

**IN THE COURT OF LXIX ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE (CCH 70)**

Present: Sri T.P.Ramalinge Gowda, B.Sc., LL.M., MBA.
LXIX Additional City Civil and
Sessions Judge,
Bengaluru.

Dated this the 15th day of September, 2018

Crl.A.No. 597/2017

Appellant : Smt. Vidhya B.G
Aged about 24 years,
w/o Yeshwanth Kumar,
Daughter of Gopala Rao Bonmbore,
r/at No. 18/1, Veerabhadra Nilaya,
12th main, 2nd cross,
Nagamma Badavane,
Chokkasandra, T.Dasarahalli,
Bengaluru 560 057.

(By T.N.Gopal Gowda, Advocate)

Vs.

Respondent : Sri Yeshwanth Kumar,
s/o Govinda Rao Mahendar,
aged about 34 years,
r/at No. 102, Railway Quarters,
Ontikoppal, Mysore City.

And working as
Track Maintainer,
Railway Workshop,
South Western Railways,
Ashokpuram, Mysore City.

(By Sri N.Lakshminarayana,
Advocate.)

: J U D G M E N T :

This appeal is preferred against interim order dated 1.4.2017 passed in Crl.Misc.No.185/2015 on the file of MMTC-III, Bengaluru City rejecting the application filed by the petitioner u/sec. 23 of PWDV Act.

The parties are referred to their ranks before this court.

2. Essential material facts leading to this appeal are as follow:-

The Appellant is the wife of Respondent and their marriage was solemnized on 13.8.2008 at Agarwal Kalyana Mantapa, Dhanvantri road, Mysore in the presence of parents, elders and well wishers by spending Rs. 5,00,000/-. Out of wed lock she has delivered a child. After some time the Respondent started harassing the Appellant both mentally and physically and he was not providing food and cloth to her. He has also assaulted her on many occasions and driven her out of the house and instructed her not to come back till she bring money of Rs. 3 lakhs. Thereafter she started to reside with her parents. Hence she filed the petition U/Sec. 12 of PWDV Act. She also filed IA u/sec. 23 of the Act seeking interim maintenance. The Appellant appeared and filed objections to IA

No.1. After hearing both side the Trial Court rejected the application. Being aggrieved by the above impugned order of court below, Appellant/wife preferred this appeal against her husband. The Appellant in her appeal memo contended that the order passed by the learned Magistrate is opposed to law, facts and probabilities, the learned Magistrate erred in not considering the fact the Respondent is capable of maintaining his wife and the learned Magistrate has not considered the fact that the Tailoring Job Certificate-Ex.R.1 was issued in the year 2011 when the Appellant and Respondent were residing in Yeshwanthpur House at Bengaluru, the learned Magistrate erred in coming to the conclusion that the Appellant has not proved the Domestic Violence and the learned Magistrate also erred in coming to the conclusion that the Appellant has taken joint loan from the Bhavasara Kshatrilya Cooperative Bank Ltd. in the year 2011 and she is earning sufficiently and on that ground rejected the application. It is further contended that no documents are produced to prove that the Appellant is doing Tailoring business and she is earning for her livelihood . The learned Magistrate rejected the application without considering the documentary evidence available on record. With these

main contentions Appellant prays to set aside impugned order of court below. The Appellant has relied on some decisions.

3. Respondent appeared through his counsel and filed his statement of objections, wherein it is contended that the Appellant led her evidence as PW.1 and marked 3 documents. On the other hand the Respondent examined himself as RW. 1 and marked Ex.R.1 to R34. The Appellant is contending that she has no source of income for livelihood and the Respondent deserted her, which is not true. The Respondent is taking care of child and incurring medical expenses towards his health care and she has held a threat on 25.12.2015 to kill the Respondent and kidnap the child from Mysore, as such he had lodged complaint before the police, after the marriage when they were living together at Mysore, she always in the habit of quarreling without his fault and creating nuisance. The Respondent is getting salary of Rs. 23,262/- in gross and after deduction he is getting Rs. 10,172/-. The Respondent further contended that she has illicit relationship with one Mr. Madhusudhan @ Madhu Kumar and without the knowledge of the Respondent Madhu used to visit their house when the Respondent was at work and out of Station. The Respondent has relied on 34 documents and he

also filed written arguments and a order passed in different CrI.R.Ps. With these contentions he prays to dismiss the appeal.

