

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.1170 of 2013

ORDER:

This Criminal Revision Case is filed under sections 397 & 401 Cr.P.C against the orders of the learned Judge, Additional Family Court, Visakhapatnam, dated 28.02.2013 in O.P.No.1283/2011, by and under which the learned Judge has granted maintenance of Rs.4,000/- to the 1st respondent/wife and Rs.2,000/- each to respondents 2 & 3/daughters.

Heard the learned counsel appearing for the petitioner/husband and the learned Additional Public Prosecutor, representing the State.

The petitioner is the husband. The 1st respondent is the wife, and respondents 2 and 3 are their daughters. The relationship between the parties is not in dispute. The petitioner/husband and the 1st respondent/wife were married on 13.10.2003 and they were blessed with two daughters, who were aged about 7 years and 5 years in 2011 when the O.P.was filed. The 1st respondent/wife filed maintenance O.P. against the petitioner/husband stating that at the time of marriage the parents of the 1st respondent/wife gave sufficient dowry in cash and other gold and silver jewelry to the satisfaction of the petitioner/husband. After the marriage, the husband and his family members used to harass her both physically and mentally to fulfil their lust for additional dowry. She was not allowed to speak to neighbours and to her parents and treated her as a slave. On 31.12.2007 the husband dropped the wife at her parents stating that he would not allow her unless her parents pay Rs.10 lakhs. Then the wife filed O.P.1041/2008 and later the matter was compromised at the intervention of well wishers and again the wife joined the husband. But there was no change in the attitude of the husband and his family members and they again started harassing the wife to fulfil their evil desire of additional dowry. On 20.12.2010 the husband beat the wife due to which the wife sustained fracture to her hand. On knowing the illegal acts of the in-laws of the wife, the father of 1st

respondent/wife lodged a complaint with Mahila Police Station, Durg. The husband admitted his guilt and requested the wife to withdraw the complaint lodged by her father or otherwise he threatened to kill her, her children and her parents. On 25.06.2011 the husband beat the wife and made her to run on the roads with nighty and as there is no other way, the wife to save her life went to her parents house at Visakhapatnam by leaving her two children, and on 06.07.2011 she lodged a complaint before Kancharapalem police against the husband. Through police, the children were handed over to the wife, and herself and her children are living at the mercy of her parents. She is not having any earning sources. The husband was working as Senior TNC in South East Central Railway, Raipur, drawing salary more than Rs.25,000/-, in addition he was doing finance business and earning Rs.15,000/- per month thereon and he is in a position to pay maintenance to the wife and children.

The petitioner/husband filed counter denying the allegations of the respondent/wife and contended that his mother is living with his brother at Raipur and his two sisters are living separately and they are no way connected with the internal affairs of his family. The husband stated that the wife at the instigation of her father, left the matrimonial home along with children openly saying that she is not interested to lead conjugal life with the petitioner/husband and hence the payment of maintenance to any of the petitioners is not valid under law. The husband further submitted that he is ready and willing to take back the wife and children to lead conjugal life. He further contended that himself and his family members faced lot of torture in the hands of the respondent/wife and her father.

During the course of trial, the wife examined herself as PW 1 and husband examined himself as RW 1. On behalf of wife, Exs.A1 to A7 were marked and no documents were produced on behalf of the husband.

Considering the oral and documentary evidence adduced on either side, by the impugned order, the learned Judge held that the wife is entitled to claim maintenance and accordingly awarded maintenance at Rs.4,000/- per month to the wife and Rs.2,000/- each to the two children. Aggrieved by the said order, the present revision is filed by the husband.

The contention of the petitioner/husband is that the respondent/wife is not at all justified in living separately from the husband and claim maintenance. Without

there being any evidence to show that with a justifiable cause the wife was living separately, the learned Judge awarded maintenance which is not permissible. Except Exs.A5 and A6 complaints which are said to have been filed under Section 498-A IPC and under sections 3 & 4 of Dowry Prohibition Act, no other evidence was produced by the respondent/wife for holding that the respondent/wife is entitled to claim maintenance by living separately. The petitioner/husband further contended that Court below has not considered the material on record in proper perspective and erroneously awarded maintenance to the wife and children, which is excessive and exorbitant.

As already stated, it is not disputed that since August, 2010 the respondent/wife and her children are living separately from the petitioner/husband. Who is responsible for the separation is the contentious aspect. According to the petitioner/husband, it is the respondent/wife herself who voluntarily left his company without any reason and hence she is not entitled to claim maintenance. On the other hand, it is the contention of the respondent/wife that when she was living with the petitioner/husband, she was subjected to harassment and ill-treatment on several occasions, due to which she had left the company of the petitioner/husband and living separately.

As a matter of fact, previously the respondent/wife filed O.P.1041/2008 for the very self-same relief and the said O.P. was compromised and the respondent/wife joined the company of the petitioner/husband and lived with him for about three years. There was no change in the conduct of the petitioner/husband. It is alleged by the respondent/wife that on 25.06.2011 at about 12.30 p.m the petitioner/husband beat her and made her run in streets with a nighty and having no other go, she went to her parents house and took shelter. The respondent/wife and her father filed two complaints against the petitioner/husband on 02.05.2011 and 06.07.2011, the complaints were registered and FIRs issued. Due to unbearable harassment meted out by the respondent/wife in the hands of the petitioner/husband, the respondent/wife was living separately with her children.

In granting maintenance what is required to be considered is as to whether there is just and sufficient cause for the wife to live separately from the husband and whether there are any sources of income to survive and whether the husband is in a position to pay maintenance to the wife and children separately. The Court below has considered the material on record in proper perspective and rightly awarded the

maintenance to the wife and children, considering the income of the petitioner/husband and present cost of living. The quantum of maintenance awarded by the Court below is just and reasonable. Admittedly, the petitioner/husband was working in South Central Railway and as of now he is earning more than Rs.40,000/- per month.

Upon perusal of the material on record, I see no reason to interfere with the said order as it does not suffer from any irregularity or illegality.

The Criminal Revision Case is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 02.11.2015

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