

**IN THE COURT OF THE XXVIII ADDL. CITY CIVIL
& SESSIONS JUDGE, Mayo Hall, Bangalore,
[CCH.NO.29]**

Present :- Sri. K.M. Rajashekar, B.Sc., L.L.M.,

Dated this the 6th day of May 2023

Crl.Appeal No.25058/2021

Appellant: Mr. Joseph Albert @
Leonard Christopher,
Aged about 58 years,
S/o Late Albert Raj,
Residing at Flat No.001,
Kamadhenu Apartments,
#39/9, Ramakrishnappa Road,
Cox Town, Bangalore-560 005.

(Sri. K.R. Bharadwaj Adv.)

.. Vs ..

Respondent: Mrs. Mary Merlin,
Aged about 49 years,
W/o Mr. Joseph Albert,
Residing at No.2F, 2nd Floor,
Sycon Horamavu,
Opp. SBI Bank,
Horamavu Main Road,
Bangalore-560 043.

(Sri. T. Satheesha Adv.,)

JUDGMENT

This Appeal is filed by the Appellant/Accused being aggrieved by the impugned order dtd: 12.3.2021 rendered by the MMTC-1 Court in Crl.Misc.No.191/2019 U/S 29 of Protection of Women from Domestic Violence Act, 2005.

2. Looking at the case papers, it indicates that the Respondent herein who is the Petitioner before the Trial Court filed Criminal Misc.No.761/2010 under Domestic Violence Act and sought for maintenance, accommodation and maintenance to her child etc. The Trial Court after hearing both sides and considering the claim of the Respondent herein ordered for maintenance of Rs.10,000/- + Rs.2,500/- towards accommodation on 19.11.2013. However, it appears that during the course of trial the Appellant herein appears to have filed a memo of calculation claiming that he has paid Rs.1,93,796/- and also claimed that he has purchased a Flat worth of Rs.48,00,000/- in the name of his daughter and her claim is Rs.24,00,000/-. Hence, he has sought for

discharging him from the liability. The Trial Court after hearing both sides, rejected the claim of the Appellant herein and ordered for payment of arrears of Rs.7,54,204/-. Now, the Appellant come up with this Appeal contending that the Trial Court erred in considering the documents and failed to notice that the Respondents are residing in the said Apartment. Since the Appellant is residing in different place he is not liable to pay any maintenance etc.

3. Heard, Perused the records.

4. The points that arise for my determination are as under:

1) Whether the Appellant makes out case to interfere with the impugned order?

2) What order?

5. My findings on the above points are as under:

Point No.1 : In the Negative.

Point No.2 : As per final order,
for the following:

REASONS

6. **Points No.1** :- Upon careful perusal of the orders, it indicates that, the Respondent herein who is the Petitioner before the Trial Court filed Criminal Misc.No.761/2010 under Domestic Violence Act and sought for maintenance, accommodation and maintenance to her child etc. The Trial Court after hearing both sides and considering the claim of the Respondent herein ordered for maintenance of Rs.10,000/- + Rs.2,500/- towards accommodation on 19.11.2013. However, it appears that during the course of trail the Appellant herein appears to have filed a memo of calculation claiming that he has paid Rs.1,93,796/- and also claimed that he has purchased a Flat worth of Rs.48,00,000/- in the name of his daughter and her claim is Rs.24,00,000/-. Hence, he has sought for discharging him from the liability. In the Trial Court after hearing both sides, rejected the claim of the Appellant herein and ordered for payment of arrears of Rs.7,54,204/-.

7. Looking at the impugned order, it is seen that the Trial Court has rightly appreciated the claim of the Petitioner who is the Respondent herein in the right spirit. Looking at the impugned order, it indicates that the Trial Court has considered the claim of the Appellant herein and held that vide order dtd: 19.11.2013 an amount of Rs.2,500/- towards accommodation and Rs.10,000/- towards maintenance is ordered, against which approximately Rs.2,00,000/- is already paid. It is also observed by the Trial Court that absolutely there are no proof to accept that the Respondent and her daughter herein were residing in the said Apartment. It is also clearly observed by the Trial Court that "If the Respondent proves that the Petitioner and his daughter are staying in the said House then he can absolve from the liability to the extent of order regarding accommodation from the date of stay in the said House. Mere taking contention that he purchased property in the joint name of himself and his daughter he cannot adjust the value of the property towards arrears of the maintenance."

8. As rightly argued by the Learned Counsel for the Respondent the Trial Court has rightly considered the fact that even if it is established that the Respondent herein were residing in the said Apartment, the liability towards payment of Rs.2,500/- towards accommodation can only be absolved, still the Appellant herein is liable to pay maintenance amount. Therefore, I did not find any reason to interfere with the observation of the Trial Court. Moreover, this being an interim order the Appellant herein has every liberty to put forth his defence in a right spirit and convince the Trial Court. But unfortunately, inspite of giving sufficient opportunity, the Appellant has failed to address any arguments on merits. Hence, I did not find any reason to interfere with the impugned order as the Trial Court has rightly appreciated the claim of the parties in a right spirit which deserves no interference. Hence, I answer Point No.1 in the Negative.

9. **Point No.2**: In the light of above discussions, I proceed to pass the following:

ORDER

The Criminal Appeal preferred by the Appellant U/S 29 of Protection of Women From Domestic Violence Act, 2005 is hereby dismissed with costs of Rs.10,000/- payable to the Respondent.

The Order passed by the Trial Court in Crl.Misc.No.191/2019 dtd: 12.3.2021 is confirmed.

Send back the Trial Court records along with a copy of this Judgment to the trial Court.

(Dictated to the Stenographer directly on computer, typed & computerized by her, corrected and signed by me and then pronounced in the open Court on this the **6th** day of **May 2023.**)

[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.

**Order pronounced in the open Court
(vide separate Judgment)**

ORDER

The Criminal Appeal preferred by the Appellant U/S 29 of Protection of Women From Domestic Violence Act, 2005 is hereby dismissed with costs of Rs.10,000/- payable to the Respondent.

The Order passed by the Trial Court in Crl.Misc.No.191/2019 dtd: 12.3.2021 is confirmed.

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[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.