

IN THE COURT OF THE I ADDITIONAL SESSIONS JUDGE,
WEST GODAVARI, ELURU.

Present: SRI G.GOPI,
I Additional Sessions Judge,
West Godavari, Euru.

Friday, the 05th day of January 2018.

CRIMINAL APPEAL No. 362/2016.

From what Court the appeal is	: Judicial Magistrate of First Class, Special Mobile Court, Eluru.
Number of the case in that Court	: D.V.C.No. 29/2012.
Number of the Criminal Appeal	: Criminal Appeal No. 362/2016.
Name and description of the Appellant	: Kunapureddy @ Nookala Shanka Balaji Naidu s/o Venkateswara Rao, Hindu, male, 54 years, Hindu, Business, Tulip Gardens, Plot No.3, V.L. Puram, Rajahmundry of West Godavari District.
Name and description of the respondents.	: 1. Kunapureddy Swarna Kumari w/o Kunapureddy @ Nookala Shanka Balaji Naidu, Hindu, Female, 40 years, House wife, Brundavan Apartments, Ashok Nagar, Eluru, West Godavari District. 2. State: Station House officer, represented by its P.P., W.G., Eluru.
The Sentence and law and which it was imposed in the Lower Court	: The 1 st respondent is directed to pay monthly maintenance of Rs.10,000/- to the complainant from the date of the order apart from return of dowry amount of Rs.3.00 Lakhs within three months and compensation amount of Rs.15.00 Lakhs within six months from the date of its order and passed such other reliefs.
Whether confirmed, modified or reversed and if modified the modification	: MODIFIED.
Date of presentation	: 30.08.2016.
Date of filing	: 31.08.2016.
Date of notice issued by the court to appear.	: 31.08.2016.
Bail bond if appellant has been let out on the bail.	: --
Applicant ordered to appear	: 30.09.2016.
Date of hearing	: 19.12.2017.
Date of Judgment	: 05.01.2018.

The appeal coming on 19.12.2017 for hearing, upon perusing the grounds of appeal, record and the evidence, and upon duly considering the same after hearing the arguments of Sri K.Srinivsa Rao, Advocate for appellant; Sri B.V.Krishna Reddy, Advocate for respondent No.1 and Additional Public Prosecutor appeared for the State/ respondent No.2 and having stood over for consideration till this day, this Court delivered the following:-

J U D G E M E N T

1. This Criminal Appeal is filed by the appellant/1st respondent under the provisions of Section 29 of Protection of Women from Domestic Violence Act 2005, against the Order dated 12.08.2016 in D.V.C.No. 29 of 2012 passed by the learned Judicial Magistrate of I Class, Special Mobile Court, Eluru, wherein and where under the lower Court directed the appellant herein to return the dowry amount of Rs.3.00 Lakhs within three months from the date of its order; to pay monthly maintenance of Rs.10,000/- from the date of its order, payable on the 1st day of every succeeding month; and pay compensation of Rs.15.00 Lakhs within six months from the date of its order to the complainant and also passed other reliefs.

2. The parties shall be referred to as arrayed before the lower Court in the D.V.C.

3. Before the trial Court, the Complainant/wife, filed D.V.C.No. 29 of 2012 against the 1st respondent under various provisions. Admittedly, the appellant herein is the husband of the 1st respondent herein.

4. The contention of the 1st respondent who is the complainant before the trial Court is that at the time of her marriage with the appellant, her parents gave Rs.3.00 Lakhs as dowry, gold ornaments

weighing 15 sovereigns, and their marriage was performed in 1986 at Tirumala.

5. It is contended that due to their lawful wedlock, they blessed with two male issues. Later, the husband addicted to all sorts of vices, refused and neglected the complainant and her children, harassed her for both mentally and physically for more dowry. The amount paid by the brothers of the complainant to the appellant was spent away and the husband took away 15 tulas of gold ornaments.

6. The further allegation of the wife is that her husband used to suspect her fidelity and drove away her in March 2005. Due to the said harassment, the father of the complainant died. The appellant possessed assets and properties, but failed to maintain the wife and children.

7. The appellant herein who is the 1st respondent filed the Counter, denied the averments in the petition except by admitting the matrimonial relationship between himself and his wife. Therefore, there is no need or necessity to reproduce the rival contentions of both the parties herein again.

