



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE RAJENDRA BADAMIKAR
CRIMINAL REVISION PETITION NO. 56 OF 2016

BETWEEN:

SMT. SHANTHAKUMARI,
W/O THIMMEGOWDA,
AGED ABOUT 45 YEARS,
R/AT RANGANATHA KOTE,
CHICKMAGALUR-577 101.

...PETITIONER

(BY SRI. YADUNANDAN .N, ADVOCATE FOR
SRI. GURURAJ .R, ADVOCATE)

AND:

THIMMEGOWDA,
S/O LAKSHMEGOWDA,
AGED : MAJOR,
SHANNIDEVARA TEMPLE STREET,
NEAR RATHNAGIRIBORE, RAMANAHALLI,
CHICKAMAGALUR-577 101.

...RESPONDENT

(BY SRI. LOKESHA .P.C, ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C
PRAYING TO SET ASIDE THE ORDER DATED 06.11.2015
PASSED IN CRL.A.NO.251/2013 ON THE FILE OF II ADDL. S.J.,
CHIKAMAGALUR AND ORDER DATED 13.03.2013 PASSED IN
CRL.MISC.NO. 17/2009 ON THE FILE OF CHIEF JUDICILA
MAGISTRATE, CHIKKAMAGALUR BE RESTORED BY ALLOWING
THIS REVISION PETITION.

THIS PETITION COMING ON FOR HEARING THIS DAY,
THE COURT MADE THE FOLLOWING:



**ORDER**

This is petition filed by the wife challenging the order passed by II Additional Sessions Judge, Chikkamagaluru, in Crl.A.No.251/2013, dated 06.11.2015 whereby the learned Sessions Judge has set aside the order of granting maintenance to the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act') along with compensation.

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the trial Court.

3. The brief factual matrix leading to the case are that the petitioner has filed the petition under Section 12 of the D.V. Act claiming protection order under Section 18, residential order under Section 19 and monetary benefit under Section 20 in the form of maintenance of Rs.3,000/- per month and compensation of Rs.25,000/- under Section 22 of the said Act. After appreciating the oral and documentary evidence, the learned Magistrate granted a



protection order under Section 18 of the D.V. Act. He has also awarded maintenance of Rs.1,500/- to the petitioner with Rs.1,000/- towards rent allowance and also awarded Rs.5,000/- towards compensation.

4. This order is being challenged by the husband before II Additional Sessions Judge, Chikkmagaluru, in Crl.A.No.251/2013 by filing an appeal under Section 29 of the D.V. Act. The learned Sessions Judge after re-appreciating the oral and documentary evidence, allowed the appeal by setting aside the impugned order passed by the learned Magistrate in Crl.Misc.No.17/2009 and dismissed the petition.

5. Being aggrieved by this order of rejecting the maintenance and denying compensation, this revision is filed by the wife.

6. Heard the learned counsel for the revision petitioner/wife and learned counsel for the respondent/husband. Perused the records.



7. The learned counsel for the revision petitioner would contend that the petitioner is a legally wedded wife of respondent and it is the duty of husband to maintain his wife. It is asserted that since he is having an illicit relationship with his relative, domestic violence is required to be inferred. Hence, he would contend that petition needs to be allowed.

8. Per contra, the learned counsel for the respondent would contend that the marriage was dissolved by the Competent Court by granting a decree in M.C.No.53/2016 on the ground of adultery as well as cruelty. He would also contend that evidence disclose that the petitioner had eloped with neighbor and all along, she refused to stay with her husband and showed her interest to stay with her paramour, which clearly discloses her mental state of mind. Hence, he would contend though she is legally wedded wife, looking to her conduct having illicit relationship, she is not entitled for any maintenance. He would also contend that since now divorce has been



granted, the question of granting a residential order or protection order does not arise at all.

9. Having heard the arguments and perusing the records, it is evident that there is no serious dispute of the fact that the petitioner was the wife of the respondent. She has filed a petition under Section 12 of the D.V. Act, claiming various reliefs. However, it is the specific contention of the respondent husband is that the petitioner has eloped with a neighbor by name Mahesh and he was compelled to lodge a complainant. In this context, the respondent has placed reliance on Ex.R1 statement given by the petitioner before the police and Ex.R2 is the complainant lodged by the husband. Ex.R3 is the endorsement issued by the police to the respondent, wherein they have specifically stated that the wife has refused to join the husband and she preferred to stay with her paramour Mahesh.

10. Ex.R1, R2 & R3 are not at all challenged by the revision petitioner. Further, it is also submitted that, on



the same ground, now the divorce has been granted by the family Court and this statement is also not challenged. The respondent was got examined himself as RW1 and he has reiterated the allegation regarding the petitioner being eloping with Mahesh. RW2 is the neighbor and he has also deposed to this fact. RW3 is the brother of the petitioner and he has specifically asserted that the respondent never subjected the petitioner to ill-treatment demanding dowry. He has also asserted that his sister-petitioner is staying along with Mahesh and they did conduct the panchayat and initially, the husband and wife were residing together, but again, she joined Mahesh. Though in the cross-examination it is suggested that petitioner is not having any income to maintain herself, but this witness specifically asserted that she is staying with Mahesh and Mahesh is taking care of her maintenance. Apart from that, the evidence of Hanumantha-RW3 is supported by the son of the parties by name Punith Kumar, who is examined as RW4. He has also specifically deposed regarding his mother eloping with Mahesh. Though he was



cross-examined, nothing was elicited. Mahesh was also examined as RW5 by obtaining summons, but he has turned hostile and quite natural, which is expected. The oral and documentary evidence produced clearly establish that the petitioner is not honest towards her husband and she has got extramarital affairs with neighbor Mahesh and all along, she asserted that she used to stay with him. When the petitioner is staying in adultery, the question of she claiming maintenance does not arise at all. The contention of the petitioner that the petitioner is a legally wedded wife and entitled for maintenance cannot be accepted in view of the conduct of the petitioner, who is not honest and is leading adulterous life.

11. The learned counsel for the revision petitioner has also invited the attention of the admission given by RW1 regarding he is having illicit relationship with daughter of his sister-in-law. Though that aspect has been disputed, since the petitioner is claiming maintenance, she must prove that she is honest and when she herself is not



honest, she cannot pin-point her fingers towards her husband.

12. The learned Magistrate has failed to appreciate any of these aspects and in a mechanical way, awarded the maintenance and compensation, which is a perverse order. The learned Sessions judge has re-appreciated the oral and documentary evidence and has rightly rejected the claim of the petitioner in view of the fact that she was leading an adulterous life. Considering there facts and circumstances no illegality or perversity is found in the order of learned Sessions Judge so as to call for interference by this Court. Hence, revision petition being devoid of any merits, does not survive for consideration and accordingly, I proceed to pass the following:

ORDER

The revision petition stands ***dismissed***.

**Sd/-
JUDGE**