

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.275 of 2020

ORDER :

This Civil Revision Petition is filed by the petitioner under Art.227 of the Constitution of India challenging order dt.23.12.2019 in IA No.92 of 2019 in HMOP.No.117 of 2019 on the file of the Additional Metropolitan Sessions Judge for Trial of Jubilee Hills Car Bomb Blast Court-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX Additional Metropolitan Sessions Judge, Hyderabad.

2. The said HMOP was filed on 12.9.2019 by the petitioner in under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955 (for short “the Act”) alleging that the respondent had treated him and his family members with cruelty and sought relief of dissolution of the marriage solemnized between them on 02.08.2012.
3. No counter affidavit has been filed by respondent in the OP till date.
4. The petitioner and the respondent have two minor children by name Baby Rishita (aged between 4 to 5 years) *and* Baby Rama Sri Vidya (aged less than 3 years).

IA No.91 of 2019

5. Pending the OP, petitioner filed I.A.No.91 of 2019 under Section 26 of the Act for custody of both the children every week and during school holidays.

6. Though a counter affidavit was filed by respondent in the Court below opposing the grant of above relief to petitioner, during the course of hearing of the IA No.90 of 2019, the respondent, through her counsel stated that she had no objection if the custody of the children is given to petitioner on every Sunday from 8 AM to 6 PM.

The order of the trial court in IA No.91 of 2019

7. In the order dt.23.12.2019 in I.A.No.91 of 2019, the Court below took note of the contentions of the parties and the legal position relating to grant of visitation rights and held that the children ought to get the love and affection of both parents. It therefore granted custody of the elder child Baby Rishita to petitioner on every Saturday from Friday 5 PM to Monday 10 AM; and also granted custody of the younger child Baby Rama Sri Vidya on every Sunday from 9 AM to 6 PM to him until further orders. It directed that petitioner shall pick up and drop off the children as per the above schedule.

I.A.No.92 of 2019

8. The petitioner filed I.A.No.92 of 2019 also on 12.09.2019 under Section 151 of Civil Procedure Code seeking direction to the respondent not to divulge the contents of the proceedings pending in

the Family Court or any material concerning the disputes between them without obtaining the specific leave of the said Court to any unauthorized third-party including the media.

9. In the affidavit filed in support of the said application, the petitioner contended that since 20.04.2019 the respondent was living with her parents at Uppal in Hyderabad; that the respondent lodged a complaint against the petitioner and his parents with the Woman Police Station, Hyderabad making false allegations of demand of dowry and additional dowry and harassment; and that the complaint was registered as F.I.R.No.233 of 2019, for offences under Sections 498A, 406, 323 I.P.C. read with Sections 4 and 6 of Dowry Prohibition Act on 27.04.2019. It is contended that since then the respondent was addressing the media exclusively with a view to malign the petitioner and his parents in public.

10. The petitioner contended that the respondent complained to the Child Welfare Commission that the two children who were in his custody were denied food milk and water and that they require protection and shelter; on the basis of the said false complaint, the officials of the Child Welfare Commission / Child Helpline visited petitioner's house around 06:00 p.m. on 28.04.2019; that after interaction with the children, the petitioner and his parents, they were satisfied that the complaint of the respondent was without any merit.

11. It is contended that the respondents and her parents, relatives and other people hired by her resorted to a Dharna from 02:00 p.m. onwards in front of the petitioner's house on 28.04.2019; and the media hired by them covered the Dharna from the beginning and by evening the shouting and other unlawful activities of these said individuals made the police officers and the Child Welfare Commission officers suggest to petitioner's father to hand over the younger child to the respondent, and the elder child was requested to be produced the next day at 'Bharosa Centre'. It is stated that petitioner accordingly handed over the child to the respondent on 28.04.2019.

12. It is contended that the respondent addressed media in the compound of the petitioner's house on 28.4.2019 holding the younger child in her hands without any concern for the trauma that caused to the child.