4. Secured the L.C.R. Heard the counsel for parties.

5. Perused the papers.

6. In the light of above materials and contentions of parties, following points fall for decision making of this court:-

1. Whether the Appellant has made out grounds to set aside the impugned order?

2. What order?

7. This court on re-appreciation of available materials with reference to prevailing legal aspects, give finding to the above points as follow:-

POINT NO.1 - In Negative

POINT NO.2 - As per final order, on the

following;

: REASONS :

8. **POINT NO.1** :. The domestic relationship between wife and husband and the parental relationship of child is not in dispute. On perusal of the impugned order, it reveals that in the impugned order the learned Magistrate observed that ; “it is not in dispute that both parties are residing separately and it is to be noted that the proceedings under DV Act are different

from proceeding u/sec. 125 of Cr.P.C. The primary difference between the proceedings being that the petitioner has to establish by way of pleadings and deposition that she has been subjected to domestic violence in order to be entitled for the relief under DV Act and hence the initial burden of proof would be on the petitioner to establish her case and it is only after such proof, the onus would shift on the respondent to disprove her case. It is further observed that on examination of the oral testimony as well as documents submitted before this court on behalf of petitioner it is noticed that except the allegation that she was subjected to physical and mental harassment and she was thrown out from the matrimonial home, no other allegations are made against the Respondent by the petitioner so as to make out the specific case of domestic violence against the Respondent. It is further observed that the present application which is filed for interim maintenance does not reveal any instances of domestic violence and the affidavit filed by the petitioner does not mention about any such instances.

Further, Ex.R.1 shows that she is earning income of Rs. 12,500/-. It is further observed that the petitioner is able to earn for her livelihood and also that no specific instance of domestic violence is made out. With this observation the

learned Magistrate rejected the application of the petitioner filed u/sec. 23 of the Act.

9. On perusal of the trial court records it transpires that the trial Court has not passed any ex parte order granting maintenance to the petitioner and this impugned order is passed on IA after the appearance of the Respondent and after hearing both side but before completion of the preliminary inquiry. At this juncture I would like to rely upon the decision of the Hon`ble High Court of Karnataka in **Crl.R.P No. 815/2009** wherein it is held that; “when respondent denies alleged domestic violence, it is necessary to conduct enquiry regarding defence put forwarded by respondent before passing any order under the provisions of PWDV Act and further observed that the impugned order being not an order passed ex parte the learned Magistrate was required to have held an inquiry as prescribed in Cr.P.C and then to record his finding. Since that has not been done the matter requires to remand. Thus the order impugned is unsustainable.” So as per the principles laid down in the above case the Court has to pass an ex parte interim order or otherwise the Court has to conduct the enquiry then pass the order for maintenance. This order is not an ex parte order. After appearance, the Respondent filed detailed

objections by denying the allegation made by the Petitioner. Hence the Trial Court ought to have conducted the enquiry and then pass the order. Since the Trial Court has not conducted the enquiry and passed the impugned order without following the principles as laid down amounts to illegality.

10. Further as stated above the Respondent seriously disputed the loyalty of the wife and produced so many documents on this aspect, at this stage without completion of trial it is not proper to grant interim maintenance as sought by the petitioner. Further the learned Magistrate has exercised his discretion in a proper manner and rejected the interim maintenance application with sound reasons. In this regard this Court wants to rely upon a decision in 2012 CrI.LJ 516 wherein it is held that:

Protection of Women from Domestic Violence Act.....Appellate Court would interfere with interim order only when discretion was exercised by trial Court arbitrarily, perversely.

In the instant case, the Trial Court has not exercised its discretion arbitrarily and perversely. Accordingly this Court feels that the impugned order of trial court needs no interference as this court has not found any illegality or

irregularity committed by the trial Court in passing the interim order and hence there is no occasion for this court to interfere with the said order. Consequently the trial Court is required to be confirmed. . Hence point No.1 is answered in negative.

11. **POINT NO.2:** In the light of finding on above point, this court proceeds to pass the following:

: ORDER :

Appeal is dismissed.

Impugned order of trial court passed in Cr.Misc.No. 185/2015 dated 1.4.2017 is hereby confirmed..

Send copy of this judgment to the trial court for needful.

(Dictated to the Judgment Writer on computer, then corrected, signed and pronounced by me in the open court on this the 15th day of September, 2018)

(T.P.Ramalinge Gowda)
LXIX Addl.City Civil & Sessions Judge,
Bengaluru.

