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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2019

BEFORE:

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL REVISION PETITION NO.1377 OF 2018

BETWEEN:

1. K.C. VIJAYAKUMARA,
S/O. LATE CHIKKAMALLAYYA,
AGED ABOUT 44 YEARS,
TRAINED GRADUATE TEACHER,
PRESENTLY WORKING IN GOVERNMENT
MODEL HIGHER PRIMARY SCHOOL,
PRESENTLY NOW R/AT VENKATAPURA,
PAVAGADA TALUK,
TUMKUR DISTRICT-561 202.

2. K.C. BASAVARAJ,
S/O LATE CHIKKAMALLAYYA,
AGED ABOUT 47 YEARS,
AGRICULTURIST,
RESIDENT OF KOLALA VILLAGE,
KORATAGERE TALUK,
TUMKUR DISTRICT-572 129.

... PETITIONERS

[BY SRI. GANGADHARAPPA A.V., ADVOCATE]

AND:

SMT. S. GEETHA,
W/O. K.C. VIJAYAKUMARA,
AGED ABOUT 30 YEARS,
RESIDING AT NO.5/1,
'BASAVESHWARA NILAYA',
2ND MAIN ROAD, 5TH CROSS,

DEEPANJALINAGARA,
MYSORE ROAD,
BANGALORE-560 026.

... RESPONDENT

[BY SRI. DINESH GAONKAR, ADVOCATE]

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THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH 401 OF CRL. P.C., PRAYING TO SET ASIDE THE JUDGMENT DATED 14.11.2018 PASSED BY THE COURT OF THE LVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN CRL. A. NO.506/2018 AND THE ORDER DATED 09.03.2018, PASSED BY THE COURT OF THE V ACMM, TRAFFIC COURT, AT BANGALORE IN CRL. MISC. NO.246/2013 AND BE PLEASED TO ALLOW THE MEMO HOLDING THAT THE COURT OF V ACMM, TRAFFIC COURT AT BANGALORE HAS NO JURISDICTION TO TRY THE PETITION FILED BY THE RESPONDENT AND BE PLEASED TO DISMISS THE PEITION IN CRL. MISC. NO.246/2013 HOLDING IT AS WITHOUT JURISDICTION.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY **MOHAMMAD NAWAZ J.**, PRONOUNCED THE FOLLOWING:

DATE OF RESERVED THE ORDER : 18.07.2019

DATE OF PRONOUNCEMENT OF THE ORDER : 20.09.2019

ORDER

This revision petition is preferred with a prayer to set aside the judgment dated 14.11.2018 passed by the court of the LVI Addl. City Civil and Sessions Judge, Bengaluru in Crl. Appeal No.506/2018 and the order dated 09.03.2018 passed by the Court of V Addl. CMM Traffic Court at Bengaluru in Crl.Misc. No.246/2013 and to hold that the Court of V Addl. CMM Traffic Court, Bengaluru has no jurisdiction to try the petition filed by the respondent and to dismiss the said petition filed in Crl.Misc. No.246/2013.

2. I have heard Sri. A.V. Gangadharappa learned counsel appearing for the petitioners and Sri. Dinesh Gaonkar, learned counsel appearing for the respondent.

3. Facts leading to the filing of this revision petition in brief are as under :

The respondent is the legally wedded wife of the 1st petitioner. Their marriage was solemnized on 17.04.2005. The respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in

short 'Act 2005') before the Court of the Addl. CMM, Traffic Court-V, Bengaluru City, seeking reliefs under Section 18 to 22 of the said Act. The 1st petitioner herein filed objections to the said application interalia contending that the various averments made in the application are not true and further that the said application was not maintainable as the said Court has no jurisdiction to entertain the application.

4. A memo was filed by the petitioners herein to treat, jurisdiction to prosecute the case, as preliminary issue. The respondent herein filed objections to the said memo dated 08.12.2017. The learned Magistrate by an order dated 09.03.2018 was pleased to hold that the Court has jurisdiction to proceed with the matter and dismissed the prayer of the petitioners herein.

5. Aggrieved by the aforesaid order passed by the learned Magistrate the petitioners herein preferred Crl.A.No. 506/2018 before the learned Sessions Judge. The said appeal came to be dismissed by judgment dated 14.11.2018,

aggrieved by which and challenging the aforesaid orders, the petitioners are before this court.