13. It is contended that the next day i.e, 29.4.2019 at 'Bharosa Centre' when the Child Welfare Commission officials allegedly informed the respondent that issue of custody can only be adjudicated by a Court of competent jurisdiction and that the elder child did not require any protection, the respondent and her parents created a lawless situation. It is alleged that the father of the respondent shouted at the officials and threatened them and even tried to grab the elder child from the petitioner and he egged the respondent to forcibly grab the child from the petitioner along with his relatives. It is also

contended that when petitioner was leaving the 'Bharosa Centre' with the elder daughter, the relatives of the respondent attacked him with a view to cause bodily harm and injuries.

14. It is stated that thereafter the respondent filed W.P.No.10142 of 2019 for a *Writ of Habeas Corpus* and a detailed order was passed on 02.05.2019 advising the parties not to take the issue to the media as trial by media is not justified. It is stated that ultimately the Writ Petition was disposed of granting liberty to the parties to work out their respective rights in accordance with law.

15. In view of the above events, the petitioner sought a direction to the respondent not to divulge the contents of the proceedings pending in the Family Court or any material concerning the disputes between them without obtaining leave of the Court to any unauthorized third-party including media.

Counter of the respondent in I.A.No.92 of 2019

16. The respondent filed a counter denying all the allegations leveled by the petitioner.

17. Firstly, she contended that the application is not maintainable and the relief in the nature of an injunction / restraining order should have been sought and that the petitioner cannot seek any direction.

18. The respondent alleged that the petitioner and his parents beat her etc., and also dumped her in a hospital without informing her

parents and so she started living with her parents since 20.04.2019. She denied the allegations leveled in the O.P. against her. While admitting that filed F.I.R.No.223 of 2019 against the petitioner and his parents on 27.04.2019, she also admitted that she had addressed the Media thereafter and claimed that the circumstances had driven her to approach the Media. She also stated that only because of pressure caused by such Media, the petitioner returned the younger child to her.

19. She claimed that when officials of the Child Welfare Commission visited the house of the petitioner's father they were over-powered by the father of the petitioner who used all his experience and skill to ensure that the said officials did not help the respondent in her cause.

20. She denied that she brought hired men and women for conducting a Dharna near the house of the petitioner on 28.04.2019 but did not deny that such a Dharna took place from 02:00 p.m. onwards at the said house at the house of the petitioner. She admitted that she had answered questions put to her by the Media then. She claimed to have taken help of officials and activists from NGOs to save her children.

21. She also relied on certain CC camera footage in support of her pleas.

22. She denied that her father shouted at officials and tried to grab the elder child from the petitioner or that her relatives attacked the petitioner with a view to cause bodily harm at the Bharosa centre. She alleged that the petitioner did not come to the Court with clean hands and resorted to distortion of certain facts.

Reply-affidavit of the petitioner

23. The petitioner contended that the respondent cannot rely on the contents of the FIR. No.223 of 2019 lodged by her against him and her parents or the supplementary complaint lodged by her with the police on 23.09.2019 since they are subject matter of investigation by the police and any attempt by the respondent to do so would amount to influencing the investigation and is impermissible in law. He however denied the contents of the said complaint and reserved his right to defend himself in case the matter goes before the Criminal Court.

24. He also stated that though petitioner referred to CC camera footage of 20.04.2019 and 27.04.2019, the same had not been furnished to him though notice was issued on 28.09.2019 by his counsel to the counsel for respondent to furnish the same.

25. He alleged that the respondent tried to run towards one of the three balconies in his house with a view to harm herself and throw the blame on the petitioner and his parents on 20.04.2019 and after coming down she abused petitioner's parents and ran into the kitchen

at 11:37 p.m. and tried to lock the doors from inside to ignite the stove and cause harm to herself and implicate the petitioner and his parents.

26. He reiterated that the media hired by the respondent, her father and relatives and also the persons who conducted Dharna at the respondent's instance, and at the Bharosa Centre, depicted everything done by the respondent and her father. He also alleged that physical assault was carried on him at the Bharosa Centre on 29.4.2019 by relatives of the respondent which was viewed by the Police seriously who registered it as a case.

27. He also alleged that the respondent along with her counsel held a Press Meet with Ms.Barkha Dutt which was telecast on 30.09.2019 at 11:00 p.m.

