

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

CRIMINAL REVISION CASE No.743 of 2007

ORDER:-

This Criminal Revision Case is filed questioning the orders of the learned V Additional Judicial Magistrate of First Class, Chittoor, dated 27.02.2007 in M.C.No.14 of 2005, by and under which the learned Magistrate granted monthly maintenance payable to the wife @Rs.800/-.

2. The case of the 1st respondent is that the petitioner is her husband and their marriage took place on 12.11.1972. The 1st respondent filed maintenance case against the petitioner seeking monthly maintenance @Rs.3,000/- per month. It is stated during their wedlock they were blessed with one son and daughter. The petitioner was a driver at the time of marriage and after the marriage, the petitioner neglected her and her children. The petitioner addicted to bad vices and used to raise quarrel with the 1st respondent without any reasons and subjected her to cruelty. Since 5 years before the date of filing of the petition, the petitioner completely neglected her and did not take proper care and interest to look after her and her children and left them to their fate. By the time of filing the petition, the petitioner was earning Rs.25,000/- per month and he is in a position to pay maintenance to the 1st respondent and that there are no sources of income to the 1st respondent for her livelihood.

3. The petitioner filed counter in M.C. denying the contents of the petition. He firstly denied the relationship between him and the 1st respondent. He denied the very marriage between the petitioner and 1st respondent. The petitioner in his counter stated that he got married to one Smt.Y.Sakunthamma @ Y.N.Chandravathi in 1970 at Siva Temple, Gudur as per Hindu Rites and customs, through whom he got one son by name Y.Vivekanantha who got married about 4 years back and he is a D-Pharmacy holder. The petitioner stated that the 1st

respondent is not his wife and she is wife of one K.Srinivasan, who is alleged to have filed divorce O.P.No.19/2005 against the 1st respondent on the file of the Principal Senior Civil Judge, Srikakulam.

4. The point for consideration is as to whether the respondent herein viz., the petitioner in M.C.No.14 of 2005 proved that she is entitled to claim maintenance and whether the quantum of maintenance is just and reasonable?

5. **Point:-** The respondent herein is one Chandravathi, who is examined as PW.1 and she filed M.C.No.14 of 2005 against the revision petitioner/Narasimhulu who is examined as R.W.1. The learned V-Additional Judicial Magistrate of First Class, Chittoor, by Judgment dated 27-02-2007 held that the Chandravathi/PW.1 is the wife of the revision petitioner/Narasimhulu/R.W.1 and taking into consideration the income of PW.1, awarded maintenance @ Rs.800/- per month. Challenge is made by the revision petitioner/R.W.1 on the ground that the petitioner/PW.1 is not the wife of the revision petitioner/R.W.1 and not entitled to maintenance.

6. According to the respondent/PW.1, she was married to the revision petitioner/R.W.1 on 12-11-1972 and Ex.P.1 is the marriage card. They are blessed with two children viz., son by name Bhagawan and daughter by name Supraja. PW.1 claims that she had been living with R.W.1 at different places depending upon the posting of R.W.1. It is alleged that for about 4 or 5 years prior to the filing of the Maintenance Case in the year 2005, R.W.1 developed illicit intimacy with another woman and started neglecting and maintaining PW.1 and her two children and hence the Maintenance Case is filed.

7. The contention of the revision petitioner/R.W.1 is that PW.1 is not his wife and that Bhagawan and Supraja are not his children. On the other hand, R.W.1 married one Shakuntalamma (R.W.2) on 19-01-1970 in a Siva temple at Gudur and they are blessed with a son by name Vivekananda (R.W.3), whose date of birth is 24-03-1971. The revision petitioner/R.W.1 further contends that he does not know PW.1

and the children and has got nothing to do with them.

8. What is apparent from the above is the relationship in between PW.1 and R.W.1 is in dispute. While PW.1 claims that R.W.1 married her on 12-11-1972, R.Ws.1 and 2 claim that they are man and wife having married on 19-01-1970. In a case of this nature, the evidence has to be scrutinized carefully for seeing as to whether the petitioner who filed the Maintenance Case is entitled to the same or not. Documentary evidence as compared to the oral evidence plays a vital role in adjudicating this controversy. Significantly, R.W.1 is a public servant and is working as Lineman-cum-Driver in AP TRANSCO.

9. Insofar as the oral evidence is concerned, there is oath against oath. While PW.1 asserts that she is the legally wedded wife of R.W.1 and is blessed with two children, R.W.1 asserts that he do not know PW.1 and the children and as a matter of fact, it is R.W.2 who is his wife and R.W.3 is the son. In support of the respective contentions, both the parties produced oral evidence in the shape of PWs.2 and 3 and R.Ws.2 to 5.

