

Ramachandrachar Vs. Devakumari

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Court : Karnataka

Decided On : Jan-19-2016

Judge : A.V. Chandrashekhara

Appeal No. : Criminal Revision Petition No.181 of 2012

Appellant : Ramachandrachar

Respondent : Devakumari

Judgement :

(Prayer: This Crl.RP filed u/s.397(1) r/w 401(1) Cr.P.C by the advocate for the petitioner praying that this Hon'ble Court may be pleased to set aside the Order dated:23.12.11 passed by the P.O., FTC-VI, Bangalore in Crl.A.No.687/11.)

1. Divergent judgment passed by the learned judge of Fast Track Court-VI in Crl.A.687/11 is called in question. Respondent herein was the complainant in the said case, i.e. Crl.Misc.102/11 and petitioner herein was the accused-respondent.
2. Petition had been filed under Sections 9(b) and 37(2)(c) of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as the D.V. Act, for brevity). Parties will be referred to as complainant and respondent as per their ranking before the trial court in Crl.Misc.102/11.
3. Facts leading to the filing of the present revision petition are as follows:

a) Claiming herself to be the legally wife of the accused, the complainant chose to file a petition requesting the trial court to direct the accused to provide accommodation in his house and also to pay Rs.10,000/- p.m. as maintenance during her lifetime and to issue necessary direction to the local police in the event the respondent were to cause inconvenience and harassment and also to grant such other reliefs as the court deems fit in the circumstances of the case.

b) The respondent is stated to have married the complainant on 24.2.1965 as per Hindu customs in his residential premises at Bengaluru. After the marriage, it is stated that she lived with him discharging her duties as a dutiful wife. They have no issues out of their marriage. It is alleged that after some time, the respondent started neglecting her and refused to maintain her due to ill-advice of his relatives. He is stated to have developed illegal intimacy with a lady called Ratnamma. In spite of her repeated requests, respondent did not allow her to join him and continued to neglect her, without making any provision for her maintenance.

c) After the death of the respondent's father, complainant is stated to have once again requested him to allow her to live with him in the said house. He refused to take her back. Hence a legal notice was got issued by the complainant on 17.8.2009 and the same was acknowledged by the respondent. She wanted a portion of the premises where the respondent is living and also a sum of Rs.10,000/- for food, clothing, shelter and medical expenses as maintenance.

d) Respondent-accused has filed detailed objections opposing the complaint. He has admitted that his marriage took place with one Devakumari. But according to him, the person who has filed the complaint is not Devakumari whom he had married, and the complainant is stated to have falsely represented herself as Devakumari-his wife and that the real Devakumari with whom he had married was not traced and she had given up her status as his wife.

e) According to the accused-respondent, Devakumari whom he had married, had no objection for granting a decree of divorce in the proceedings initiated by him. He does not have any proper income and he is aged more than 64 years and is dependant on his son for his daily necessities and his son also does not have much income. He has called upon the complainant to prove her relationship with

him as the legally wedded wife. She is stated to be a fictitious person having approached the court in the name of Devakumari. With these pleadings, he had requested the court to dismiss the petition.

f) Devakumari (complainant) herself is examined as PW-1 and the respondent's sister-Hemavaathi is examined as PW-2. She has got marked two exhibits, viz., Ex.P1-marriage invitation card and Ex.P2-photograph. The accused-Ramachandrachar is examined as RW-1 and two persons namely, Shamantha and V.R.Vishwanath are examined on his behalf as RW-2 and RW-3 respectively. Five exhibits have been got marked on his behalf.

g) Ultimately the learned judge of the trial court chose to dismiss the petition vide considered order dated 7.9.2011 as against which an appeal was filed under Section 29 of the D.V. Act before the City Civil Court, Bengaluru. The said appeal filed in Crl.a.687/11 is allowed vide judgment dated 23.11.2012. It is this divergent judgment which is called in question by the accused (respondent in Crl.Misc.102/11) in this revision petition on various grounds as set out in the memorandum of revision petition.