Counter of the respondent to the reply-affidavit filed by the petitioner in I.A.No.90 of 2019

28. This document is placed on record through a Memo dt.01.05.2020 before this Court during the hearing of this CRP, and the connected Civil Revision Petition Nos.360 and 735 of 2020 on 01.05.2020.

29. The petitioner's counsel pointed out that in the said counter-affidavit filed by the respondent to the reply-affidavit filed by the petitioner in I.A.No.90 of 2019, in para no.5, the respondent stated as under :

“5. The contents of para 17 of the reply-affidavit are hereby denied. It is false to state that I along with my counsel held a press

meet with Barkha Dutt. I respectfully submit that Ms. Barkha Dutt extended her invitation to me and my counsel, to attend her event titled, 'WE THE WOMEN', which was presented by FACEBOOK and partnered by U.N. WOMEN. The event was held in Kolkata and several celebrities attended the same. The entire expenditure for our travel, stay etc., were met by the team of Barkha Dutt. It was no press meet, as sought to be represented by the petitioner.

6.I submit that at the meet, I was questioned about the videos, which went viral on electronic and social media, showing me being attacked by my husband and father-in-law. I replied to the questions put to me. The entire gathering of women expressed solidarity with me.”

The order dt.23.12.2019 in I.A.No.92 of 2019

30. The court below extracted the contents of the pleading of the parties and referred to the decisions cited by the parties. It distinguished the decisions cited on facts and observed that they cannot be applied to the instant case as most of them pertained to criminal cases and injunctions were granted against Media houses not to publish or print any matter between the parties. It also observed that no injunction was sought for or granted against the spouse not to disclose the disputes between both the parties to any person or media. It observed that Section 22 of the Hindu Marriage Act, 1955 amply takes care of the situation and that it protects and safeguards the interests and privacy of the parties in a matrimonial case.

31. It then dismissed the I.A. stating that it was not the case of the petitioner that so far, the respondent had divulged the contents of the proceedings of the O.P. to any unauthorized party or the media till

23.12.2019 and that no proof was filed before the Court except orally asserting that she is giving interviews to media.

The instant CRP

32. Assailing the order in I.A.No.92 of 2019 in HMOP.No.117 of 2019 of the Court below, the present Civil Revision Petition is filed by the petitioner.

33. On 10.02.2020, this Court issued notice to the respondent and granted interim direction restraining the respondent from divulging the disputes between the parties and the contents of the proceedings pending before the Court below in HMOP.NO.117 of 2019 to any unauthorized third-party including the media, pending disposal of this CRP.

34. On 27.02.2020, the respondent entered appearance through Ms. S. Vani, Advocate.

35. On 01.05.2020, arguments of Sri Sunil Ganu, counsel for the petitioner and Ms S. Vani, Counsel for the respondent were heard in this Revision along with the connected Civil Revision Petition Nos.360 and 735 of 2020.

The contentions of the parties :

36. The counsel for the petitioner contended that when the respondent herself admitted :

(a) to addressing the Media after lodging the F.I.R. on 27.04.2019 against the petitioner and her parents in the counter-affidavit filed by her (para no.7, page no.3 of the counter filed in I.A.No.92 of 2019);

(b) that there was a Dharna at the house of the petitioner on 28.04.2019 where she received support from several women and that she had addressed the Media then also (para no.9, page no.4 of the counter);

(c) in counter to reply-affidavit filed by respondent in I.A.No.90 of 2019 (para nos.5 and 6, at page no.2) about participating in an event titled 'WE THE WOMEN' on Facebook partnered by U.N. WOMEN which took place at Calcutta, that the entire expenditure of her travel, stay, etc., were sponsored by the team of prominent T.V. personality Ms. Barkha Dutt, that she had been questioned about the videos circulated by her on electronic and social media and she answered the questions put to her, which was telecast on 30.09.2019,

there is every apprehension in the mind of the petitioner that, notwithstanding the legal prohibition to publish any matter in matrimonial proceedings under Section 22 of the Hindu Marriage Act, 1955, the respondent would freely speak to the Media about them, and the Court below therefore erred in denying relief to the petitioner.

