

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. 149/2017.

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. 149/2017.
Name and description of the Appellant	: Kunapureddy Swarna Kumari w/o Kunapureddy @ Nookala Shanka Balaji Naidu, Hindu, Female, 41 years, Apartments, Ashok Nagar, Eluru of West Godavari District.
Name and description of the respondents.	: 1. Kunapureddy @ Nookala Shanka Balaji Naidu s/o Venkateswara Rao, Hindu, male, 45 years, Medicine Business, r/o Tulip Gardens, Plot No.3, V.L. Puram, Rajahmundry of 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 appellant/complainant from the date of the order apart from other reliefs.
Whether confirmed, modified or reversed and if modified the modification	: CONFIRMED.
Date of presentation	: 16.06.2017.
Date of filing	: 24.04.2017.
Date of notice issued by the court to appear.	: 24.04.2017.
Bail bond if appellant has been let out on the bail.	: --
Applicant ordered to appear	: 16.06.2017.
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 and record on the evidence, and upon duly considering the same after hearing the arguments of Sri B.V.Krishna Reddy, Advocate for appellant; and of Sri K.Srinivasa Rao, Advocate for respondent No.1 and Additional Public Prosecutor appearing 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 petition is filed by the appellant/complainant 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 the respondent herein is directed to pay monthly maintenance of Rs.10,000/- to the complainant/appellant herein from the date of the order on every first of the succeeding month and also passed other reliefs. Aggrieved by the said order the appeal is preferred.

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

2.1. The Complainant/appellant is the wife, while the 1st respondent is the husband. The complainant/appellant filed the D.V.C.No. 29 of 2012 against the 1st respondent herein under various provisions under D.V.C.Act. The 1st respondent/husband also filed the Counter and contended the matter.

2.2. The contention of the appellant herein is that at the time of her marriage with the 1st respondent her parents gave Rs.3.00 Lakhs as dowry, gold ornaments weighing 15 sovereigns, and their marriage was performed in 1986 at Tirumala.

2.3. The further contention of the appellant/wife is that due to their lawful wedlock, they blessed with two male issues. Later, the husband/1st respondent addicted to all sorts of vices, refused and neglected the wife and children, used to demand for additional dowry. The amount paid by the brothers of the appellant to the 1st respondent was taken away and the 1st respondent also taken away 15 tulas of gold ornaments.

2.4. The further allegation of the wife is the husband used to suspect her fidelity and drove away her in March 2005. It is due to the harassment, the father of the appellant died. The 1st respondent possessed assets and properties, but failed to maintain the wife and children.

3. The husband contested the petition before the lower Court by way of filing 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 contents of both parties herein again.

4. Before the trial Court, on behalf of the petitioner/complainant, P.Ws.1 and 2 were examined and no exhibits are marked.

5. On behalf of the 1st respondent R.W.1 examined and got exhibited Exs.D-1 to D-9.

6. The lower Court after framed the appropriate points, directed the husband who is the 1st respondent herein to pay monthly maintenance @ Rs.10,000/- from the date of its order and also passed such other reliefs.

7. Aggrieved by the said order, the appellant/wife filed the present appeal on various grounds mentioned in the memorandum of appeal grounds as the maintenance of Rs.10,000/- granted by the trial Judge is not sufficient.

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

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

10. Now, the crucial point for consideration is:

Whether the trial court is not justified in awarding maintenance to the complainant/appellant herein at the rate of Rs.10,000/- per month?

11. **POINT**: 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.

12. The learned counsel for the appellant/respondent submitted that the lower Court ought to have grant Rs.25,000/- per month to the appellant herein towards the maintenance instead of Rs.10,000/-. The complainant herself testified as P.W.1. In her cross-examination, she stated that she is not willing to live with the 1st respondent/husband. Her elder son is aged about 27 years, her younger son is aged about 18 years, and at present, her elder son is studying in America. The complainant further admitted that she filed a petition under Section 13 of Hindu Marriage Act for seeking dissolution of marriage on the file of the learned Principal Senior Civil Judge, Eluru, and the same was ended in dismissal.

The complainant denied that she is doing business and she is an income tax assessee. P.W.1 further admitted that she did not produce any documentary proof to show that the 1st respondent owns Ac.10.00 cents of land, fish tanks in Ac.6.00 cents and commercial complex worth of Rs.70.00 lakhs. According to complainant, she is residing separately since March 2005 at Eluru.

13. To prove the means and capacity of the complainant, the 1st respondent relied upon Ex.D-3 income tax returns 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 ailments.

14. 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 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 and hence, dismissed the said divorce petition.

15. The 1st respondent himself testified as R.W.1 in the lower Court. In his cross-examination it is elicited that himself and his wife are residing

separately since 2006 and he did not provide any maintenance either to his wife or to his children till now. According to R.W.1 he is running food supplementary business. As per 1st respondent he is ready and willing to take back the complainant to his fold and to lead conjugal life. But, the complainant deliberately says that she is not willing to live with the husband. Therefore, the attitude of the complainant in filing the maintenance case, divorce petition shows that she is not willing to continue her matrimonial life with the husband.

16. On the other hand, it is the case of the complainant she was subjected to cruelty by respondent and was necked out of the house. As the complainant has no means to sustain herself and her children, she claimed maintenance from respondent/husband. The said plea is not considered why because, P.W.1 in her cross-examination stated that she is not willing to live with her husband.

17. The learned trial Court having properly appreciated the evidence adduced by both parties and by giving cogent and convincing reasons partly allowed the petition filed by the complainant. Admittedly, the 1st respondent herein is the legally wedded wife of the appellant. If the wife is refused and neglected to maintain by the husband, if the wife has no means and capacity to maintain herself, certainly she is entitled for maintenance from the husband. The trial Court observed that the wife is depending upon his brother for her sustenance and granted such maintenance by considering the means and capacity of the husband.

18. The learned trial Court has discussed the provisions under the Domestic Violence Act and granted maintenance to the wife. The settled law is that if the wife has no means, unable to maintain herself, certainly, she is entitled for maintenance from her husband. But, in this case, the documents relied upon by the husband under Exs.D-3 to D-5 shows that

the wife has got some means to maintain herself. 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. Under the above circumstances, I do not find any illegality or perversity in the impugned order whatsoever 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. There are no merits whatsoever in the revision, as such the same is liable to be dismissed.

IN THE RESULT, the Criminal Appeal is dismissed. Each party to 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.