

(2017) 03 KAR CK 0260

In the Karnataka High Court

Case No : 1016 of 2012 C of W CRIMINAL PETITION NO 125 of 2012

SMT ASITHA PRASAD W/O MR SOAMI PRASAD

APPELLANT

Vs

MR SOAMI PRASAD S/O MR DAYAL PRASAD

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

Protection of Women From Domestic Violence Act, 2005, Section 19, Section 20, Section 12(1), Section 22, Section 12 - Residence orders

Citation : (2017) 03 KAR CK 0260

Hon'ble Judges : John Michael Cunha

Bench : SINGLE BENCH

Advocate : JAYNA KOTHARI, FARAH FATHIMA, HEMANTH KUMAR

Judgement

1. Crl.P.No.125/2012 is filed by the respondent before the lower court, hereinafter referred to as "husband" calling in question the order dated 13.8.2010 in C.Misc.No.727/2009 on the file of the I Metropolitan Magistrate Traffic Court, Mayo Hall, Bengaluru and the judgment dated 30.11.2011 passed by the Fast Track Court-III in Crl.A.No.25104/2010.

2. Crl.P.No.1016/2012 is filed by the petitioner "wife" in respect of the very same orders passed by the Courts below in so far as they relate to the quantum of monetary relief and has sought for grant of monetary relief as prayed for by her in the application under section 12(1) of the Protection of Women from Domestic Violence Act, 2005 ("PWDV Act 2005" for short).

3. The brief facts essential for the disposal of the petitions are as follows:

That the petitioner/wife filed an application under section 12 r/w. sections 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 seeking monetary relief of Rs.1,43,000/- p.m. under various heads for her and for her two children for life sustenance including payment of monthly rentals, alternate residence among other reliefs in Crl.Misc.No.727/2009. She examined herself as

PW.1 and produced as many as 212 documents marked as Ex.P1 to Ex.P212. In rebuttal, the respondent/husband examined himself as RW.1 and relied on 46 documents marked as Ex.R1 to Ex.R46. On appreciation of the oral and documentary evidence produced by the parties, the learned Magistrate partly allowed the petition filed by the wife and directed as under:

"VERNACULAR MATTER OMITTED"

4. Feeling dissatisfied with the said order, both the parties preferred separate appeals in Crl.A.No.25104/2010 and Crl.A.No.25116/2010 respectively and the learned Fast Track Court-III by order dated 30.11.2011 dismissed both the appeals and consequently, confirmed the order passed by the learned I Metropolitan Magistrate Traffic Court, Bengaluru in C.Misc. No.727/2009.

5. The contention of the petitioner/wife is that the courts below have failed to consider her requirement of Rs.1,43,000/- p.m. towards the maintenance as sought for under various heads which is inconsonance and in confirmation with the standard of living they were adopted to. It is contended that the respondent/husband is working in a multinational company and is earning Rs.2,00,000/- p.m. Hence, he should have been directed to pay atleast 1/3rd of his income towards maintenance of his wife and children. The petitioner/wife has further contended that the courts below have committed serious error in holding that she is capable of earning and has got savings of Rs.25,00,000/- which is highly erroneous and baseless in as much as there are no material to arrive to such a conclusion. According to the petitioner, her children are growing and their needs have also increased. Their tuition fee, travel expenses etc., cost her nearly Rs.4,00,000/- p.a. That apart, the petitioner and children were adopted to a standard of living. Therefore, she requires Rs.30,000/- p.m. along with the household requirement of Rs.15,000/- p.m., thus totaling to Rs.45,000/- p.m. It is further stated that the petitioner is residing separately with two children in a rented house paying monthly rent, electricity and water charges and therefore, she requires a minimum of Rs.1,43,000/- p.m. as claimed by her in the petition.

6. The respondent/husband has contended that the directions issued by the learned Magistrate to pay the monthly rent to the premises where the petitioner/wife is residing and further directed him to pay Rs.15,000/- towards mental agony, Rs.15,000/- p.m. towards maintenance and Rs.60,000/- p.a. towards school fees is contrary to the fact and evidence on record. The courts below have erred in granting the said reliefs to the petitioner/wife even after coming the conclusion that he provided her with a car, computer, internet facility wife with an intention to make her learn the computer to live in the present world. It is further contended that the courts below erred in partly allowing the petition even after recording a finding that the petitioner/wife has got sufficient income and she is suppressing her correct income which is proved from the documents produced by her.

