

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL REVISION PETITION NO.795 OF 2015

C/W

CRIMINAL REVISION PETITION NO.1031 OF 2015

IN CRL.RP.NO.795/2015:

BETWEEN:

SRI. G. KALASEGOWDA,
SON OF LATE GANGAPPA,
AGED ABOUT 45 YEARS,
RESIDING AT KEMPANAHALLI VILLAGE,
SANTHEMAVATHURU POST,
KUNIGAL TALUK,
TUMKUR DISTRICT.

....PETITIONER

(BY SRI. K.S. HARISH, ADVOCATE)

AND:

SMT. N.K. NETHRAVATHI,
WIFE OF G. KALASEGOWDA,
AGED ABOUT 40 YEARS,
RESIDING AT NO.28, 4TH CROSS,
THIGALARAPALYA MAIN ROAD,
PEENYA II STAGE,
BENGALURU.

...RESPONDENT

(BY SRI. ABHISHEK ARUNKUMAR HAPPALI FOR
SMT. VAISHALI HEGDE, ADVOCATES)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 5.10.2013 PASSED BY THE III METROPOLITAN MAGISTRATE TRAFFIC COURT, BANGALORE CITY IN CRL.MISC.NO.153/2012 AND THE JUDGMENT DATED 9.6.2015 PASSED BY THE LIX ADDL. DIST. & SESSIONS JUDGE, BENGALURU CITY IN CRIMINAL APPEAL NO.580/2013 AND ETC.

IN CRL.RP.NO.1031/2015:

BETWEEN:

SMT. N.K. NETHRAVATHI,
W/O. G. KALASEGOWDA,
AGED ABOUT 40 YEARS,
R/O. NO.28, 4TH CROSS,
THIGALARAPALYA MAIN ROAD,
PEENYA II STAGE,
BENGALURU.

....PETITIONER

(BY SRI. ABHISHEK ARUNKUMAR HAPPALI FOR
SMT. VAISHALI HEGDE, ADVOCATES)

AND:

SRI. G. KALASEGOWDA,
SON OF LATE SRI. GANGAPPA,
AGED ABOUT 45 YEARS,
RESIDING AT KEMPANAHALLI VILLAGE,
SANTHEMAVATHURU POST,
KUNIGAL TALUK,
TUMKUR DISTRICT-577 101.

...RESPONDENT

(BY SRI. K.S. HARISH, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 09.06.2015 PASSED IN CRL.A.NO.580/2013 BY LIX ADDL. CITY CIVIL AND S.J.,

BENGALURU AND CONFIRM THE JUDGMENT DATED 05.10.2013 PASSED IN CRL.MISC.NO.153/2012 BY MMTC-III BENGALURU CITY.

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.08.2023, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These two petitions are filed by the husband and wife challenging the order passed by MMTC-III, Bangalore, in Crl.Misc.No.153/2012 dated 05.10.2013 and the judgment dated 09.06.2015 passed by the LIX Additional City Civil & Sessions Judge, Bangalore in Crl.A.No.580/2013. The husband has filed Crl.RP.No.795/2015 while the wife has filed Crl.RP.No.1031/2015.

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the learned Magistrate in Crl.Misc.No.153/2012.

3. The brief factual matrix leading to the case are that the petitioner-wife has filed the petition under

Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act'), seeking injunction against the respondent-husband from committing any domestic violence, seeking relief for separate residence and also sought maintenance as well as compensation to the tune of Rs.10,00,000/-. According to the petitioner, her marriage with respondent was solemnized on 15.03.1998 and after the marriage, the petitioner joined the respondent and out of the said wedlock two children are born by name Navyashree and Uma. K born in 1999 & 2001 respectively. It is asserted that the respondent is working as Assistant Teacher in primary school and he has subjected the petitioner-wife to domestic violence demanding dowry. It is further asserted that she has also lodged a complaint under Section 498A of I.P.C against the respondent for dowry harassment and matter is still pending. It is asserted that the respondent having sufficient means neglected the petitioner and hence, this petition.

