

G. Ranganath Vs. Manjula

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Court : Karnataka

Decided On : Mar-14-2014

Judge : S.N. Satyanarayana

Appeal No. : Criminal Petition No. 5802 of 2013

Appellant : G. Ranganath

Respondent : Manjula

Judgement :

(Prayer: This CrI.P Is Filed Under Section 397 R/W 401 Cr.P.C Praying To Set Aside The Order Dt. 10.8.12 Passed By The Mmtc-V, Bangalore In CrI.Misc.72/12 (Annexure-B) And Set Aside The Order Dt.24.6.2013 Passed By The L Addl. C.C. And S.J. Holding C/C. Ftc- Xv, Bangalore In CrI.A.N0.591/12 (Annexure-C).)

1. Respondent in CrI.Misc.72/2012 on the file of V MMTC; Bangalore, has come up in this proceeding under Section 482 of Cr.P.C., seeking setting aside of order dated 10.8.2012 passed on an application, which is filed under Section 20(l)(d) of the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short) for maintenance of the respondent herein and children of petitioner and respondent herein, which is confirmed by order dated 24.6.2013 in CrI.A.No.591/2012 on the file of FTC XV, Bangalore.

2. The undisputed facts are that petitioner herein is husband and respondent is his wife. The fact that they are living separately from 21.1.2008 is not in dispute, which

is borne out by the pleadings in the petition filed under Section 9 of the Hindu Marriage Act in MC.219/2008, by the petitioner herein seeking restitution of conjugal rights with respondent, his wife. During the pendency of proceeding in MC.No.219/2008 the respondent-wife had approached the media trying to highlight the dispute between herself and her husband on 12.12.2011. She also filed a complaint against petitioner for alleged offences punishable under Sections 498- A, 506 of IPC. It is seen that subsequent to filing of such complaint, MC petition filed by petitioner- husband is allowed on 7.1.12 directing the wife to join her husband and thereafter, the present petition in Crl.Misc.72/2012 under Section 12 of the Act is filed.

3. In said MC petition, an application in IA. 1/2012 is filed under Section 20(l)(d) of Act seeking interim maintenance for the maintenance of respondent and also her two children born in the wedlock with petitioner. On appreciation of the aforesaid facts, the learned Magistrate has come to the conclusion that respondent-wife is not entitled to seek maintenance from her husband in view of the fact that there is already an order directing her to establish her conjugal rights with her husband, petitioner herein and to live with him in the matrimonial house, which she has not complied. Therefore, the application filed by her is considered only to the extent of providing maintenance to minor children, who are admittedly residing with her from 2008. The said order of learned Magistrate is challenged by respondent-husband in Crl.A.No.591/2012, which came to be dismissed and the interim maintenance that is granted on IA.1/2012 in Crl.Mis.72/2012 is confirmed. Being aggrieved by the finding of both the courts, the present petition is filed.

4. Heard the Counsel for petitioner and counsel for respondent. On going through the material available on record, in the background of submission made by the learned counsel for petitioner it is seen that, it is a clear case where the wife has failed to comply with the order passed by the family Court in MC.No.219/2008 directing her to join her husband in the matrimonial house. It is seen that, when MC.No.219/2008 was pending consideration, for a period of four years the wife has not chosen to file an application to seek maintenance either for her self or to the children. It is only after she suffered an order directing her to go and reside with her husband in the matrimonial house, she has chosen to file the present

petition in Crl.Misc.72/2012 alleging domestic violence. Whether she is entitled to file an application under Section 12 of the Act, is something which has to be decided by the V MMTC Court and this Court would not traverse the correctness or otherwise of the petition being filed by the wife and whether she has such a right to file a petition invoking Section 12 of the Act, Be that as it may.

5. Now this Court is concerned with the maintenance of two children, who are presently residing with their mother. The fact that the children who are presently residing with respondent-wife are aged 8 years and 5 years respectively. It is stated that both the children are pursuing their studies in kinder garden and primary school at Bangalore. In that view of the matter, the finding of V MMTC Court ordering maintenance to children at the rate of Rs. 1,000/- each is meager and not sufficient to cover the educational expenses and the upbringing of both the children. In that view of the matter, this Court find that though this petition is coming up for setting aside the order dated 10.8.2012 passed in Crl.Misc.72/2012 regarding maintenance of children, which is confirmed by the Court of FTC XV, Bangalore, by order dated 10.8.2012 in Crl.A.No.591/2012, this Court in exercise of its inherent powers under Section 482 of Cr.P.C., has power to consider whether maintenance that is awarded by the court below is sufficient on its own. When said fact is addressed in this background, this Court feels that the amount which is awarded by V MMTC in Crl.Misc.72/2012 is required to be enhanced. Accordingly, it is enhanced to Rs.2,000/- per child.

6. While doing so, it is made clear that the order that is passed by the learned Magistrate shall be applicable from the date of application till date of filing of this petition and the revised maintenance that is ordered by this Court shall come in to force from the date of filing of the present petition i.e., from 17.7.2013, from which day the petitioner herein shall pay a sum of Rs.2,000/- each per month, for maintenance of his children. However, modifying this order would not come in the way of petitioner seeking dismissal of petition filed by respondent-wife under the provisions of Domestic Violence Act. It is further made clear that even if said petition under the provisions of Domestic Violence Act is dismissed, the order which is passed for the maintenance of children shall remain unaltered until the children attain majority. In the meanwhile, if respondent-wife feels that amount

awarded in this petition is insufficient, she is at liberty to approach the Court for revision of the same.

7. Accordingly, this criminal petition is dismissed. While doing so, it is made clear that the petition which is filed by the respondent-wife in Crl.Misc.72/2012 on the file of V MMTC, Bangalore shall be disposed of at the earliest.

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