6. It is the contention of the learned counsel appearing for the petitioners that the 1st petitioner and the respondent started their marital life at Mellagatti in Savanur Taluk, where the 1st petitioner was working as a trained graduate teacher in Government Higher Primary School. They led their marital life till 14.11.2012. Thereafter, without any reason, the respondent/wife abandoned the company of the 1st petitioner and left the marital house once for all and returned to her parents' house. She lodged a false complaint on 30.11.2012 in Savanur Police Station against the petitioners alleging offence punishable under Sections 506, 34 and 498-A of IPC, wherein she has narrated about the commission of the alleged offences having taken place within the jurisdiction of Savanur Police Station. The police have filed charge sheet against the petitioners and the said case is registered as C.C.No.56/2013 on the file of the Civil Judge and JMFC at Savanur. It is contended that the present case has been filed alleging domestic violence stated to have been

caused to her while she was residing with the 1st petitioner at Mellagatti in Savanur Taluk and no part of the cause of action has arisen at Bengaluru. Merely because the respondent is residing in Bengaluru with the parents, wherein no domestic violence has taken place, the present application filed before the Court in Bengaluru is not maintainable.

7. The learned counsel for the petitioners would contend that according to Section 28 of the 'Act 2005', all proceedings shall be governed by the provisions of Cr.PC. The Trial Court has failed to follow the procedure prescribed in Chapter XIII of Cr.PC. As per Section 177 of Cr.PC, every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. The Trial Court has no jurisdiction to try the case since the offences alleged have taken place in Mellagatti Village in Savanur Taluk. It is further contended that the reasons assigned by the learned Magistrate as well as the Appellate court are erroneous and the Courts below have not properly considered the contentions raised in this behalf and therefore it is submitted that both the courts have erred in dismissing the

prayer made by the petitioners and accordingly the learned counsel seeks to allow the revision petition.

8. In support of the contentions raised, the learned counsel for the petitioners has placed reliance on the following decisions.

1) AIR 2016 SC 3930 – Manoj Kumar Sharma and Ors. Vs. State of Chhattisgarh and Anr.

2) (2005) 11 SCC 66 – Bhagwan Dass and another vs. Kamal Abrol and others.

3) (2005) Crl.LJ 1732 – Ramesh and others vs. State of T.N.

9. Per contra, the learned counsel appearing for the respondent would contend that the petitioners herein have raised the issue of jurisdiction to drag on the proceedings. Under Section 2(i) of the 'Act 2005', definition of 'Magistrate' includes the jurisdictional Magistrate where the aggrieved persons resides temporarily or otherwise. Hence, the application filed by the respondent under Section 12 of the Act is maintainable. Section 27 of the said Act provides that

the Court of Judicial Magistrate of the 1st Class or the Metropolitan Magistrate as the case may be within the local limits of which the person aggrieved permanently or temporarily resides etc., shall be the competent Court to grant protection order and to try offences under the Act. The learned counsel contends that the respondent/wife is admittedly residing with her parents in Bengaluru after she was forced out from her shared household at Melagatti. The acts of domestic violence are continuing acts. It is submitted that when the matter was at the stage of cross-examination of PW-1/respondent herein, the question of jurisdiction has been raised just to drag on the proceedings and to harass the respondent without paying maintenance in time. Accordingly, the learned counsel for the respondent seeks to dismiss the petition.

10. In support of the above contentions, the learned counsel for the respondent has placed reliance on the following decisions:

(1) Laws (DLH) 2010 9 9 – Sharad Kumar Pandey vs. Mamta Pandey.

(2) TRP CRL No.20/2016, Rabindranath Sahu & anr. Vs. Smt. Suhsila Sahu.

(3) 1995 Supp. (4) SCC 137 – Dharshan Kumari vs. Surinder Kumar.

11. The point that arise for my consideration is as to whether the Court of V Addl. CMM traffic Court at Bengaluru has jurisdiction to try and to decide the application filed by the respondent herein under Section 12 of the Protection of women from domestic Violence Act, 2005.

