

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.618 of 2009

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the order dated 02.03.2009, passed by the Judge, Family Court, Nellore, in F.C.O.P.No.335 of 2008.

2. The revision petitioner herein is the respondent, whereas respondent Nos.2 to 4 herein are the petitioners in F.C.O.P.No.335 of 2008 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in F.C.O.P before the trial Court.

3. The brief facts of the case are that the respondent married the first petitioner on 09.05.1987. Their marriage was consummated and in their wedlock, petitioners 2 & 3 were born. At the time of marriage the respondent was given dowry, gold and articles by his parents-in-law. The respondent is in the habit of taking alcohol, coming home late in night in a drunken state and beating the first petitioner for no just cause. The respondent was suspecting the fidelity of the first petitioner and was not providing her necessities. When the first petitioner was beaten by the respondent she was about to lodge a report to police, but due to the intervention of elders the matter is subsided. Though she led marital life with the respondent, there was no change in his attitude and on 24.06.2008 he beat her indiscriminately and drove her out from the house. The first petitioner lodged a report with police, Buchireddypalem Police Station, who registered the same as a case in Cr.No.79 of 2008 for the offences punishable under Sections 498-A & 307 I.P.C against the respondent. The respondent is working as a teacher and is getting Rs.16,000/-p.m as salary, having a house and getting Rs.1,500/-p.m as rent on the same and having sufficient means. He has neglected and refused to maintain the petitioners, who are unable to maintain themselves. Hence the petitioners filed the petition. The claim of the third petitioner was not pressed on 30.12.2008.

4. During the course of trial, to prove the case of petitioners, PWs.1 & 2 were examined and no documents got marked. On behalf of the respondent, RWs.1

to 3 were examined and Exs.R1 to R11 got marked.

5. The trial Court after considering the evidence, after hearing the arguments and after perusing the record directed the respondent to pay maintenance allowance at the rate of Rs.2,000/- p.m to the first petitioner and Rs.1,500/- p.m to the second petitioner from the date of petition.

6. Being aggrieved by the order passed by the trial Court, the respondent preferred the present revision case.

7. The learned counsel for the revision petitioner argued that the revision petitioner is getting a net salary of Rs.11,270/- and with the meagre amount it is not sufficient to maintain himself; that he is maintaining the fourth respondent; that the second respondent is working as a teacher and getting monthly salary of Rs.3,000/-; and that the second respondent herself deserted the revision petitioner and as such, she is not entitled for maintenance, therefore prayed the Court to set aside the order passed by the trial Court in F.C.O.P.No.335 of 2008 and reduce the maintenance awarded.

8. On the other hand, the learned counsel for respondent Nos.2 & 3 argued that the trial Court after considering the evidence on record granted maintenance of Rs.2,000/- to the second respondent and Rs.1,500/- to the third respondent; that the second respondent is not working as a teacher, but she is a house wife and she is not in a position to maintain herself; that she is depending on the earnings of the revision petitioner; that the trial Court after considering the evidence on record rightly granted maintenance and therefore the revision petitioner is not entitled to set aside the order passed by the trial Court and prayed the Court to dismiss the revision case.

9. Now, the point for determination is:

Whether the revision petitioner herein is entitled to set aside the order dated 02.03.2009 passed by the trial Court in F.C.O.P.No.335 of 2008, as prayed for or not?

10. **P O I N T:** A perusal of the record shows that the marriage of the revision petitioner and second respondent was performed on 09.05.1987. Their marriage was consummated and out of their wedlock, respondent Nos.3 & 4 were born. It is the contention of the second respondent that since the date of marriage, the

revision petitioner was harassing her to get more dowry. Admittedly, the revision petitioner is working as a teacher and getting monthly gross salary of Rs.17,297/- p.m i.e., in the year 2009 and he is maintaining the fourth respondent. The main grievance of the revision petitioner is that after deductions, he is getting Rs.11,270/- p.m and he is unable to maintain himself. Further, it is his contention that the second respondent is working as a teacher and she is capable for maintaining herself. In this regard, the revision petitioner has not filed any documentary evidence to show that second respondent is working as a teacher and getting monthly salary of Rs.3,000/- p.m. Admittedly, the revision petitioner and second respondent are husband and wife and the revision petitioner has to maintain his wife and children. The contention of the revision petitioner that he is getting only meager salary after deduction and not in a position to maintain respondent Nos.2 & 3 cannot be accepted. Therefore, the second respondent herein, who is the wife of the revision petitioner, is entitled for maintenance and the trial Court rightly passed the order granting maintenance of Rs.2,000/- to the second respondent and Rs.1,500/- to the third respondent and the revision petitioner has not made out any case to set aside the order dated 02.03.2009 passed by the trial Court in F.C.O.P.No.335 of 2008.

11. The other contention of the learned counsel for revision petitioner is that the amount granted as maintenance to respondent Nos.2 & 3 is very high and it has to be reduced. Admittedly, the revision petitioner and second respondent are living separately and there is no evidence to show that the second respondent is capable of maintaining herself and her daughter third respondent. In view of the fact that the revision petitioner failed to prove that second respondent is earning Rs.3,000/- per month by working as teacher, it is the duty of the revision petitioner to maintain the second respondent and third respondent. Therefore, the trial Court after considering the oral and documentary evidence, rightly passed the order and the finding of the trial Court needs no interference.

12. Accordingly, the Criminal Revision Case is dismissed confirming the order dated 02.03.2009 passed by the Judge, Family Court, Nellore, in F.C.O.P.No.335 of 2008.

13. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 20.04.2015

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