HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.372 OF 2008

O R D E R:

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 petitioners herein, challenging the order dated 07.03.2005, passed by the Judge, