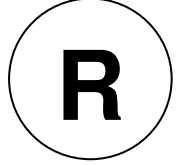




IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 13TH DAY OF DECEMBER, 2023

BEFORE



THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO. 102231 OF 2023

BETWEEN:

MOHAMMED YASEEN NAIKWADI
S/O ABDULLA NAIKWADI,
AGED ABOUT 42 YEARS,
OCC. DOCTOR,
R/O. NO.2ND CROSS,
SIDDESHWAR NAGAR,
BAUXITE ROAD,
BELAGAVI-590010.

... PETITIONER

(BY SRI. Z.M. HATTARKI AND
SRI. ARZOO M. MULLA, ADVOCATES)

AND:

1. SMT. ANEESA MOHAMMED YASEEN NAIKWADI,
AGED ABOUT 32 YEARS, OCC. DOCTOR,
R/AT. FLAT NO.203, ROHIT PALACE,
MARATHA COLONY, TILAKWADI,
BELAGAVI-590006.
2. MISS. SARAH D/O MOHAMMED YASEEN NAIKWADI,
AGE. MINOR, OCC. NIL, R/AT. FLAT NO.203,
ROHIT PALACE, MARATHA COLONY,
TILAKWADI, BELAGAVI-590006,
R/BY MINOR GUARDIAN I.E.,
RESPONDENT NO.1/MOTHER.

... RESPONDENTS

(BY SRI. S.B. SHAIK, ADVOCATE FOR R1 ABSENT;
R2 IS MINOR R/BY R1)

THIS CRIMINAL PETITION FILED U/SEC 482 OF CR.P.C.
SEEKING TO QUASH THE PROCEEDINGS IN CC NO.1/2022 U/SEC 12
OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,
2005 WHICH IS PENDING ON THE FILE OF IV THE JMFC COURT,





BELAGAVI AND ALL FURTHER PROCEEDINGS ARISING THEREFROM AGAINST THE PETITIONER FOR THE OFFENCE P/U 31 OF PWDV ACT, TO MEET THE ENDS OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed praying to quash the proceedings in C.C.No.01/2022 pending on the file of the IV-JMFC, Belagavi.

2. Heard learned counsel for the petitioner. None appears for the respondents this day and on the previous date.

3. Respondent Nos.1 and 2 have filed a private complaint No.219/2017 against this petitioner alleging that the petitioner herein has made breach of protection order by not paying maintenance amount as per the order dated 29.07.2015 passed in Crl.Misc.No.306/2015 and committed offence punishable under Section 31 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act', for brevity). The learned Magistrate has recorded sworn statement of



respondent No.1 and registered criminal case against this petitioner by order dated 12.01.2022 for offence punishable under Section 31 of the D.V. Act. Based on the said order case came to be registered against this petitioner in C.C.No.1/2022 pending on the file of the IV JMFC, Belagavi. The petitioner has sought for quashing of proceedings in C.C.No.1/2022.

4. Learned counsel for the petitioner would contend that alleged violation of order passed by the learned Magistrate is not protection order and it is order to pay interim maintenance. He contends that as per Sub-Section (1) of Section 31 of the D.V. Act, it is only for breach of protection order action is to be initiated and not for breach of interim maintenance order. On that point he placed reliance on the decision of the Co-Ordinate Bench of this Court in the case of the **Mr. Francis Cyril C Cunha Vs. Smt Lydia Jane D'Cunha**¹. He contends that the order passed by the learned Magistrate taking cognizance and registering criminal case against this petitioner for

¹ 2016 Criminal Law Journal 1967



offence punishable under Section 31 of the D.V. Act is not sustainable in law and prayed to quash the proceedings in C.C.No.1/2022 pending on the file of the IV JMFC, Belagavi.

5. On considering the arguments advanced by the learned counsel for the petitioner, the point that arises for consideration is as under:

“Whether penal provision found in Section 31 of the D.V. Act could be invoked for non-payment of arrears of maintenance?”

6. Learned Magistrate in Crl.Misc.No.306/2015 has passed an interim order on IA’s 1 and 3 as under:

“1ST respondent is directed to pay interim maintenance of Rs.10,000/- per month to the petitioners from the date of petition until further orders.