He also contended that as soon as the F.I.R. was lodged by the respondent against the petitioner and his parents, the respondent had addressed the Media extensively and such Media trial is unwarranted, be it in the Family Court or in the Criminal Court, and would cause prejudice to the petitioner.

He also contended that the Court below took a hyper-technical view in declining relief to the petitioner on the ground that petitioner should have filed proof that the respondent had already divulged the contents of the proceedings of this HMOP and that it had ignored the above referred admissions of the respondent totally, by observing that *'no proof is filed before the Court except orally asserting that she is giving interviews to media'*.

37. The counsel for the respondent contended that the prayer made in I.A.No.92 of 2019 is in the nature of a direction to the respondent invoking Section 151 of C.P.C. and that the petitioner could have only invoked provisions relating to injunction contained in the Specific Relief Act, 1963 before a competent Civil Court and not the Family Court. She further contended that petitioner did not make out any *prima facie* case, that he did not have balance of convenience for grant of relief in the nature of injunction and no irreparable injury would be caused to him. She stated that Section 22 of the Hindu Marriage Act offers adequate protection to the petitioner.

38. She also offered that her client would file an undertaking before this Court that she would not publish any matter in the Media relating to the proceedings in the H.M.O.P.No.117 of 2019.

Consideration by the Court

39. I have noted the contentions of both sides.

40. First I shall deal with the contention of the counsel for respondent that petitioner should have approached the ordinary Civil Court for injunctive relief invoking the Specific Relief Act, 1963.

41. The HMOP.No.117 of 2019 has been filed in the Additional Family Court, at Hyderabad by the petitioner.

42. Such Family Courts were established to *inter alia* exclusively deal in matters relating to matrimonial relief including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to validity of marriage, maintenance etc.

43. Under Section 7(1) of the Family Courts Act, 1984, it has jurisdiction which is exercisable by any District Court or any Subordinate Civil Court under any Law for the time being in force in respect of suits and proceedings of the nature referred to in the explanations thereto which include suits and proceedings referred to in the earlier paragraph.

44. Under Clause (a) of Section 8 where a Family Court has been established for any area, no District Court or any Subordinate Civil

Court referred to in Sub-Section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit, proceeding of the nature referred to in the explanation to that sub-Section.

45. The jurisdiction conferred on the Family Court under Section 7 of the Family Courts Act, 1984 has to be liberally construed and parties to a proceeding before such Family Court like the petitioner, cannot be compelled to approach the ordinary Civil Court for any relief, interim or final, in connection with the matrimonial dispute he has with the respondent.

46. In **K.A. Abdul Jaleel v. T.A. Shahida**¹, the Supreme Court observed that though Clause (c) of explanation to Section 7 empowers the Family Court to deal with a suit or proceeding between the parties to a marriage with respect to the property of the parties or either one of them, the said Clause has to be broadly construed conferring on the Family Court, jurisdiction to decide disputes between parties to a marriage though such marriage is no longer subsisting between them.

It declared :

“11. The wording “disputes relating to marriage and family affairs and for matters connected therewith” in the view of this Court must be given a broad construction. The Statement of objects and reasons, as referred to hereinbefore, would clearly go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean the properties claimed by the parties thereto as a spouse of the other;

¹ (2003) 4 SCC 166

irrespective of the claim whether the property is claimed during the subsistence of a marriage or otherwise.

12. The submirespondention of the learned counsel to the effect that this Court should read the words “a suit or proceeding between the parties to a marriage” as parties to a subsisting marriage, in our considered view would lead to miscarriage of justice.

13. The Family Court was set up for settlement of family disputes. The reason for enactment of the said Act was to set up a court which would deal with disputes concerning the family by adopting an approach radically different from that adopted in ordinary civil proceedings. The said Act was enacted despite the fact that Order 32-A of the Code of Civil Procedure was inserted by reason of the Code of Civil Procedure (Amendment) Act, 1976, which could not bring about any desired result.

14. It is now a well-settled principle of law that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed liberally. The restricted meaning if ascribed to Explanation (c) appended to Section 7 of the Act, in our opinion, would frustrate the object wherefor the Family Courts were set up.”
(emphasis supplied)

47. Therefore, the petitioner having filed the HMOP.No.117 of 2019 in the Additional Family Court, at Hyderabad cannot again approach the ordinary Civil Court for any relief in connection with the matrimonial dispute he has with the respondent.

