THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 18TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MS.JUSTICE J.M.KHAZI

CRIMINAL REVISION PETITION No.100322 OF 2023
C/W
CRIMINAL REVISION PETITION No.100321 OF 2023

IN CRL.R.P.NO.100322 OF 2023

BETWEEN:

SIDDARAMAPPA S/O. SANGANNA JANI
AGE: 33 YEARS, OCC: ASST. STATION MASTER,
SOUTH WESTERN RAILWAY, HUBBALLI DIVISION,
R/O: VYSAN COLONY, HOSPET.
DIST: BALLARI-583101.

...PETITIONER

(BY SMT. RANJITA ALAGAWADI, ADVOCATE FOR
SRI. B.V.SOMAPUR, ADVOCATE)

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AND:

KAVITA D/O. MADIVALAPPA HADAPAD
AGE. 30 YEARS, OCC: HOUSEHOLD WORK,
R/O. KESHAVA NAGAR, NEAR RAILWAY GATE,
DHARWAD-580002.
ALSO C/O KATAVAKAR BUILDING,
RADDI COLONY,
NEAR BIKKANNAVAR COMPOUND
SARASWATPUR DHARWAD.

…RESPONDENT

(BY SRI. D. L. LADKHAN, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C. PRAYING THAT THE IMPUGNED JUDGMENT AND ORDER PASSED BY THE LEARNED IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, DHARWAD IN CRL. APPEAL NO.21/2022 DATED 25.07.2023 AND THE IMPUGNED JUDGMENT AND ORDER PASSED BY THE LEARNED III ADDL. SENIOR CIVIL JUDGE, AND CJM, DHARWAD IN CRIMINAL MISC NO.38/2016, 13.01.2022 MAY PLEASE BE SET ASIDE BY ALLOWING THIS REVISION PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.R.P.NO.100321 OF 2023

BETWEEN:

SIDDARAMAPPA S/O. SANGANNA JANI
AGE: 33 YEARS,
OCC: ASST. STATION MASTER,
SOUTH WESTERN RAILWAY,
HUBBALLI DIVISION,
R/O: VYSAN COLONY, HOSPET.
DIST: BALLARI-583101.

...PETITIONER

(BY SMT.RANJITA ALAGAWADI, ADVOCATE FOR
SRI. B.V.SOMAPUR, ADVOCATE)

AND:

1 . KAVITA D/O. MADIVALAPPA HADAPAD
AGE: 30 YEARS, OCC: HOUSEHOLD WORK,
R/O. KATAVAKAR BUILDING, MALAMADDI,
SARASWATPUR, NEAR POST OFFICE,
DHARWAD-580002.

2 . APOORVA D/O. SIDRAMAPPA JANI
AGE: 07 YEARS,
SINCE MINOR R/BY HER NATURAL MOTHER
AND M/G RESP.NO.1.

…RESPONDENTS

(BY SRI. D. L. LADKHAN, ADVOCATE, FOR R1 & R2;
R2 IS MINOR REP. BY R1)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C. PRAYING THAT THE IMPUGNED JUDGMENT AND ORDER PASSED BY THE LEARNED IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, DHARWAD IN CRL. APPEAL NO.23/2022 DATED 25.07.2023 AND THE IMPUGNED JUDGMENT AND ORDER PASSED BY THE LEARNED III ADDL. SENIOR CIVIL JUDGE, AND CJM, DHARWAD IN CRL. MISC NO.38/2016, 13.01.2022 MAY PLEASE BE SET ASIDE BY ALLOWING THIS REVISION PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 14.09.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These two Revision Petitions are filed by the petitioner/husband under Section 397 r/w 401 of Cr.P.C., challenging the dismissal of appeal filed by him and allowing the appeal filed by his wife and daughter and thereby enhancing the maintenance from Rs.10,000/- to Rs.18,000/- to respondent No.1/wife and granting maintenance at the rate of Rs.10,000/- to respondent No.2/daughter.

2. The trial Court allowed petition filed by respondent No.1 under Section 12 of Protect of Women from Domestic Violence Act (for short 'DV Act'), granting

maintenance to her at the rate of Rs.10,000/- p.m. from the date of petition. She challenged the same in Crl.A.No.23/2022 along with her daughter as appellant No.2. In Crl.A.No.21/2022, the petitioner challenged the order passed by the trial Court and sought for dismissal of the petition filed by the respondent No.1 under Section 12 of the DV act.

3. It is contended by the respondent No.1 that she belongs to schedule caste, whereas petitioner belongs to Lingayath community. During 2014 they fell in love and got married. Their marriage is also registered. Through their wedlock respondent No.2 is born to them. Later, in order to please his parents, petitioner filed a suit to declare their marriage as null and void, on the ground that it was formed by exerting force on him. Even after the filing of such suit, they live together. However, later on he prevented her from entering the matrimonial home. Initially, she filed Crl.Misc.No.12/2015, wherein she was granted maintenance at the rate of Rs.6,000/- p.m. Due to the intervention of

elders it was withdrawn before the Lok Adalath on 12.03.2016. After the birth of respondent No.2, petitioner failed to visit them and without any alternative she filed the petition.

