

2015 SCC OnLine Kar 8709 : (2015) 152 AIC 396 : (2015) 2 Kant LJ 614 :  
(2015) 91 ACC (Sum 10) 5 : (2015) 2 RCR (Cri) 807 : (2015) 3 DMC 62

In the High Court of Karnataka  
(BEFORE BUDIHALL R.B., J.)

Between

G. Jagadish Babu  
*Versus*  
Divya and others

Criminal Revision No. 1016 of 2011  
Decided on February 26, 2015  
ORDER

BUDIHALL R.B., J.:— This revision petition is preferred by the petitioner-husband against respondent No. 1-wife and also against respondents 2 and 3 being aggrieved by the judgment dated 15.7.2011 passed in CrI. A. No. 533/2010 on the file of the Fast Track Court (Sessions)-XI, Bangalore, wherein the appeal of the revision petitioner herein was dismissed confirming the order dated 24.6.2010 passed by the VII ACMM, Bangalore in CrI. Misc. 750/2009.

2. The revision petitioner has challenged the legality and correctness of the orders of Courts below on the grounds that they are illegal, improper



Page: 397

and unsustainable in law; Courts below have not appreciated the evidence on record in proper perspective which resulted in miscarriage of justice; Courts below have grossly erred in not noticing the fact that the 1st respondent has been living separately from the conjugal company of petitioner from April, 2007 and as such, there could not have been any occasion for the 1st respondent to suffer mental depression or agony so as to be compensated by pecuniary measures. The Trial Court ignoring hard and ground realities had directed the petitioner to pay Rs. 10 lakhs as compensation to the 1st respondent for the alleged mental depression forgetting the specific evidence placed on record by the petitioner that the 1st respondent had been living in adulterous life with the 2nd respondent. The Courts below have also grossly erred in ignoring the fact that the 1st respondent who has been living separately from April, 2007 made up her mind to tap the doors of the Trial Court after long lapse of time only with a view to make wrongful gain for herself and cause wrongful loss to the petitioner. The Courts below have grossly erred in not noticing the fact that complaint allegations and the reliefs claimed by the 1st respondent would show that the 1st respondent has been making endeavour to snatch as much as possible from the petitioner. Courts below have not taken into consideration the status of parties, financial stability of the petitioner and reasonable requirements of the 1st respondent and simply directed the petitioner to pay maintenance @ Rs. 15,000/- per month. The Courts below have lost sight of the fact that there was no contra evidence placed on behalf of the petitioner and the learned Magistrate has given a cake walk to the 1st respondent. The learned Magistrate ought to have appreciated the evidence on record with a pinch of salt. The approach of the Courts below is highly erroneous and same are based on surmises and conjectures. Hence, sought to allow the petition.

3. The 1st respondent-wife filed the petition before the Trial Court under section 12 of Protection of Women from Domestic Violence Act, 2005 against the revision petitioner-husband herein seeking protection and to restrain the husband from committing any act of domestic violence on her and also seeking monthly maintenance and also compensation from the husband. The revision petitioner-husband opposed the said petition by filing objection statement denying the allegations made in the petition. Then the evidence of P.W. 1 was recorded by the Trial Court and after hearing the arguments, ultimately, Trial Court has allowed the petition in part and passed the order restraining the revision petitioner-husband from committing any kind of domestic violence on the wife and granted monthly maintenance of Rs. 15,000/- to the wife, so also, awarded compensation of Rs. 10 lakhs. Being aggrieved by the order of Trial Court and also challenging the legality and correctness of the said order, revision petitioner herein preferred appeal in CrI. A. No. 533/2010 before the Fast Track Court No. IX, Bangalore. In the said appeal, appellant has arrayed his wife Divya as respondent No. 1 and also arrayed one Lalith Jain as respondent No. 2. After hearing the arguments and considering the merits of case, the appellate Court has dismissed the appeal and confirmed the order passed by the learned Magistrate Court. Being aggrieved by the same, the revision petitioner has preferred the present revision petition before this Court.

4. Heard the arguments of both sides on the main petition and also on the application I.A. No. 2/2014 filed under section 12 of the Contempt of Courts Act, 1971.