4. The respondent-husband appeared and denied all the allegations. The petitioner is examined as PW1 and placed reliance on 47 documents while respondent was examined as RW1 and he placed reliance on four documents. After hearing the arguments and after appreciating the oral and documentary evidence, the learned Magistrate allowed the application under Section 12 of the DV Act in part directing the respondent not to commit any domestic violence and further directed that the children of the petitioner & respondent are entitled for monthly maintenance of Rs.5,000/- each till they are married. Further, he has also awarded compensation of Rs.5,00,000/- by way of damages. This order is being challenged by the respondent-husband before LIX Additional City Civil & Sessions Judge, Bengaluru, in CrI.A.No.580/2013.

5. The learned Sessions Judge after re-appreciating the oral and documentary evidence, has partly allowed the petition filed by the husband by

directing the respondent to pay maintenance of Rs.4,000/- each to children from the date of filing the petition and further reduced damages from Rs.5,00,000/- to Rs.1,00,000/-. Being aggrieved by these findings, the husband as well as wife are before this Court.

6. Heard the arguments advanced by the learned counsel for the petitioner and respondent. Perused the records.

7. The learned counsel for the petitioner/wife would contend that daughters were granted maintenance of Rs.5,000/- each by the Magistrate which was reduced to Rs.4,000/- and damages were reduced from Rs.5,00,000/- to Rs.1,00,000/- and there is no reason for reduction of the maintenance as well as damages. It is also asserted that the relationship between the parties is undisputed and respondent being the father did not make any provision for maintenance of the minor children and it is the duty of the father to maintain his children. He would contend that when the appellate Court in para

No.17 has observed that the children are required maintenance of Rs.5,000/- to Rs.6,000/- per month, there is no reason for reducing it to Rs.4,000/-. He would also contend that there is no reason for reduction of compensation from Rs.5,00,000/ to Rs.1,00,000/- and hence, he would seek for restoring the order of the learned Magistrate.

8. Per contra, learned counsel for the respondent-husband would contend that both petitioner and respondent are government teachers and are having sufficient means. It is also asserted that the petitioner is also equally responsible for maintenance of children and definition of the child means person below the age of 18 years and hence, maintenance cannot be awarded after they attain the age of majority under the provisions of this Act and the daughters are at liberty to file a independent petition under the provisions of Hindu Adoption And Maintenance Act, 1956, (for short 'Hindu Adoption Act') for claiming maintenance, since now, they

have attained majority. He would also contend that there is no pleading that children are now unable to maintain themselves as they have attained majority and further, there is no material evidence regarding domestic violence. He would alternately contend the order of damage and maintenance awarded by the appellate Court may be confirmed with a modification that maintenance shall be paid till daughters attain the age of majority.

9. Having heard the arguments and perusing the records, it is evident that the petitioner and respondent are husband and wife. It is also an undisputed fact that both are now working as teachers. The petitioner has joined the post subsequently, while respondent is serving as a teacher since earlier itself. It is also evident that initially children were minor and maintenance was awarded. But admittedly, children were born in the year 1999 & 2001 respectively and as on today they have attained majority.

10. The monetary benefit is awarded under Section 20 of the protection of women from Domestic Violence Act. Under Section 20(1)(d) there is a provision for awarding maintenance to the aggrieved person as well as the children. The definition of the child is given in Section 2(d) of the act wherein child is described as any person below the age of 18 years and it includes adopted, step or foster child. Hence, under the provisions of Section 20, maintenance can be awarded only to aggrieved person and children. But admittedly, in the instant case the daughters are now major and when the petition was filed they were minors. However, the learned Magistrate has awarded maintenance till their marriage. But under the provisions of the DV Act, the unmarried daughter is not entitled for maintenance and only aggrieved persons or children are entitled for maintenance .