4. Heard the learned counsel for the parties at length.

5. Learned counsel for the revision petition has submitted arguments essentially on the ground that the first appellate court has not re-assessed the evidence in right perspective and has ignored the material admissions elicited from the mouth of PW-1. He has argued that the initial burden cast on the complainant is not effectively discharged and therefore, onus does not shift on the other side. According to him, no maintenance could be granted in a petition filed under the provisions of the D.V. Act without there being any domestic violence.'

6. Per contra, learned counsel for the complainant (respondent herein) has supported the judgment of the first appellate court, placing reliance on the decision of the Bombay High Court Bench at Nagpur, reported in 2012 Crl.L.J. 87(1) between MAROTI DEWAJI LANDE .v. GANGUBAI MAROTI LANDE AND OTHER to contend that the wife driven out of the matrimonial house is entitled to invoke the provisions of the D.V. Act, even if she had been thrown out before the coming

into force of the said Act, since such cause of action would be a continuing one.

7. After going through the records and hearing the learned counsel for the parties at length, the following points arise for consideration of this court:

1) Whether any glaring illegal error is found in the judgment of the first appellate court so as to invoke the revisional jurisdiction vested in this court under Section 397, Cr.P.C.?

2) Whether a married lady who is neglected by her husband even before the coming into force for the Protection of Women from Domestic Violence Act, 2005, is entitled to seek maintenance under the provisions of the Protection of Women from Domestic Violence Act?

3) Whether the quantum of maintenance awarded by the first appellate court requires any interference and if so, to what extent?

REASONS

8. Point No.(1): The fact that the accused had married one lady called Devakumari is not in dispute. What is disputed by the accused-respondent in CrI.Misc.102/11 is that the lady named Devakumari who has chosen to file the complaint is not the lady whom he had married in the year 1965 and that she is an imposter. PW-1 is examined at length. The fact that Ramachandrachar (accused) had filed a petition seeking divorce from his wife-Devakumari before the concerned civil court at Bengaluru is not in dispute. Certified copy of the petition filed under Section 13 of the Hindu Marriage Act, 1955, by the accused-Ramachandrachar seeking divorce of his marital relationship with Devakumari in M.C.133/79 is produced as Ex.D1. The fact that he had married a lady by name Devakumari in the year 1965 is forthcoming in this document. He had got issued a legal notice dated 16.9.1968 calling upon his legally wedded wife to stay with him and to that effect, reference is made in paragraph 3 of Ex.D1. According to him, his wife had deserted him in the year 1966 and therefore, he had sought a decree for divorce on the ground of desertion. Ex.D2 is the certified copy of the deposition of Devakumari, daughter of Muniyappachar, aged 32 years and her evidence was recorded on 11.6.1981 in

M.C.116/80 (originally numbered as M.C.133/79).

9. As could be seen from Ex.D1, Devakumari had admitted her marriage with Ramachandrachar-respondent and after some time, she was residing in the house of her father since April 1977. According to her, Ramachandrachar took her to her father's house in April 1977 and left her there and never allowed her to join him. Her deposition found in page 3 marked as Ex.D2 discloses that she was not allowed to go and stay with her husband, and apprehending danger to her life from him, she had no objection for the court to allow the petition subject to granting permanent alimony in case divorce were to be granted.

10. Ex.D3 is the order sheet of the case in M.C.116/80. On 3.12.1983, the said petition was dismissed for default as both the learned counsel and the parties were absent. Therefore, on a reading of Exs.D1 to D3, it is clear that Ramachandrachar had instituted a petition seeking divorce of the matrimonial relationship he had with a lady named Devakumari and since he did not pursue the same, it was dismissed for default. This would go to show that the marital relationship he had with the lady called Devakumari whom he had married in the year 1965 exists for all practical purposes, though they may not be living together for quite a long time.