10. PW.2 is the brother of PW.1. He speaks about the marriage said to have been taken place in between R.W.1 and PW.1 on 12-11-1972. He also speaks about the two children being born to PW.1 out of the wedlock with R.W.1. PW.3 is a crucial witness insofar as the claim of the petitioner is concerned. He is working as an Upper Division Clerk in APSPDCN, Chittoor. On being summoned from the Court, he came and gave evidence to the effect that R.W.1 is having a basic pay of Rs.21,000/- as on 01-07-2005. He also produced the Service Register of R.W.1. He deposed that as per the service record, R.W.1 nominated Chandravathi (PW.1) as a wife for pensionary benefits. Subsequently, on 18-08-1998, R.W.1 filed another nomination nominating Y.Sakuntamma (R.W.2) as the nominee. He asserts that as per the Service Record, there is no *alias* name for Shakuntamma and he further speaks that while R.W.1 changed his nomination from Chandravathi (PW.1) to Shakuntamma (R.W.2), he has not given any

separate application.

11. As against the above oral evidence, on behalf of R.W.1, R.W.2 is examined, who is said to be the legally wedded wife of R.W.1. She deposed that she married R.W.1 on 19-1-1970 at Gudur Siva Temple. She also speaks about R.W.3 being born as a son. In the cross-examination, instead of categorically denying, what is deposed by R.W.2 is that she do not know whether R.W.1 married PW.1 or not and that she do not know whether PW.1 and R.W.1 had a male child and a female child. She also admits that she has not filed any record to show that she and R.W.1 are residing in Tirupati. She further stated that she do not know whether R.W.1 and PW.1 lived at Naidupet. In her further evidence, Exs.R.2 to R.4 are marked through her. She admits that in Ex.R.3, which is the house tax receipt, the name of her husband is not mentioned, so also in Ex.R.4 which is the electricity bill. She further admits that Exs.P.7 and P.8 are the certified copies of the registered sale deeds dated 04-05-2006 and that these sale deeds were executed by R.W.2 in the name of Chandravathi by affixing her photo. There is no record to show that Shakuntalamma/R.W.2 is having any other alias name Chandravathi. Chandravathi is PW.1 and therefore it is suggested to her that by impersonating PW.1, R.W.2 executed Exs.P.7 and P.8, in which R.W.1 has acted as an identifying witness.

12. PW.3 is the son of R.Ws.1 and 2 and he deposed that his date of birth is 24-03-1971 and that he is a Diploma-holder in Pharmacy. He produced the record to that effect. He also stated that he cannot say whether his father R.W.1 married his mother R.W.2 or PW.1 and that he cannot say as to what happened prior to his birth in between R.W.1, R.W.2 and PW.1. On behalf of revision petitioner/R.W.1, one independent witness is examined as R.W.4 ostensibly to speak about the marriage in between R.w.s.1 and 2. He deposed that the marriage of R.Ws.1 and 2 took place on 19-01-1970 at Gudur Siva Temple, that he attended the marriage, that after the marriage R.Ws.1 and 2 came to

Tirupati and stayed at Tirupati in a house adjacent to his house. When that is the assertion made by R.W.4 in the chief-examination, in the cross-examination he made certain admissions which completely shatters the claim of R.W.4. He admits in the cross-examination that when he was giving evidence in the Court, he noted down the names of R.Ws.1 and 2 on his hand, and by seeing that, he gave evidence. This itself shows that R.W.4 is a witness planted by the respondent and as a matter of fact, he do not know the personal lives of R.Ws.1 and 2. If what is claimed by R.W.4 is true, there would not have been any need for R.W.4 to note down the names of R.Ws.1 and 2 on hand before entering into the witness box. When R.W.4 claims to have attended the marriage of R.Ws.1 and 2 performed in 1970 and had been a neighbouring resident of R.Ws.1 and 2, it cannot be believed that he was not even aware of the names of R.Ws.1 and 2 and that he could not give their names while giving evidence in the Court without there being any prompting in the shape of referring to their names scribbled on his hand before entering into the witness box.

13. R.W.5 is another witness and his evidence is similar to that of R.W.4. While giving his evidence on 25-08-2006, he gave his age as 55 years, which means that he was born in or around 1950. The marriage of R.Ws.1 and 2 which he claims to have attended was performed in the year 1970 and at that time R.W.5 would have been aged about 20 years. He admits that he attended the marriage of R.Ws.1 and 2 along with his own father.

14. Adverting to the documentary evidence on record, on behalf of PW.1, Exs.P.1 to P.11 are marked. Ex.P.1 is the marriage card, Exs.P.2 P.3, and P.4 are the documents pertaining issuance of legal notice prior to filing of Maintenance Case. The material documents are Exs.P.5 and P.6. The official of the Department – PW.3 spoke about these documents. Ex.P.5 is the nomination made by R.W.1 for the purpose of receiving the death-cum-retirement gratuity. R.W.1 has nominated Smt. Chandravathi (PW.1) and described her as his wife.