5. In I.A. No. 2/2014 filed under section 12 of the Contempt of Courts Act, 1971 it is stated that the above revision petition was preferred questioning



the legality and correctness of the orders passed by the Courts below. However, on 20.2.2014 petitioner agreed and undertook to pay a sum of ₹ 40 lakhs towards full and final settlement of the claims and accordingly on 28.2.2014, an application for compromise under section 320 r/w section 482 of Cr. P.C. was filed and the petitioner has undertaken to pay the amount in certain instalments. It is further contended that the revision petitioner willfully disobeyed and committed breach with regard to his undertaking before this Court and thereby committed contempt of Court and hence, action may be taken against him. The revision petitioner filed objection statement stating that there is mutual agreement between the parties for settlement of disputes and the revision petitioner had agreed to pay the amounts within the specified dates to the respondent and on payment the 6 criminal cases shall also come to an end. It was also agreed that in case of failure on the part of petitioner, all the criminal cases pending between the parties shall be proceeded with in accordance with law. It is also contended that petitioner was making earnest and honest efforts to mobilize funds to pay to respondent No. 1. Since the amount to be paid is quite huge, he is not in a position to mobilize the amount immediately, which has forced him to seek adjournments to make payment with fond hope of keeping up the promise with a bonafide intention. Even now he is ready to comply with the terms agreed and mere breach of promise cannot attract the provisions of Contempt of Courts Act as there is no willful disobedience or breach of order committed by the petitioner.

6. Learned Counsel appearing for the 1st respondent-wife during the course of arguments submitted that the Courts below have passed the orders after taking into consideration the financial capacity of the revision petitioner-husband herein. He has also made the submission that there are concurrent findings of the Courts below with

regard to the factual aspect of the matter and no illegality has been committed by the Courts below in passing such orders. Hence, he submitted that there is no merit in the revision petition and same is to be dismissed. With regard to I.A. No. 2/2014, learned Counsel has submitted that though the revision petitioner herein has entered into compromise and the same was submitted before this Court and subsequently also he has undertaken that he will pay the amount as per the agreed time schedule, he has not at all complied with the said undertaking and also the orders passed by this Court and thereby petitioner herein has committed the contempt of Court's order and hence, 1st respondent has filed LA. No. 2/2014 under section 12 of the Contempt of Courts Act to take action against the revision petitioner herein. In support of his contention learned Counsel for the 1st respondent-wife has relied upon the following two decisions:

- (i) in the case of *Rama Narang v. Ramesh Narang*,<sup>1</sup>
- (ii) in the case of *Narendra D.V. Gowda v. Vineet Jain*.<sup>2</sup>

7. *Per contra*, learned Senior Counsel appearing for the revision petitioner-husband during the course of his arguments submitted that the orders of the Courts below are without taking into consideration the financial capacity of the petitioner. The Court below only on the basis of evidence of P.W. 1 has wrongly proceeded to award the amount. Even the first Appellate Court without appreciating the materials placed on record has wrongly confirmed the order of the Trial Court. No material was placed by the respondent No. 1 wife before the Trial Court to show the income of the revision petitioner and also regarding the rental income of Rs. 2,80,000/- per month. The Trial Court itself has observed in



its order that no documents are produced to prove-the same. Hence, the learned Senior Counsel submitted that the amount awarded is excessive and highly exorbitant in nature. Hence, the revision petition may be allowed and the orders under revision may be set aside.

8. With regard to I.A. No. 2/2014 learned Senior Counsel has submitted that there is no disobedience of Court's order by the revision petitioner. It is true that as per the settlement terms the revision petitioner had agreed to pay the amount. But since the amount was heavy in spite of making his best efforts for arranging the amount, he could not arrange the same. Even he has made an attempt to sell the site for arranging the amount and as nobody came forward to purchase the same, he had offered the same before the Court during the course of arguments to respondent No. 1 -wife to purchase the said site, for which, 1st respondent has submitted that she is not ready and she wants payment of money as ordered by the Court. Hence, it is submitted that when there is no intention on the part of the revision petitioner purposely to avoid payment of money, question of committing contempt of Court order does not arise. It is also submitted that in case revision petitioner did not pay the amount as agreed upon, the next course to be followed is mentioned in the settlement terms itself. As such, the application is not maintainable and the decisions relied upon by the learned Counsel, for respondent No. 1 are also not applicable. Hence, it is submitted to reject the application.

9. I have perused the pleadings of the parties, judgment and orders passed by the Courts below, LA. No. 2/2014 filed under section 12 of the Contempt of Courts Act, '1971 and objections to the said application, grounds urged in the revision petition and ailsq the two decisions relied upon by learned Counsel appearing for the

respondent No. 1-Wife.