11. PW-1 is cross-examined at length in regard to the matrimonial proceedings initiated by the accused-Ramachandrachar and her oral evidence before court. That portion of the evidence, according to the learned counsel for the petitioner, is a clear admission within the purview of Section 17 of the Evidence Act which goes to the root of the complaint in respect of their relationship as wife and husband. In paragraph 17 of the judgment of the trial court, the relevant deposition of PW-1 is extracted. It discloses that in spite of her marriage, she did not have any sexual contact with the respondent and was living in the house of her grandfather and she had not seen the body of her husband at any point of time except when he was taking bath.

12. What is observed in paragraph 18 of the judgment of the trial court is that the admission of PW-1 is contrary to the normal conduct of a spouse and she has not assigned any substantial reason for that. This deposition, according to the trial

court, supports the case of the respondent.

13. In paragraph 19 of the judgment also, that portion of her evidence is referred to hold that the complainant is an imposter. PW-1 has, in her cross-examination, denied about the divorce petition being filed against her, her appearance before the civil judge court and Family Court, Bengaluru, and tendering evidence. A suggestion put to her that she had engaged an advocate named G.T.Thimmappa in the petition filed against her for divorce in M.C.133/79 is denied. She has further denied about objections being filed on her behalf and her evidence being recorded on 11.6.1981 as RW-1. She has feigned ignorance about engaging an advocate-G.T.Thimmappa and filing objections to the divorce petition. A suggestion that she had stated no objection to grant divorce has been denied. She has further deposed that she had not given any information to her advocate at the time of getting legal notice issued to the accused-respondent about a lady named Ratnamma.

14. When the evidence of PW-1 was recorded by way of affidavit in lieu of examination-in-chief on 19.11.2009, her age was shown as 60 years, If the marriage of the accused-Ramachandrachar had taken place with Devakumari in the year 1965, she was hardly 15-16 years at the time of marriage in 1965. Thus the possibility of having no sexual contact with the respondent-accused at a tender age of 16 cannot be ruled out.

15. The learned judge of the trial court has mainly relied on some of the answers given by PW-1 to hold that she has not discharged the initial burden cast on her and therefore the respondent's contention that the complainant is an imposter, has to be upheld. The entire evidence will have to be assessed as a whole to come to a proper conclusion. The proceedings initiated under the relevant provisions of the D.V. Act are both quasi-criminal and quasi-civil in nature. The complainant who files a petition under the provisions of the said Act is not expected to prove the allegations beyond all reasonable doubt, as is insisted in a criminal case. The evidence will have to be assessed on the basis of broad preponderance of probabilities since basically the petition is one for maintenance.

16. Of course whether PW-1 was the legally wedded wife of Ramachandrachar-accused is also to be looked into incidentally. The purpose for which the D.V. Act has come into force will have to be looked into. The Protection of Women from Domestic Violence Act, 2005, is enacted to provide for an effective protection of the rights of women guaranteed under the Constitution of India who are victims of domestic violence and other matters incidental thereto. The word women is not defined in Section 2 of the said Act. It is very relevant to see that Section 2(f) defines domestic relationship. The same is extracted below:

domestic relationship means a relationship between two persons who live or have at any point of time, live together in a shared household when they are related by a consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family'

Section 3 of the Act speaks about the definition of domestic violence. Explanation (1)(iv) found in Section 3 speaks about economic abuse. It is an inclusive definition. For better appreciation of the facts of the case, Explanation I(iv) of Section 3 of the D.V. Act is reproduced below:

3. Definition of domestic violence:

Explanation I: For the purposes of this section ”

(i)

(ii)

(iii)

(iv) economic abuse includes-

a) Deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court of otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

b) Disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other person jointly or separately held by the aggrieved person; and

c) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

17. What is burden of proofis well dealt with at length by the Hon'ble apex court in the case of NARAYAN BHAGAWANTRAO BALAJI WALE .v. GOPAL VINAYAK GOSAVI (AIR 1960 SC 100). It is appropriate to reproduce the relevant discussion found in the said decision found at paragraph 10:

10. The appellant contended that this was a special suit under S.5(3) of the Charitable and Religious Trusts Act, 1920 and that the burden lay upon the respondents to prove that there was a religious and charitable trust of a public character in favour of the deity. He contended that the two Courts below had placed the burden of proof upon him to show by positive evidence that the deity was a family deity, and that the properties were his private properties. According to him, the defendants ought to have proved their case, and if they failed to prove affirmatively that case, then the suit ought to have been decreed in his favour. The expression burden of proof really means two different things. It means sometimes that a party is required to prove an allegation before judgment can be given in its favour; it also means that on a contested issue one of the two contending parties has to introduce evidence. Whichever way one looks, the question is really academic in the present case, because both parties have introduced their evidence on the question of the nature of the deity and the properties and have sought to establish their own part of the case. The two Courts below have not decided the case on the abstract question of burden of proof; nor could the suit be decided in such a way. The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail.

Where however, parties have joined issue and have led evidence and the conflicting evidence can be weighted to determine which way the issue can be decided, the abstract question of burden of proof becomes academic.

18. In the present case, the complainant is examined as PW-1. The contents of the petition filed by her are virtually reproduced in the affidavit filed in lieu of examination-in-chief. She has produced two documents, (i) marriage invitation marked as Ex.P1 and (ii) photograph marked as Ex.P2 taken in connection with the marriage of the son of PW2-Hemavathi. A suggestion put to her that the lady who had appeared in the family court is different from the lady who is examined as PW-1 is denied. The fact that the father of the respondent was one Nagappachar who had 2 sons-Dasappachar and Krishnachar and a daughter-Lakshmiddevamma, is admitted. The name of the father of the respondent is Dasappachar. The lady whom the respondent-accused had married is the daughter of Lakshmiddevamma. That means, the lady whom the respondent had married was none other than the daughter of his maternal aunt. He has admitted that Devakumari has a brother and he has not seen him, nor he knows his name. He has admitted that he has married a lady by name Devakumari in his house which is near Gopalaswamy Temple of Chikkpet, Bengaljuru. He has further admitted that his grandfather was alive when his marriage was solemnized with Devakumari. He has admitted the contents of Ex.P1-marriage invitation card.

19. On going through the evidence of DW-1, it is forthcoming that the marriage of Ramachandrachar was solemnized with a lady called Devakumari on 24.6.1965 in his house in the vicinity of Gopalaswamy Temple of Chikkpet, Bengaljuru. He has further admitted that he could not continue his marital relationship with Devakumari since Devakumari was living in the house of her father at Bukkapatna. He has admitted that the name of the lady whom he had married is Devakumari and that is found in Ex.P1.

20. PW-2-Hemavathi is none other than the sister of the respondent-accused. She has deposed that the complainant is the legally wedded wife of the respondent and their marriage was solemnized on 24.6.1965 and respondent is the only son to his father. His parents had advised the complainant to wait till he (accused)

changed his attitude. PW-2 has spoken about the difficulties faced in regard to the daily maintenance of the complainant and she is staying in Bukkapatna with her father and was often coming to the house of the accused and used to sit with Ratnamma, Siddaraju and Rekha, and Devakumari was not objecting to the same in any manner. What is suggested to her at the end of her cross-examination is that a case in O.S.2440/01 is filed by the respondent-accused to get her evicted from the house in which she is living. Whether the evidence of PW2-Hemavathi who is none other than the sister of the respondent-accused could be disbelieved for the simple reason that the respondent has filed a suit for eviction against her, is the question.

21. Section 50 of the Evidence Act speaks about evidence relating to relationship and its relevancy. Section 50 is reproduced below:

50. Opinion on relationship, when relevant.- When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact;

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecution under sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)

Illustration A appended to Section 50 states that the question is whether A and B were married will be relevant the fact that they were usually treated by their family as husband and wife is also relevant. Illustration B states that the question as to whether A was the legitimate son of B and that the fact that A was always treated as such by the members of the family, is also relevant.