48. In fact, under Section 10 of the Family Courts Act, 1984, the Family Court itself is deemed to be a Civil Court and is conferred with all the powers of such a Court.

49. Though, the powers of a Civil Court under the Code of Civil Procedure are conferred on the Family Court by Sub-Section (1) of Section 10, Sub-Section (3) of Section 10 states that the Family Court

is not prevented from laying down its own procedure to determine the truth of the facts in the matter before it.

50. Section 20 of the Family Courts Act, 1984 gives overriding effect to the said statute over anything inconsistent therewith in any other law.

51. No doubt, the petitioner has sought relief in I.A.No.92 of 2019 in the form of a direction under Section 151 of C.P.C. to the respondent not to divulge the contents of the proceedings in the HMOP.no.117 of 2019 or any material concerning the disputes between them, without obtaining the specific leave of the Court, to any unauthorized third-party including the Media.

52. The said relief is not couched as an injunctive relief restraining the respondent from divulging the contents of the proceedings in the HMOP.no.117 of 2019 or any material concerning the disputes between them, without obtaining the specific leave of the Court, to any unauthorized third-party including the Media.

53. According to me, the contention of the counsel for respondent that only injunctive relief can be sought, if at all, by the petitioner against the respondent and not the relief in the nature of a direction, is hyper-technical in nature.

54. When Section 10(3) of the Family Courts Act, 1984 permits the Family Court to lay down its own procedure notwithstanding that it has the powers of a Civil Court under the Code of Civil Procedure,

1908, it cannot be said that except injunctive relief, petitioner cannot seek interim relief of the nature sought by him under Section 151 C.P.C. in I.A.No.92 of 2019. After all, procedure is only a hand-maid of justice.

55. The Supreme Court in **State of Gujarat v. Ramprakash P. Puri**² had held :

“5. Procedure has been described to be a hand maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it... ..”

56. I am of the opinion that the manner in which the prayer is couched is not particularly relevant, and the Court has to consider whether on the facts and circumstances of a particular case whether the prayer sought can be granted or moulded appropriately. It cannot throw out applications filed for interim relief on the specious ground that they are is not properly worded as long as the prayer sought conveys proper sense and meaning.

57. Therefore, the objection of the counsel for respondent that the petitioner can only seek injunctive relief, that too in a Civil Court, is without any merit and is rejected.

58. Next I shall consider whether the petitioner had made out any *prima facie* case for grant of the relief sought by him in I.A.No.92 of 2019.

² (1969) 3 SCC 156

59. It is not disputed by the counsel for the respondent that Sub-Section (1) of Section 22 of the Hindu Marriage Act, 1955 mandates that every proceeding under the said Act should be conducted *in camera* and further *prohibits any person to print or publish any matter in relation to any such proceeding* except a judgment of a High Court or the Supreme Court printed or published with the previous permission of the Court. Sub-Section (2) of Section 22 states that if any person prints or publishes any matter in contravention of the provisions contained in Sub-Section (1), he shall be punishable with fine which may extend to Rs.1000/-.

60. Thus, the Hindu Marriage Act, 1955 itself prohibits publication or printing of any matter in relation to a proceeding under the said Act. If so, there is no necessity for the petitioner to produce proof of any such publication in contravention of Sub-Section (1) of Section 22 by the respondent to seek the interim relief of restraining the respondent from making any such publication in the Media, Print or Electronic or Social media, without the permission of the Court.

61. It is shocking that the Court below, having noticed Section 22 of the Hindu Marriage Act, did not appreciate its significance and required the petitioner to produce proof of publication by the respondent of the matter in relation to the HMOP filed by him against the respondent.

62. In my opinion, there is no obligation on the petitioner to produce any such proof in view of the specific language of Sub-Section (1) of Section 22, and the punishment imposed on the offending party by Sub-Section (2) of Section 22 if he / she were to contravene provisions contained in Sub-Section (1).