12. The point raised above is answered as under :

Admittedly, the respondent herein is the legally wedded wife of the 1st petitioner. The marriage is said to have taken place on 17.04.2005 at Balaji Kalyana Mantapa, Mysore Road, Hosaguddahalli, Bengaluru. The averments made in the application filed by the respondent/wife under Section 12 of the 'Act 2005' in brief would disclose that, after the marriage, the respondent started living together with the petitioner in a rented house in Melagatti Village in Savanur Taluk. Marriage was consummated and a male child was born on 30.12.2006

at Bengaluru. After one year from delivery of the baby, the respondent joined her husband at Melagatti. After about a month, the 1st petitioner/husband again brought the respondent and her son to Bengaluru during summer vacation and while returning, he left the child with the respondent's parents in Bengaluru. Ever since then, they are looking after the child. During the period April-May 2012, the 1st petitioner started finding fault with the respondent and started physically and verbally abusing etc., stating that she should go back to her parental house, so that he could take 2nd wife. Since the threat of removal was imminent, the respondent's father, for the sake of the future of his daughter, raised a loan of Rs.3 Lakhs and deposited the said amount in Vijaya Bank, Chamarajpet branch, Bengaluru. The 1st petitioner forcefully removed and took away all the gold jewels and ornaments etc., given to him by her parents during their marriage. Even the panchayat failed. Unable to bear all these agony, she had to go back to Bengaluru and live with her parents.

13. The averments made in the application filed under Section 12 goes to show that the marriage took place in Bengaluru. After the marriage, the couple started living in Melagatti Village, Savanur Taluk. However, due to the physical and mental harassment given by the 1st petitioner/husband, the respondent was forced to stay in Bengaluru with her parents. The cause title of the application filed before the Trial Court shows that the respondent-wife is residing at No.5/1, Basaveshwara Nilaya, II Main Road, 5th Cross Mysore Road, Deepanjalinagara, Bangalore-560026. It cannot be said that no part of the cause of action has arisen in Bengaluru. Merely because a criminal case was registered in Savanur Police Station on the complaint lodged by the respondent herein, the same is not a ground to hold that the Court in Bengaluru has no jurisdiction to entertain an application filed under Section 12 of the 'Act 2005'.

14. Sections 177 and 178 of Cr.PC reads as under :

"Section 177 – Ordinary Place of inquiry and trail:-

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Section 178 – Place of inquiry or trial:-

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) Where an offence is committed partly in one local area and partly in another, or

(c) Where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) Where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

Section 27 of the 'Act 2005' reads as under ;

Jurisdiction:- (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

Section 2(i) of the 'Act 2005' defines "Magistrate" as under :

"Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

15. The operative portion of the order passed by the learned Magistrate reads as under ;

"The Hon'ble Chief Metropolitan Magistrate, Bengaluru by special notification dated 03.06.2015, allotted jurisdiction to all Metropolitan Traffic Courts as per the annexure of the said notification and from then, the petitions were directed to be filed

before the MMTCs, prior to this notification, it is the CMM Court which used to allot the petition under the Protection of Women from the Domestic Violence Act, 2005 to the MMTCs. The present petition was made over by the Honble CMM Court to this Court prior to the notification. Hence, this court has jurisdiction to proceed with the matter."

16. It is not in dispute that the respondent is presently residing with her parents in the address shown at Bengaluru. Section 27 (1)(a) of the Act, 2005 emphasize that the court of judicial magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which the person aggrieved permanently or temporarily resides etc., shall be the competent court to grant protection order and other orders under the Act and to try offences under the Act.

17. The decisions relied upon by the learned counsel for the petitioners is not applicable to the case on hand. In the case of '*Manoj Kumar Sharma and Others'* (Supra), the Hon'ble Apex Court has held that the territorial jurisdiction of the Court with regard to a criminal offence would be decided

on the basis of the place of occurrence of the incident. In the said decision, while considering the territorial jurisdiction to conduct police investigation in respect of the offences under the Indian Penal Code, it was held, considering the facts of the said case that none of the ingredients constituting the offence was said to have occurred within the local jurisdiction of that Court.

18. In the case of '*Bhagawan Dass and Another Vs. Kamal Abrol and others*' (supra), the Apex Court was dealing with a question of eligibility for allotment of LPG dealership and the eligibility criterion with regard to permanent or temporary residence.

19. In the case of '*Ramesh and others Vs. State of T.N.*' (supra), considering the facts of the said case and on looking at the complaint at its face value, it was held that the alleged acts which according to the petitioners constitutes the offences under Section 498-A and 406 of IPC were done by the accused mostly in Mumbai and partly in Chennai. *Prima facie,* there is nothing in the entire complaint which goes to

show that any acts constituting the alleged offences were at all committed at Trichy.