22. In the present case, PW-2, being the only sister of the respondent, is entitled to speak about the relationship of Devakumari, the lady who had filed the petition against the respondent-accused. The complainant has not brought the suit on the ground that herself and the respondent had been living as husband and wife, and society has accepted them as such. In fact, the respondent-accused himself has

admitted his marriage with a lady called Devakumari. But his ground in the objections is that the lady who has filed the petition is an imposter.

23. Normally no lady would come to court projecting herself as a married lady of some person. Her assertion is supported by the evidence of a close relative-PW2 who is competent to speak about the marriage that took place between herself and the respondent-accused. Apart from this, Ex.P2 is got marked confronting the same to RW-1. He has admitted that the photograph is taken out at the time of the marriage function of the son of PW2-Hemavathi and that himself and his sister are residing in the same house. He has admitted that he is found in the photograph-Ex.P2 and Hemavathi is also found in it. He has further admitted that Devakumari is another lady found in Ex.P2, and that photograph was taken at the time of the marriage of Lakshamma, daughter of Kamamma at Mysore. The lady by name Devakumari found in Ex.P2-photo is none other than the lady who chose to file the complaint seeking maintenance and therefore, this material aspect is taken note of by the first appellate court while re-assessing the evidence. On the other hand, the learned judge of the trial court has not assigned valid and cogent reasons to reject this material evidence got marked as Ex.P2.

24. What is observed by the trial court in paragraph 23 of the judgment at page 9 is that the admission of RW-1 relating to Exs.P1 and P2 is no way helpful to the petitioner. It is further held that though the respondent has admitted the contents of Exs.P1 and P2, these documents are not helpful to the petitioner to prove that she is the lady by name Devakumari referred to in the documents. This part of the observation found in paragraph 23 of the judgment of the trial court is wholly inconsistent with the totality of the case.

25. RW-1 has further deposed that he has filed a suit for eviction against his sister-Hemavathi from the house in which she is living. He has deposed that since she deposed against him, he filed the suit and hence filing of a suit is a counter blast to PW-2 deposing in favour of the complainant. He has admitted that in Ex.P2-photograph, himself, Hemavathi and Devakumari are together found and that was taken at the time of the marriage of the son of Hemavathi. The address given in Ex.P1 is admitted by RW-1. The address of the complainant is shown as

Devakumari, wife of Ramachandrachar, daughter of Muniyappa, residing at Bukkapatna, Tumkur District. The same is found in Ex.D1-petition for divorce in M.C.133/789 filed by Ramachandrachar as petitioner. Her age was shown as 30 years in the year 1979. If that were to be so, she was probably 15-16 years at the time of marriage in 1965. Therefore, the possibility of the respondent having no sexual contact with a young married girl cannot be ruled out. On the other hand, PW2-Hemavathi has specifically deposed that PW-1 examined before court is none other than the wife of her brother-Ramachandrachar and daughter of her maternal aunt-Lakshmiddevamma.

26. The learned judge of the first appellate court has specifically held that the lady by name Devakumari as found in Ex.P2 is Devakumari-wife of the accused-respondent and not any other lady unconnected with him. Just because the marriage of the complainant was not consummated, it cannot be said that there was no marriage at all. Unless the marriage is got set aside on the ground of non-consumation, marital relationship continues to exist for all practical purposes in spite of there being no sexual contact. The first appellate court being the final court of facts, has assessed the entire evidence in proper perspective and it has taken into consideration all the material admissions elicited from the mouth of RW-1. No perversity or illegality is found in the judgment of the appellate court keeping in mind the rival contentions of the parties. Therefore, point no.(1) is answered in the affirmative.