8. The appellant herein is testified as R.W.1 and got exhibited Exs.D-1 to D-9.

9. On behalf of the petitioner/complainant, P.Ws.1 and 2 were examined and no exhibits are marked.

10. The lower Court after framed the appropriate points and discussed the evidences, directed the appellant herein to return the dowry amount of Rs.3.00 Lakhs within three months from the date of its order; to pay monthly maintenance of Rs.10,000/- from the date of its order, payable on the 1st day of every succeeding month; and pay compensation of Rs.15.00 Lakhs within six months from the date of its order to the complainant and also passed other reliefs.

11. Aggrieved by the said order, the appellant/1st respondent filed the present appeal on various grounds mentioned in the memorandum of appeal grounds.

12. Heard the learned counsel for the appellant and the respondents.

13. Perused the order under appeal as also the material placed on record.

14. Now, the crucial point for consideration is:

i) Whether the order passed by the trial court in D.V.C.No.29 of 2012 is sustainable under Law?

ii) If not, what is the result of the appeal?

15. **POINT No.i** Under Section 20(1) of the Protection of Women from Domestic Violence Act, the Magistrate is empowered to direct the respondent/husband to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to, and the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force. Under sub-section (2) the monetary relief granted shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

16. The learned trial Court by considering the oral and documentary evidence adduced, directed the appellant herein to pay monthly maintenance to the wife @ Rs.10,000/- from the date of its order payable on first day of every succeeding month, which is permissible since the appellant is the husband of the 1st respondent herein.

17. The learned counsel for the appellant submitted that the lower Court ought not to have directed to return dowry amount of Rs.3.00 Lakhs as the parents of the 1st respondent neither paid Rs.3.00 Lakhs nor presented 15 sovereigns of gold ornaments, as the appellant herein married the 1st respondent without taking any dowry amount.

18. The wife is examined as P.W.1 before the trial Court. P.W.1 categorically admitted in her later part of cross-examination that she did not produce any documentary proof to show that her parents paid an amount of Rs.3.00 Lakhs as dowry, gold ornaments weighing 15 sovereigns, gold chain weighing 7 sovereigns and a gold ring to the respondent/husband. If such is the case of the wife, how the lower Court directed the husband to return the alleged dowry amount of Rs.3.00 Lakhs to the wife within the stipulated period. The wife also failed to examine her parents, elders or her kith and kin to show that by the time of the marriage, they paid Rs.3.00 Lakhs to the husband towards dowry. Therefore, the direction given by the learned trial Court for return of dowry amount of Rs.3.00 Lakhs by the husband to the wife is not sustainable under Law and the said finding is not substantiated, since no cogent evidence found to believe presentation of dowry of Rs.3 lakhs.

19. Now coming to the compensation amount of Rs.15.00 Lakhs awarded to the wife. The trial Court directed the husband to pay Rs.15.00 Lakhs to the wife towards the compensation amount within six months from the date of its order. A perusal of the order passed by the lower Court in this aspect, this appellate Court did not find any reasons for granting such amount towards compensation to the wife.

20. In clear and categorical terms P.W.1 in her cross-examination stated that she is not willing to live with the husband and she filed a petition under Section 13 of Hindu Marriage Act seeking dissolution of

marriage on the file of learned Principal Senior Civil Judge, Eluru, and the same was ended in dismissal. P.W.1 further admitted that she also did not produce any documentary proof to show that her husband owns Ac.10.00 cents of agricultural land, fish tanks for an extent of Ac.6.0 cents and commercial complex worth of Rs.70.00 Lakhs. P.W.1 admitted that she did not remember whether she pleaded in the petition and in her chief-examination affidavit that she is residing separately since March 2005 in Eluru.

21. P.W.1 in her cross-examination further admitted that the respondent/ husband is employee as insurance surveyor in Rajahmundry and his services were terminated as it is temporary post and she does not know the avocation of the respondent/husband right now. P.W.1 further admitted that she did not lodge any complaint against the respondent/husband when she was harassed. Though the wife attributed extra-marital relationship of her husband with one Sasikala, she has failed to establish the same and she admitted that she did not produce any proof to show that the respondent/husband was maintaining illicit relationship. P.W.;1 further admitted that she did not produce any documentary proof to show that her husband is a profitably employed and doing business.

