified to be including those covered by clauses (a) to (d) of sub-section 1 of Section 20 of the Act. It can be either the loss of earnings or the medical expenses or the loss in respect of any property or maintenance and the expenses incurred and losses suffered either by the aggrieved person or any child of the aggrieved person can be under these heads to be the subject of any monetary relief under sub-sections 1 to 3 of Section 20 of the Act. Similarly, compensation which can be granted u/s 22 of the Act also can be only in respect of the injuries including mental torture and emotional distress caused by "acts of domestic violence committed by the respondent". Section 20 of the Act provides for monetary relief only to meet the expenses incurred or losses suffered "as a result of the domestic violence". Section 20 or Section 22 of the Act thus apply only to the result or effect of "domestic violence". Subsequent domestic violence may not fasten any retrospective legal liability in respect of past losses or expenses or injuries within the scope of Sections 20 and 22 of the Act. The plain and grammatical effect of the unambiguous language of Sections 20 and 22 of the Act does not appear to cover such claims as made in Annexures -C to E of the domestic violence case towards cash spent or expenses incurred for the marriage or expenses incurred for travelling. While no opinion is being expressed herein about the right of the second respondent to recover any such sums claimed under Annexures -C to E of the domestic violence case from any of or all the petitioners in an appropriate legal proceeding, if she is entitled under any provision or principle of law, such a relief appears to be plainly unavailable under the provisions of this statute and the domestic violence case cannot be considered to be *ex facie* maintainable in respect of those claims.

10. However, insofar as the reliefs claimed in Annexure -E to the domestic violence case are concerned, they cover a claim for Rs.20,00,000/- towards loss of earnings, Rs.10,00,000/- towards monetary relief u/s 20 sub-section 2 of the Act, Rs.13,50,000/- towards maintenance and Rs.20,00,000/- towards compensation u/s 22 of the Act, making a total of Rs.63,50,000/-. These claims are on the face of them not such as can be considered to be not maintainable under the provisions of Sections 20 and 22 of the Act. Whether the second respondent is entitled to such sums on merits is not a question to be gone into in these proceedings, but the relationship between the parties being admitted and the estrangement of the couple being evident from the very order in O.P.No.56 of 2007, the claims made in Annexure -F are, therefore, such as to be left for adjudication by the Magistrate on merits on the evidence of the parties than in a summary proceeding like the present one restricted to considering the

applicability of Section 482 Cr.P.C. to take recourse to the inherent powers of this Court to quash the proceedings against the petitioners. The truth or otherwise of the allegations made in the domestic violence case against petitioners 1 to 3 also cannot be subject of any fact finding enquiry herein and the second respondent made various allegations specifically against all the three petitioners. The Learned Counsel for the petitioners brought to notice that while the parents are residents of Agiripalli of Krishna District of Andhra Pradesh, the marital life of the third petitioner with the second respondent was at Chennai and, therefore, petitioners 1 and 2, not having lived at any time in a shared household with the second respondent, could not have been made liable for the reliefs. However, it is seen from the allegations in the domestic violence case that all the three petitioners were claimed to have picked up quarrels and humiliated the second respondent while living at Chennai, may be suggesting that petitioners 1 and 2 were also staying with the second respondent and her husband at that point of time. The further allegations about the specific incidents in November, 2002, and December, 2002, also are suggestive of all the three petitioners and the second respondent living together in a shared household and the question, therefore, will be a question of fact to be decided by the Magistrate on merits on the oral and documentary evidence to be placed before him by the second respondent and the petitioners as to whether petitioners 1 and 2 ever lived together with the second respondent in a shared household in a domestic relationship so as to make them susceptible to any relief under the Act.

11. Therefore, insofar as the reliefs claimed in respect of Annexures -C to E are concerned, the further proceedings in the domestic violence case have to be quashed, as the claims are not within the scope of the special statute. In so far as the claims made in Annexures -A and B are concerned, the determination of the same shall be subject to and in accordance with the decision of the civil Court in O.P.No.56 of 2007, on the file of the Senior Civil Judge's Court, Madanapalle, as may be further adjudicated in the civil miscellaneous appeals pending against the said order. Insofar as the reliefs claimed in Annexure -F under Sections 20 and 22 of the Act are concerned, the same have to be determined on merits in accordance with law by the Magistrate.

12. The Learned Counsel for the petitioners, Sri O. Manohar Reddy, also requested for dispensing with the presence of all the three petitioners on all future dates of hearing in view of the advanced age of the parents and professional obligations of the third petitioner. However, insofar as the third petitioner is concerned, he can seek exemption from personal appearance on any date of hearing on which his professional obligations compel him to be absent from the Court, but insofar as petitioners 1 and 2 are concerned, keeping their age in view and the mental and physical agony to which they will be subjected to in being compelled to attend before the Court on all future dates of hearing, their presence can be considered to be dispensed with except when it is indispensable.

13. Therefore, the further proceedings in D.V.C.No.1 of 2006, on the file of the

Judicial Magistrate of First Class, Madanapalle, are quashed in respect of the claims made in Annexures -C to E annexed to the domestic violence petition without prejudice to any other remedies which may be open to the second respondent in respect of the same. The reliefs claimed in respect of Annexures -A and B annexed to the domestic violence petition shall be subject to and in accordance with the decision of the competent civil Court in O.P.No.56 of 2007, on the file of the Senior Civil Judge's Court, Madanapalle, as may be further adjudicated in the civil miscellaneous appeals against the said order. The claims in Annexure -F attached to the domestic violence petition shall be determined on their own merits in accordance with law after every reasonable opportunity to both parties to place their oral and documentary evidence before the Magistrate. If the petitioners 1 and 2 so desire and are so advised, they can apply to the trial Court for dispensing with their personal appearance on all future dates of hearing except when their physical presence is absolutely indispensable for the further progress of the case and in the event of such a request being made, the trial Court shall positively consider the same. The trial Court shall also positively consider any request by the third petitioner for dispensing with his personal presence on any specific dates of hearing due to his professional obligations.

14. The Criminal Petition is ordered accordingly.