27. Point no.(2): Placing reliance on the decision of the Hon'ble High Court of Delhi rendered in 3878/09 dated 13.8.2010 between VIJAY VERMA .v. STATE NCT OF DELHI and ANOTHER, it is contended that domestic violence arises in respect of an aggrieved person if the aggrieved person had lived with the respondent in a shared household. This living, according to the Hon'ble High Court, together can be near before the filing of the petition or at any point of time. According to the learned counsel, the meaning of the phrase at any point of time does not mean that they were living together at any point of time.

28. Relying on another decision of the High Court of Delhi rendered in 14141/09 in the case of ADIL and OTHERS .v. STATE AND ANOTHER, it is contended that

the pre-condition to invoke the relevant provisions of the D.V. Act is that the applicant must be aggrieved as defined under Section 2(a) of the said Act and there should be a domestic relationship between the parties. The decision rendered earlier in the case of VIJAY VERMA is relied upon.

29. Whether a married lady could seek maintenance under the relevant provisions of the D.V. Act if she had been driven out of the house even before the coming into force of the Act, is dealt with at length by the Bombay High Court, Bench at Nagpur in the case of MAROTI DEVAJI LANDE (supra). What is held in the said decision is that even if the woman was in the past in relationship, she would be entitled to invoke the provisions of the D.V. Act on the basis of continuing cause of action. The relevant discussion is found in paragraph 12 of the judgment and the same is reproduced below:

The Protection of Women of from Domestic Violence Act came into force on 26.10.2006 vide SO 1776(E) dated 17.10.2006. The Act was brought into force to provide for more effective protection to the rights of women guaranteed under the Constitution of India who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Thus, any woman who or has been in a domestic relationship who is subjected to domestic violence by the respondent, i.e. her husband, she can apply under Section 12 of the Act as an aggrieved person/complainant of domestic violence and seek orders under the Act, i.e. maintenance, protection orders, etc. Thus, the respondent in such application pursuant to the complaint under the D.V. Act cannot be allowed to defeat the provisions of the Act continuously depriving his wife or applicant with whom he was in the domestic relationship from the benefits under the Act, i.e. shared household, maintenance, monetary benefits in this regard. There shall be continuing causes of action therefore, there is no question of putting a stop to the relief sought for on the ground of continuous breach of legal right, since the continued deprivation of economic or financial resources and continued prohibition or denial of access for the shared household, maintenance, etc. to the aggrieved person can come within the definition of domestic violence explained in Chapter II of the Act. Protection under the Act becomes available to the wife-applicant who was driven out from her husband's shared household prior to coming into effect of

the Act of 2005, but if the deprivation continued even after the Act came into force. Thus as held by this court in Smt.Bharati Naik .V. Ravi Ramnath Halnarkar (2011 All. M.R.(Cri) 224 : (2011 (4) AIR Bom R 335), with reference to the Act of 2005, an interpretation which furthers the purpose of the Act must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Thus, even if the woman was in the past in relationship, she would be entitled to invoke the provisions of the Act on the basis of continuing cause of action.'

30. The decision rendered in the case of MAROTI DEVAJI LANDE is in tune with the explanation (1)(iv) to Section 3 of the D.V. Act. The provisions of the Act to claim maintenance are in addition to Section 125, Cr.P.C. which is general law. Section 12 of the D.V. Act speaks about the procedure for obtaining orders and reliefs under the D.V. Act. Section 18 speaks about the protection orders and Section 20 of the Act speaks about the monetary reliefs. Monetary relief under Section 20 of the Act, as pointed out by the Hon'ble High Court of Bombay, could be granted in favour of a woman who is thrown out of the matrimonial home prior to the coming into force of the D.V. Act is also entitled to seek maintenance. The Act being a welfare legislation connected with the protection of rights of women, economic abuse also amounts to violence and therefore, the first appellate court has granted monetary relief. Hence point no.(2) is answered in the affirmative.