22. To prove the means and capacity of the complainant/wife, the 1st respondent/husband relied upon Ex.D-3 income tax referents which shows that the complainant is doing business and paying income tax on the income derived there from. Ex.D-4 is the LIC receipts in the name of the petitioner. Ex.D-5 is the bank passbook issued in the name of the complainant. Ex.D-6 is the petition copy filed by the complainant in H.M.O.P.No.22 of 2010 for divorce. Ex.D-7 is the order and decree in H.M.O.P.No.22 of 2010. Ex.D-8 is the affidavit petition in H.M.O.P.No.50 of 2008 in which the complainant claiming Rs.5,000/- per month towards

her maintenance. Ex.D-9 is the medical bills produced by the 1st respondent which shows that he is undergoing treatment for his diseases.

23. Admittedly, the parties herein are wife and husband. The evidence put forth by the parties before the lower Court shows that there are matrimonial disputes pending between them. The divorce petition filed by the complainant filed in H.M.O.P.No.22 of 2010 was dismissed by the learned Principal Senior Civil Judge, Eluru, and the order and decree copy of which is marked as Ex.D-7. The learned Principal Senior Civil Judge, Eluru, while dismissing the said divorce petition observed that the petitioner/complainant has failed to prove the desertion and cruelty.

24. Therefore, this Court has not found any substantive reasons in granting compensation to the wife. The compensation amount awarded is basing on own assumptions and presumptions and there are no basis to the trial Court for ordering the same. Further, the lower Court has failed to take into consideration of the financial position of the appellant and ordered to pay such huge compensation. The trial Court ought to have seen that filing the desertion petition by the wife itself sufficient to show that she is not willing to lead marital life with the husband. Admittedly, the 1st respondent herein is the legally wedded wife of the appellant herein. The trial Court observed that the wife is depending upon her brother for her sustenance and granted such maintenance by considering the means and capacity of the husband.

25. The learned trial Court has discussed the provisions under the Domestic Violence Act and granted maintenance to the wife. But, with regard to the refund of alleged dowry amount and compensation granted to the wife, the learned trial Court went in wrong notions and in its own assumptions and presumptions. Therefore, the order passed by the learned trial Judge with respect to the refund of alleged dowry amount

and compensation amount is liable to be set aside. The learned trial Judge after gone through the evidence let in by both the parties and the admissions made by them, considering the present cost of living conditions, granted maintenance to the wife. Hence, this Court has not find any illegality or perversity in the impugned order with respect to granting monthly maintenance to the wife. Therefore, the impugned order dated 12.08.2016 passed by learned Judicial Magistrate of I Class, Special Mobile Court, Eluru in D.V.C.No. 29 of 2012 with respect to the maintenance amount to the wife is sustainable in law and on facts and no interference is necessary, whereas, the order passed by the learned trial Court for return of alleged dowry amount and compensation amount is liable to be set aside. Accordingly, the point is answered.

26. **POINT No.ii:-**

IN THE RESULT, the appeal is allowed in part, by setting aside the order passed by the learned Judicial Magistrate of I Class, Special Mobile Court, Eluru, in D.V.C.No.29 of 2012.

The order of the lower Court with regard to return of dowry amount of Rs.3.00 Lakhs within three months from the date of its order and compensation amount of Rs.15.00 Lakhs within six months from the date of its order by the 1st respondent to the Complainant is hereby set aside.

The order of the lower Court with regard to monthly maintenance @ Rs.10,000/- by the 1st respondent to the complainant from the date of its order payable on the first day of every succeeding month and the direction given to the 1st respondent not to interfere with the personal freedom and space of complainant is hereby confirmed.

Each party do bear their own costs.

Typed to my dictation by the Personal Assistant, directly on computer, corrected and pronounced by me in open Court, on this the 05th day of January 2018.

Sd/-G.Gopi,
**I ADDITIONAL SESSIONS JUDGE,
WEST GODAVARI, ELURU.**

APPENDIX OF EVIDENCE

No oral and documentary evidence is adduced on either side.

Ild/-G.Gopi,
**I A.S.J.,
W.G., ELURU.**

Copy to:

1. The Register (Judicial) High Court of Andhra Pradesh, Hyderabad.
(through C.D)
2. The Judicial Magistrate of First Class, Special Mobile Court, Eluru
(with record in D.V.C.No.29/2012)

// t.c.f.b.o.//

Superintendent,
I A.D.J.Court, Eluru.