Ex.P.6 is another nomination for family pension and DCRG and other benefits. In this nomination, made on 18-08-1998, R.W.1 has nominated Shakuntalamma (R.W.2), but significantly when it came to declaring the children, he has declared that Vivekananda and N.Bhagawan are the sons whereas N.Supraja is the daughter. It is not the case of R.Ws.1 and 2 that they were blessed with three children namely Vivekananda, Bhagwan and Supraja. On the other hand, the contention of R.Ws.1 and 2 is that they are having only one son by name Vivekananda, who is R.W.3. According to PW.1, Bhagawan and Supraja are the son and daughter born to her (PW.1) out of the wedlock with R.W.1. This nomination clearly shows that in 1998, while he has changed the name of his wife from Chandravathi (PW.1) to Shakuntalamma (R.W.2), but when it came to children, he has mentioned the names of all three children born either through Shakuntalamma (R.W.2) or Chandravathi (PW.1).

15. The other material document is Ex.P.9, which is the Identity Card issued by the Election Commission of India in January, 1995. This shows that Chandravathi (PW.1) is the wife of Narasimhulu (R.W.1). Ex.P.10 is the ration card and it contains the photo of R.W.1. It clearly shows that in 1997, ration was drawn on the basis of the said ration card and it shows that Narasimhulu (R.W.1) is the head of the family whereas Chandravathi (PW.1) is his wife and Bhagawan and Supraja are son and daughter of R.W.1 and their ages are shown as 17 years and 11 years at that time. This document was of the year 1997 and it clearly shows that PW.1 and R.W.1 were declaring themselves as man and wife and they were blessed with two children – Bhagawan and Supraja, whose names are even declared by R.W.1 in the nomination Ex.P.6 in August, 1998.

16. The contention of the petitioner/PW.1 is that after this Maintenance Case was filed, R.W.1 got filed one divorce O.P. through one Srinivasulu on the file of the Senior Civil Judge, Srikalahasti, and it was numbered as O.P.No.19 of 2005. That O.P. was filed for

dissolution of marriage showing PW.1 as the wife of one Srinivasulu, PW.1 herein filed a counter in that O.P. specifically denying that Srinivasulu is her husband and as a matter of fact, in that counter, PW.1 herein has specifically mentioned that she is the wife of R.W.1 herein and that the O.P. was got filed only to defeat the claim made in M.C.No.14 of 2005. It is also admitted that the said O.P., which was filed by one Srinivasulu, was subsequently dismissed.

17. On behalf of the revision petitioner/R.W.1, Exs.R.1 to R.7 are marked. Ex.R.1 is the reply notice to Ex.P.2, and this was issued on 20-06-2005 whereas the M.C. was filed even before that. Ex.R.2 is the I.D.Card issued by the Election Commission of India in March, 2003. It shows that Shakuntalamma (R.W.2) is the wife of Narasimhulu (R.W.1). Ex.R.3 is the house tax receipt and Ex.R.4 is the electricity bill, which have no direct bearing to the point in controversy. Similarly, Ex.R.5 is the original S.S.C. certificate, which shows that R.W.3 has completed his SSC and his date of birth is 24-03-1971. His father's name is shown as Y. Narasimhulu (R.W.1). Similarly, Ex.R.6 is the Diploma Certificate issued by the competent authority in respect of R.W.3. Ex.R.7 is said to be a Pharmacists Registration Book in respect of R.W.3 which shows that R.W.1 is his father and his date of birth is 24-03-1971.

18. Upon carefully perusing the voluminous oral and documentary evidence on record, the irresistible conclusion that is drawn is that R.W.1, who was working as Lineman-cum-Driver in Electricity department, has a relationship both with R.W.2 and PW.1 and through both the women, he is blessed with three children namely Vivekananda (R.W.3), Bhagawan and Supraja. He declared them as his children before the authorities for receiving the post retrieval benefits. The evidence clearly shows that R.W.1 and PW.1 lived together as man and wife and even R.W.1 has declared so in his Service Record. Even the public authorities such as the Election Commission of India and the Revenue Department have issued Voter I.D.Card and Ration

Card showing that PW.1 is the wife of R.W.1. Therefore, it cannot be said that PW.1 is not entitled to claim maintenance as being the wife of R.W.1. The learned Magistrate has considered all the aspects in proper perspective and held so and upon perusing the evidence on record, the said findings cannot be said to be not based on proper appreciation of the evidence on record.

19. With regard to the quantum of maintenance, as already stated, even as in July, 2005, the basic salary of R.W.1 was in the range of about Rs.21,000/-. In addition to that, he is entitled to other allowances. Therefore, the Court below has awarded a sum of Rs.800/- per month to PW.1 and this amount cannot at all be said to be, in any way, excessive or exorbitant. It is just and reasonable maintenance warranting no interference. There are no grounds in the revision. The point is answered accordingly.

20. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

27th October, 2015
smr