4. In the statement of objections, though petitioner admit acquaintance between him and respondent No.1, he has denied the factum of marriage. He has alleged that respondent No.1's mother with the help of henchman forced him to exchange garland in the temple. The registration of marriage is also done exerting force and threat on his life. He admits filing of suit in O.S.No.3/2015. Though he has also admitted that he is working in South western Railways, he has denied the income and his liability to maintain respondent No.1/wife. He claimed that after deductions, he is getting only a sum of Rs.25,000/-. Petitioner has admitted the filing of Crl.Misc.No.12/2015 and grant of maintenance at the rate of Rs.6,000/- p.m. and that after compromise it was withdrawn. The petitioner has also contended that he was

forced to sign the compromise petition, giving threat and exerting pressure through the henchman.

5. At the enquiry, respondent No.1 examined herself as PW-1 and got marked Ex.P1 to 18.

6. Petitioner got himself examined as RW-1 and relied upon Ex.R1 to 31.

7. The trial Court partly allowed the petition granting maintenance at the rate of Rs.10,000/- p.m. to respondent No.1.

8. The Session Court dismissed the appeal filed by petitioner. It allowed the appeal filed by respondents by enhancing the maintenance payable to respondent No.1 to Rs.18,000/- p.m during her lifetime and granted maintenance at the rate of Rs.10,000/- p.m. to respondent No.2 from the date of petition till her marriage or till she is able to earn, whichever is earlier.

9. Challenging the dismissal of appeal filed by him and allowing the appeal filed by respondents and thereby enhancing the maintenance, petitioner has come up with these petitions, contending that the impugned orders are erroneous, illegal, improper and perverse. Both Courts have erred in granting maintenance, especially in the light of specific defence taken by him. The observation of the Courts below that he has not challenged the judgment and decree in M.C.No.254/2016 and M.C.No.216/2016 is factually wrong. He has filed MFA.No.101760/2019 and MFA.No.101834/2019 and they are pending. The parents and other family members are dependent on the petitioner. Respondent No.1 is having source of income and her parents are rich. Respondents are not entitled for any maintenance from the petitioner. After deductions, petitioner is getting only Rs.20,566/- out of salary of Rs.70,398/-. Therefore, granting maintenance at the rate of Rs.28,000/- p.m to respondent No.1 and Rs.10,000/- to respondent No.2 is highly excessive

and prays to allow the petitions, set aside the judgment and order of trial Court as well as the Session Court.

10. On the other hand, learned counsel for respondents supported the order of the Sessions Court and sought for dismissal of the petitions.

11. Heard arguments of both sides and perused the record.

12. Thus, alleging that despite marrying her and having a daughter through the said marriage, petition has failed and neglected them, respondent No.1 filed petition under Section 12 of DV Act, seeking various relief including maintenance. The petitioner has denied the relationship between him and respondents contending that his marriage with respondent No.1 was performed forcefully with the help of henchman by exchanging garlands in a temple and later in the same manner, the marriage was registered with the Registrar of the Marriages. However, during the course of evidence, he has admitted that after the marriage, he and

respondent No.1 lived together and respondent No.2 is born to him. He has also admitted of having performed baby shower during the pregnancy of respondent No.1.

13. The petitioner has filed suit in O.S.No.3/2015 to declare his marriage with respondent No.1 as void. As admitted by him, he has withdrawn the same with liberty to file petition for divorce. Later in M.C.No.261/2016 filed by him for divorce is dismissed and M.C.No.254/2016 filed by respondent No.1 for restitution of conjugal rights was allowed. In this petition, the petitioner has pleaded that he has challenged both orders in MFA.No.101760/2019 and MFA.No.101834/2019 and they are pending. Though petitioner has contended that respondent No.1 is capable of maintaining herself and her parents are very rich, he has not placed any material on record to evidence the said fact.

14. Taking into consideration the basic salary and the other emoluments which the petitioner is getting and having regard to the fact that it is the responsibility of petitioner to

maintain respondents and also taking into consideration their standard of living and the fact that respondent No.2 is child aged six years, the trial Court has enhanced the maintenance payable to respondent No.1 to Rs.18,000/-p.m. and granted maintenance at the rate of Rs.10,000/- p.m. to respondent No.2.

15. In support of petitions, petitioner has relied upon the decision of the Hon'ble Supreme Court in Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy (***Kalyan Dey Chowdhury***)[1]. In the said decision, taking into consideration the fact that after getting divorce, the husband has remarried and having a child through the second marriage and he is having the responsibility of taking care of them, Hon'ble Supreme Court reduced the maintenance payable to the wife from Rs.23,000/- to Rs.20,000/-. However, in the present case, the petitioner has failed to establish that apart from respondent, he is having the responsibility of maintaining any other person. Taking into

consideration the gross salary drawn by the petitioner, the Session Court has rightly enhanced the maintenance payable to respondent No.1 and also granted maintenance to respondent No.2. In the facts and circumstances of the case, this Court is of the considered opinion that there are no justifiable grounds to interfere with the impugned order. In the result, the petitions fail and accordingly the following:

ORDER

(i) Both petitions filed under Section 397 r/w 401 Cr.P.C by the petitioner/husband are rejected.

(ii) The impugned judgment and order dated 25.07.2023 in Crl.A.No.21/2022 & Crl.A.No.23/2022 on the file of IV Addl.District and Sessions Judge, Dharwad and order dated 13.01.2022 in Crl.Misc.No.38/2016 on the file of III

[1] *Civil Appeal No.5369/2017*

Addl.Senior Civil Judge & CJM, Dharwad are confirmed.

(iii) The Registry is directed to send back the trial Court as well as Session Court records along with copy of this order forthwith.

Sd/-
JUDGE

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