Further the respondents are prohibited from disposing, alienating or encumbering shared household until further orders provided the petitioners furnish the complete particulars of shared household within 3 days from today.



On appearance of the respondents, the parties are at liberty to seek for review of this orders.

Issue notice to the respondents on I.A. No.1 to 3 main petition and furnish the copy of this order returnable by 20-08-2015."

7. The said Crl.Misc.No.306/2015 has been filed by respondent Nos.1 and 2 under Section 12 of the D.V. Act. Respondents have filed complaint in P.C.No.219/2017 against this petitioner alleging he has violated the order passed by the learned Magistrate in Crl.Misc.No.306/2015 by non-payment of maintenance amount. The relevant para in the said private complaint reads thus:

"8. That the accused has to pay the maintenance amount of Rs.2,10,000/- from 29/7/2015 to till date 29/3/2017. The accused has made breach of protection order passed by this Hon'ble court. The accused did not care for complainant and also to the court order."

8. Respondent No.1 in her sworn statement stated as under:



"This court was passed interim order dtd 29-07-2015 of Crl.Misc No.306/15 directing my husband to pay monthly maintenance of Rs.10,000/- per month. My husband Yasin Naikwadi not complied the order passed by this court in Crl Misc No.306/15. Till date my husband has to pay the arrears amount of Rs.2,70,000/-."

9. Considering the above aspects the alleged breach committed by the petitioner by non-payment of maintenance amount as per order dated 29.07.2015 passed in Crl.Misc.No.306/2015 to respondent Nos.1 and 2 herein.

10. Section 18 of the D.V. Act deals with "Protection Orders" which reads as under:

"18. Protection orders.—*The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—*

(a) committing any act of domestic violence;



- (b) aiding or abetting in the commission of acts of domestic violence;*
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;*
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;*
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;*
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;*
- (g) committing any other act as specified in the protection order."*

11. The words 'protection orders' are defined in under Section 2(o) of the D.V. Act, same extracted as under:



"2. Definitions.—

2(o) "protection order" means an order made in terms of section 18;"

12. The plain reading of Section 18 of the D.V. Act in the light of definition found under Section 2(o) of the D.V.Act, it could be definitely said that the order of granting maintenance does not amount to "protection order" and violation of the same will not attract the provisions of the section 31 of the D.V. Act.

13. Section 31 of the D.V.Act is reproduced as under:

"31. Penalty for breach of protection order by respondent.—*(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.*

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.



(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

14. In the present case, provisions of Section 31 of the D.V. Act was pressed into service before the Trial Court essentially on ground that of arrears of the maintenance was not paid and therefore it paved for penal action under Section 31 of the D.V Act. The learned Magistrate has construed that even the non-payment of arrears of maintenance amounts to the violation of protection order and thereby Section 31 of the D.V. Act could be invoked.

15. Providing two separate reliefs, one under Section 18 of the D.V. Act for protection and another for monetary relief under Section 20 of the D.V. Act will have to be taken into consideration while analyzing the scope of Section 31 of the D.V. Act. If protection order was



inclusive of monetary relief of granting maintenance, Section 20 of the D.V. Act would not have been separately provided.

16. Co-ordinate Bench of this Court in the case of the ***Mr. Francis Cyril C Cunha Vs. Smt Lydia Jane D'Cunha(supra)*** considering similar case has exhaustively dealt with the scope of Section 31 of the D.V. Act in the light of Sections 2(o), 18 and 20 of the D.V. Act and held that the protection order does not include the order of granting monetary relief of maintenance under Section 20 of the D.V. Act.

17. In view of the matter, the approach of learned Magistrate in taking cognizance of the offence punishable under Section 31 of the D.V. Act is a glaring legal error and hence, the same will have to be set aside. Consequently, the proceedings against this petition in C.C.No/1/2022 pending on the file of the IV JMFC, Belagavi are requires to be quashed. In the result, the following s



ORDER

The petition is allowed.

The proceedings against this petitioner in C.C.No.1/2022 pending on the file of the IV JMFC, Belagavi are quashed.

Sd/-
JUDGE

DSP
CT:BCK
List No.: 1 Sl No.: 18