63. In the instant case, as pointed out by the counsel for petitioner, the respondent has admitted that she has gone to the Media not only after she filed F.I.R.No.223 of 2019 against the petitioner and her parents on 27.04.2019, but also at the time Dharna was conducted by certain third parties at the house of the petitioner in the presence of the respondent and her parents on 28.04.2019. She also admitted in the counter to the reply-affidavit in I.A.NO.90 of 2019 that she attended an event at Calcutta for which entire expenditure of her travel and stay were met by a prominent T.V. Host and personality by name Ms. Barkha Dutt (which was telecast on 30.4.2019 after the OP was filed) and she answered questions about certain videos which went viral on electronic and social media about the allegations leveled by her against the petitioner and his parents.

64. In the light of the aforesaid admissions by the respondent about speaking to Media, posting videos on social and electronic media regarding her dispute with the petitioner, the petitioner was entitled to have a reasonable apprehension that she would continue to do so, even after the filing of the HMOP, undeterred by the small fine of

Rs.1,000/- which she might incur for making such publication under sub-section (2) of Sec.22 of the Act.

65. A Constitution Bench of the Supreme Court in **Sahara India Real Estate Corporation Limited vs. SEBI**³ held that excessive prejudicial publicity leading to usurpation of functions of the Court interferes with administration of justice and also prejudices or interferes with particular legal proceedings. In such cases, Courts are duty-bound under inherent jurisdiction to protect the presumption of innocence.

66. The Madras High Court in **R. Sukanya vs. R. Sridhar**⁴ made the following observations in the context of a matrimonial proceeding and the prohibition contained in Section 22 of the Hindu Marriage Act, 1955 :

"23. The right of privacy created by the statute has to be preserved. The very inception of the provision, Section 22 in the Hindu Marriage Act makes it clear that matters pertaining to matrimonial affairs are intended to be conducted "in-camera" and not intended to be divulged to others, except publication of the judgment with the leave of the Court. Right of privacy in matrimonial matters between the "parties in a litigation under Marriage Acts is personal to the litigating parties. Thus it is manifestly clear that the legislature has intended to guard the right of privacy in relation to matrimonial matters and it is a settled legal position that the real meaning and effect should be given to the words employed in the Statute. In the light of language employed in the Statute, the right of privacy is so fundamental to the individual excepting to the extent provided under the Marriage Acts. Of course, we should not forget the role of our independent press and media in coming out with revelations of public interest; resulting in societal changes. As the freedom of the press is for the dissemination of information of public interest and public affairs, those which are not related to the above, but

³ (2012) 10 S.C.C. 603

⁴ Manu / TN / 1115/2008

involving the marital relationship of the parties to a litigation should not be published or telecast, as it is prohibited under law. Publication of the proceedings meant to be in-camera will affect the constitutional liberty guaranteed to the individual and it would be an invasion of his right of privacy. When Section 22(1) of the Act prohibits printing or publishing any matter in relation to any such proceeding arising under the Act, the Family Court or any other competent Court dealing with matrimonial matter, under the Hindu Marriage Act, has inherent jurisdiction to issue an order of injunction or any such direction to give full effect to the statutory provision. Therefore, the contention of the respondents 2 to 5 that they are not parties to the Original Petition and, therefore, no injunction can be granted against them, cannot be countenanced.”

67. I completely endorse the above principle laid down in the above case that right of privacy of parties to matrimonial proceedings has to be protected and the legislative mandate has to be respected. The Family Court has inherent power to issue an order of injunction or any such direction to give full effect to Section 22 of the Hindu Marriage Act, 1955.

68. I further hold that the petitioner had shown *prima facie* case for grant of interim relief in I.A.No.92 of 2019, that he has balance of convenience in his favour and serious prejudice would be caused to him if there is a media trial by publication in electronic or print or social media by the respondent of any matter relating to H.M.O.P.No.117 of 2019 or any material concerning disputes between them without obtaining the specific leave of the Court.

69. Accordingly, the Civil Revision Petition is allowed and consequently I.A.No.92 of 2019 in H.M.O.P.No.117 of 2019 is also allowed. No order as to costs.

70. As a sequel miscellaneous petitions pending if any, in this Civil Revision Petition, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date :01.06.2020

Ndr