7. On going through the order passed by the learned Magistrate, it is seen that

the learned Magistrate has held that the petitioner/wife was working in Brainstorm Solutions India Pvt. Ltd., from 2001 to 2007 and she had a savings of Rs.25,20,000/-. Added to that, the learned Magistrate has held that the petitioner/wife has retained a sum of Rs.3,50,000/- given by the respondent/husband and is also deriving interest from the amount lent out by her, and she is also having a car and a computer. Having regard to the source of income available to the petitioner/wife, the learned Magistrate has awarded a sum of Rs.15,000/- p.m. towards food, clothing, medical charges and other household expenses of the petitioner/wife, apart from a sum of Rs.60,000/- p.a. towards the school fees of the children.

8. Though the petitioner/wife has contended that the findings recorded by the courts below with regard her income is not based on any legal evidence, yet the evidence on record suggests that the petitioner/wife is an educated qualified lady who was working with Brainstorm Solutions India Pvt. Ltd., till 2007. It has also come in evidence that with the funding of the respondent/husband, she was running an interior decoration unit. Therefore, she has the capacity to earn independent income cannot be disputed. However, it is noted by the courts below that the petitioner/wife has not disclosed her actual income and therefore, the courts were driven to infer her earning capacity from the facts and circumstances brought on record during the evidence. But in ascertaining the income of the petitioner/wife, it is pertinent to note that during the cross- examination of PW.1, the respondent/husband has suggested that the monthly income of the petitioner/wife is more than Rs.40,000/- p.m. Though petitioner/wife has denied the suggestion, yet in the absence of any positive proof of her actual income, in the light of the above suggestion and in the facts and circumstances discussed above, her income could be taken at Rs.40,000/- p.m.

9. The responsibility of looking after the children is undisputedly lies on both the parents. Therefore, the respondent/husband is also required to contribute his share towards the maintenance of the children. As the petitioner/wife has been expending all her income for her maintenance and for the maintenance of her two children, adopting the same yardsticks, the respondent/husband also should be made liable to pay the equal contribution as that of the petitioner/wife for the maintenance of the children. Regarding the need and requirement of the children, there is ample evidence on record indicating that more than Rs.1,00,000/- is required for their food, clothing, shelter and education. The petitioner/wife has produced reliable evidence to show that she has been paying Rs.20,600/- as monthly rent towards the premises. She has also produced the receipts in respect of the school fees and the tuition fees of the children. Therefore, in order to meet the said expenses, it is just and proper that in respect of his share of maintenance, the respondent/husband is made liable to pay atleast Rs.40,000/- p.m. towards the maintenance of the petitioner/wife and her children in addition to the other amounts awarded by the courts below.

10. With regard to the income of the respondent/ husband, the petitioner/wife

has produced overwhelming evidence to show that the respondent/husband is gainfully employed. He is a Software Engineer. It has come in evidence that he has worked in different parts of the globe and on those occasions, the petitioner/wife had accompanied him. Ex.P192 namely, form No.16 submitted by the respondent/husband to the Income Tax Authorities indicate that the respondent/husband has declared his income at Rs.17,20,936/- and after deducting the income tax, the net income derived by the respondent/husband is computed at Rs.1,00,000/- p.a. Further, the Trial Court has also referred to the pay slips of the relevant period which disclose that the respondent/husband was drawing a net pay of Rs.90,000/- p.m. and above. That was for the year 2005 and earlier thereto. The courts below have specifically noted that the respondent/husband has also suppressed his actual income. Yet, the income disclosed by the respondent/husband in the income tax returns and the pay slips itself is sufficient to come to the conclusion that the respondent/husband was drawing more than Rs.90,000/- p.m. in the year 2005. In the absence of any contra evidence and the respondent/husband having not disputed the above findings, it could be presumed that over the years the income of the respondent/husband has been doubled. Under the said circumstances, the respondent/husband could afford to pay 50% of his income towards the maintenance of the petitioner/wife and his children. To this extent, the claim made by the petitioner/wife deserves to be accepted.

11. The courts below have awarded only Rs.15,000/- p.m. towards the maintenance of the petitioner/wife and her children. In the light of the material available on record, the said amount is grossly inadequate to satisfy the needs and requirements of the petitioner/wife and her children. As the petitioner/wife has successfully established the capacity of the respondent/husband to pay the maintenance amounting to Rs.40,000/- p.m., in addition to the other amount directed by the courts below, I am of the view that the petition deserves to be allowed to this extent. Hence, the following order:-

12. Crl.P.No.1016/2012 filed by the petitioner/wife is allowed-in-part. In modification of the orders passed by the courts below, the respondent/husband is directed to pay a sum of Rs.40,000/- p.m. towards the maintenance of the petitioner/wife and her two children from the date of the petition till the children attain the age of majority, whereafter, the respondent/husband shall continue to pay the monthly maintenance to the petitioner/wife at the rate of Rs.15,000/- p.m. till her lifetime or till alteration thereof. The rest of the order passed by the courts below shall remain unaltered. Crl.P.No.125/2012 filed by the respondent/husband is rejected.