31. Point No.(3): Insofar as the quantum of maintenance is concerned, the first appellate court has awarded Rs.5,000/- as monthly maintenance. In paragraph 9 of his deposition, accused-respondent Ramachandrachar has deposed as follows:

I submit my father Late Sri Dasappachar leased out the portions of the property to one V.R.Vishwanath and one Bhaskar S.Shivapoojari under a registered lease deed dated 19.10.2000 and lease deed dated 23.10.1997. The certified copies of the lease deeds are produced herewith and the same be marked as Exs.R4 and R5. I submit my father during his lifetime had borrowed a sum of Rs.1,50,000/- as hand loan from the tenant by name V.R.Vishwanath for his medical expenses and for family maintenance and the said tenant is deducting a sum of Rs.4,000/- p.m. towards the loan. I submit now I am getting Rs.3,000/- p.m. from V.R.Vishwanath and Rs.6,050/- from Bhaskar S.Shivapoojari. The above said rents are not enough

for me to maintain the family. I submit my son Shivaraj is working as an ordinary electrical labourer and he is earning a sum of Rs.110/- per day if he gets work by his contractor. I submit due to my financial crunch, I was not able to pay the property tax to the concerned authorities and the authority has issued notice for attachment of my property and for sale to recover the tax amount.'

Admittedly he is already married to Ratnamma and has a son. Of course this is during the subsistence of the first marriage. The reality of life is that he married Ratnamma long back and has a grown up son. He is already aged 66 years. He has produced a lease deed entered into between his father-Dasappachar and one Bhaskar Shivapoojari relating to shop of two sqs. On OTC Road, Chikkpet, Bengaluru, a commercial locality. This was entered in the year 2000 and he is the only son to his father and is getting rent form the same. The rent agreed was Rs.5,000/- p.m.

32. One more property bearing Khatha No.589 measuring 48'x 17'situated on OTC Road, Chikpet, Bengaluru, is leased to one V.R.Vishwanath who is examined as RW-3. What is stated by him is that Dasappachar had taken Rs.5.5 lakhs for the maintenance of his family and he is deducting at the rate of Rs.4,000/- p.m. towards principal and till now, the respondent or his father have not repaid the entire loan. In this regard, he has furnished a copy of the registered lease deed entered into in October 1987 to which accused-Ramachandrachar is also a party. Thus in the year 1987 itself, the property was worth about Rs.5.5 lakhs. He had agreed to pay rent at the rate of Rs.7,000/- p.m. from 6.10.2007 to 5.10.2012 and at the rate of Rs.8,000/- p.m. from 6.10.2012. Thus it would go to show that the accused-respondent has two immovable properties in a busy commercial locality at Bengaluru and they are fetching rent.

33. Of course the accused-respondent has to look after his wife-Ratnamma and needs some amount for food, medicine, etc. What is held by the trial court is that the respondent is getting Rs.45,000/- p.m. as rent. Now the respondent has admitted that he has a house consisting of 4 floors and two portions are let out to tenants. He is residing in the ground floor and the first floor is let out on a monthly rent of Rs.7,000/- p.m. He has not produced any document to show that his father

had borrowed Rs.5,00,000/- from RW-3. Anyhow RWs-1 to 3 have admitted that the respondent is receiving rents.

34. The complainant is a lady aged more than 60 years and she is not in a position to earn any income to maintain herself. Taking into consideration the status of the respondent and the present cost of living, the learned judge of the first appellate court has, on the basis of broad preponderance of probabilities, awarded Rs.5,000/- p.m. as maintenance towards food, clothing, shelter and medical expenses and this certainly cannot be considered as either excessive or exorbitant.

35. It is in this view of the matter, no good grounds are made out to interfere with the well considered judgment passed by the first appellate court. No perversity or illegality is found in the approach of the learned judge of the appellate court to invoke the revisional jurisdiction vested in this court under Section 397, Cr.P.C. Accordingly the revision petition will have to be dismissed.

36. In the result, the following order is passed:

ORDER

The revision petition filed under Section 397, Cr.P.C. is dismissed.

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