11. The learned counsel for the respondent-husband would contend that if the daughters are unable to maintain themselves even after attaining age of

majority they are at liberty to seek maintenance under the provisions of Section 20(3) Hindu Adoption and Maintenance Act. In this context, he placed reliance on decisions reported in **2022 SCC OnLine Del 69 [POONAM SETHI vs. SANJAY SETHI]**, **AIR 2006 Bom 94 [MADHAVI RAMESH DUDANI Vs. RAMESH K. DUDANI]**, **2019 SCC OnLine Mad 39126 [R.KIRUBA KANMANI vs. L.RAJAN]** and **(2021) 13 SCC 99 [ABHILASHA vs. PRAKASH AND OTHERS]**.

12. No doubt all these citations are under the provisions of Hindu Adoption Act or under Section 125 of Cr.P.C. But it is evident that the maintenance can be claimed by daughters under the provisions of Hindu Adoption Act if they are unable to maintain themselves. But in the instant case, admittedly, the major daughters are not parties and they have not sought any maintenance independently. They have got remedy under the provisions of Hindu Adoption Act to seek the maintenance on attaining majority in case they are unable to maintain themselves. Hence, under the

provisions of Domestic Violence Act, question of awarding maintenance till marriage of the daughters does not arise at all and the maintenance can be granted till the attainment of age of majority by the child.

13. The other aspect is regarding compensation. The learned Magistrate has awarded compensation of Rs.5,00,000/- and the appellate Court has reduced it to Rs.1,00,000/-. Both the parties argued much on this aspect, but there is no provision for computing the compensation and it is only a guess work. However, damages or compensation cannot be equated or counted in terms of money as it is a solace granted for the mental or physically injuries suffered by the aggrieved person.

14. In the instant case, the evidence clearly establish that the petitioner-wife was subjected to domestic violence. This evidence is again corroborated by the report of the protection officer. Further non making any provision for maintenance of the minor children also can be termed as domestic violence as it is not the

responsibility of the mother alone to maintain the child. Hence, there is material evidence to prove the domestic violence is committed by the respondent-husband as against the petitioner.

15. However, there is no provision for computation of the compensation and it is only on the basis of guess work. Admittedly, both are teachers and both are responsible of moulding the future responsible citizens of the country. But in the instant case, their own children are the sufferers. The learned Magistrate has not given any reasons for awarding compensation/damages to the tune of Rs.5,00,000/- but the Sessions judge has reduced it to Rs.1,00,000/-. It is only a discretion considering the employment of both the parties.

16. In my considered opinion the damages awarded by the learned Sessions Judge to the tune of Rs.1,00,000/- appears to be reasonable and it does not call for any interference.

17. The learned Magistrate has awarded maintenance of Rs.5,000/- per month to each daughters till they are married. As observed above, the maintenance to the children can be granted till they attain the age of majority under the provisions of domestic violence Act. The evidence disclose that the children required maintenance of Rs.5,000/- to Rs.6,000/- per month. But it is not the sole responsibility of the respondent and it is the responsibility of mother also to maintain the children. Since both are teachers, the maintenance awarded by the learned Magistrate at Rs.5,000/- per month appears to be little high and the learned sessions judge has reduced it to Rs.4,000/- which is proper. If Rs.4,000/- is paid by respondent-husband, then balance can be contributed by the petitioner-wife/mother. Hence, this order of the learned Sessions Judge does not call for any interference. However, both the Courts below have awarded the maintenance from the date of petition till the marriage of

daughters which is not proper and the children are entitled for maintenance till the date of majority.

18. To this extent only, the revision petition filed by the husband needs to be allowed and rest of orders needs to be confirmed. However the revision petition filed by wife does not survive for consideration. Accordingly, I proceed to pass the following

ORDER

1. The revision petition filed by the husband in CrI.RP.No.795/2015 is allowed in part so far as it relates to maintenance awarded till the date of marriage of the daughters.
2. The order passed by the learned magistrate and the learned sessions judge regarding granting maintenance till the marriage of the daughters stands modified and maintenance of Rs.4,000/- is awarded to the daughters from the date of petition till they attain age of majority with a liberty to them to claim further maintenance, if any

under provision of the Hindu Adoption and Maintenance Act.

3. The rest of the order of the Sessions judge stands confirmed.
4. The Crl.RP.No.1030/2015 filed by wife stands dismissed.

Sd/-
JUDGE

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