20. The above decisions referred to by the learned counsel for the petitioners are therefore not applicable to the case on hand as the facts are entirely different from the facts of the case on hand.

21. 'The Protection of Women from the domestic violence Act, 2005' is a special Act providing more effective protection of the rights of women, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The jurisdiction of the learned Magistrate to deal with the application filed by an aggrieved person is as provided under Section 27 of the Act. Such Court is the competent Court to grant a protection order etc., and to try offences under the said Act.

22. In the case of *Sharath Kumar Pandey vs. Mamatha Pandey* (supra) *(2010 scconline DEL 2977)*, the

High Court of Delhi while dealing with Section 27 of the 'Act 2005', has observed thus:

> *"Para – 8 From different provisions of this Act, it is apparent that the scheme of the Act provides that protection officer, service provider and police to help the aggrieved person in not only approaching the court for redressal but to ensure that the domestic violence is not further perpetuated and an aggrieved person gets shelter either in the sheiter home or after the residence order in the shared household. Thus, the place of domestic violence and the place of respondent are two places which are the places of actions under the Act which the Magistrate can take and give directions to other bodies created under the Act. However, still the Legislature provided that the jurisdiction can be invoked by an aggrieved person on the basis of temporary residence. It seems that this provision has been made for such aggrieved person who has lost her family residence and is compelled to take residence, though temporarily, either with one of her relatives or with one of her friends at a place where the domestic violence was not committed or her matrimonial home was not there. Such a woman can invoke jurisdiction of the court where she is compelled to reside in view of commission of domestic violence, this temporary residence must be one which an aggrieved person takes under the circumstances of domestic violence.*

23. In the case of *Rabindra Nath Sahu and Another Vs. Smt. Susila Sahu* (supra) (*2016 Cr.LJ 4931*), the High Court of Orissa, while dealing with the same question, observed as under :

> *"Thus in view of section 27, if the 'aggrieved person' either permanently or temporarily resides at a place, the Court of Judicial Magistrate of the First Class within the local limits whose jurisdiction such place situates is competent to entertain an application under Section 12 of 2005 Act and to grant protection order and other orders under the Act or try the offences under the Act.*
>
> *The legislature in its wisdom has provided that jurisdiction can be invoked by an 'aggrieved person' before the competent Court on the basis of temporary residence. The word "temporarily" means lasting, existing, serving for a time only which is not permanent. A temporary residence is a temporary dwelling place of the aggrieved person who has for the time being decided to make that place as her home. An aggrieved person who has lost her matrimonial home due to domestic violence and was not even allowed to stay at her ancestral house or at her father's place for some reason or the other and is compelled to take residence, though temporarily, either with one of her relatives*

or with one of her friends at a place where the domestic violence was not committed can invoke the jurisdiction of the Magistrate within whose local limits such place of temporary residence situates. The temporary residence includes a place where the aggrieved person was compelled to reside in view of commission of domestic violence. She may not have decided to reside there permanently or for a considerable length of time but for the time being. A place where the aggrieved person has gone on a casual visit, a lodge or hostel or a guest house or an inn where she stays for a short period or a residence at a place simply for the purpose of filing a case against another person cannot be a place which would satisfy the term "temporarily resides" as appears in section 27. The legislature has provided the aggrieved women who are financially, economically or physically abused wide options to institute a case which best suited their convenience, comfort and accessibility. Section 2(i) of 2005 Act indicates "Magistrate" means the Judicial Magistrate of the First Class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area were the aggrieved person resides temporarily or otherwise or the respondents resides or the domestic violence is alleged to have taken place. Thus even if for a

temporary period of time, an aggrieved person is residing at a place, she can seek reliefs under the 2005 Act by filing an appropriate application before the competent Court within the local limits whose jurisdiction such place situates."

24. In the case of *Darshan Kumari (Smt.) vs. Surendra Kumar* (supra) reported in [*1995 Supp.(4) SCC 137*], the Hon'ble Apex Court while considering the application filed by the wife for maintenance under Section 125 read with Section 126 of Cr.P.C. has held that, even temporary residence, if not casual, is sufficient to confer jurisdiction on Magistrate at that place or of the district concerned.

25. For the foregoing reasons, the point raised is answered in the affirmative. There is no merit in this revision petition. Hence, I pass the following :

ORDER

The criminal revision petition is dismissed.

Sd/-
JUDGE

snc