10. Perusing the order of the Trial Court it is seen that though the revision petitioner herein has filed his objection statement to the petition filed by the wife and also cross-examined P.W. 1 before the Trial Court, he has not at all lead his evidence before the Trial Court. Merely filing objection statement is not sufficient unless and until there is evidence in support of the contentions that he has raised in the objection statement. The order of the Trial Court goes to show that P.W. 1, wife of revision petitioner has entered into the witness box and gave her oral evidence in support of averments made in the petition. Looking to the order of the Trial Court it is seen that differences arose between the couples. As such, revision petitioner-husband filed matrimonial case seeking divorce and wife also filed petition Seeking divorce and she has also filed criminal complaint for the physical, and mental ill-treatment and harassment given to her by the petitioner and case has been registered for the offence under section 498-A of I.P.C. Not only that in the objection statement filed before the Trial Court the husband made the allegation that respndent No. 1 wife is pleading adulterous life with one Lalith Jain. Considering all these aspects, ultimately the Trial Court after appreciating both oral and documentary evidence, recorded a finding that there is ill-treatment and harassment by the husband to the wife. It is also observed by the Trial Court in its order that so far as the financial capacity of the husband is concerned, wife has not produced documents to show that her husband is getting monthly rental of Rs. 2,80,000/- and in the cross-examination of P.W. 1 it was suggested to her that her husband is having properties worth Rs. 50 crores. All these aspects were taken into consideration by the Trial Court for assessment of income of the revision petitioner-husband for awarding maintenance and compensation amount. The order of the Trial Court shows that petition was partly allowed and though the 1st respondent-wife had sought monthly maintenance of Rs. 1 lakh, Trial Court has granted an amount of Rs. 15,000/- per



Page: 400

month and though she has sought for Rs. 25 lakhs by way of compensation, Trial Court has awarded Rs. 10 lakhs as compensation and revision petitioner-husband was also restrained from committing any kind of domestic violence on respondent No. 1-wife.

11. As I have already observed above, to prove his contentions, revision petitioner has not entered into witness box before the Trial Court. When the order of the Trial Court was challenged in the appeal before the first Appellate Court, the first Appellate Court also taken into consideration all the aspects of the matter and after re-appreciating the materials on record came to the conclusion that there is no merit in the appeal and concurred with the findings of the Trial Court by dismissing the appeal. Therefore, with regard to the factual aspects of the matter, there is a concurrent finding of the Courts below based on the materials on record. I do not find any illegality in the orders of the Courts below and there are no grounds for this Court in this revision petition to interfere with the findings of the Courts below. Hence, the revision petitioner has not made out any case to allow the petition. Coming to the application I.A. No. 2/2014, as per the materials on record, a settlement was arrived at between the parties under sections 320(1) and 482 of the Code of Criminal Procedure on 28.2.2014. Perusing this compromise, it is true that it is agreed that the revision petitioner-husband has to pay an amount of Rs. 40 lakhs in full and final settlement of all the disputes between the parties and regarding the payment of amount time schedule was also fixed. But now the contention of the 1st respondent-

wife in I.A. No. 2/2014 is that as the amount was not paid as per agreed terms of agreement and also undertaking of the revision petitioner-husband it amounts to contempt of Court and action may be taken. But the order-sheet dated 4.7.2014 shows that both the Counsel have sought to list the matter for hearing on merits alongwith the application. Paragraph No. 12 of compromise petition reads as under:

"It is also agreed between the parties that if the petitioner commits default in payment of any of the instalments on the date agreed, he shall pay the same within 15 days thereafter, alongwith 10% of additional amount of that installment. In case the petitioner were to commit further default, the amount already deposited by the petitioner stands forfeited and all the cases to be proceeded in accordance with law ignoring this settlement."

Looking to the terms of compromise so also, the objection statement filed by revision petitioner-husband to the application I.A. No. 2/2014, it is seen that the parties themselves have agreed that in case of default of the husband in making payment as per the time schedule, then the settlement is to be ignored and pending matters to be proceeded with. I have also perused the decisions relied upon by learned Counsel for respondent No. 1- wife. The facts and circumstances involved in the said decisions does not apply to the case on hand. Apart from that, it is a proceeding between the couple wherein their marital relationship is still subsisting. The couple may change their attitude towards each other and may reconcile the matter and get united. Considering all these aspects of the matter, I am of the opinion that respondent No. 1 wife has not made out a case to allow I.A. No. 2/2014 and to initiate contempt proceedings against the revision petitioner."

12. Hence the revision petition, so also, I.A. No. 2/2014 filed under section 12 of the Contempt of Courts Act. 1971, are hereby rejected. Stay order granted by this Court in respect of the matters mentioned in the compromise petition stands vacated.

13. *Revision Dismissed.*

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<sup>1</sup>: (2009) 16 SCC 126 : AIR 2007 SC 2029.

<sup>2</sup>: ILR 2012 KAR 5952.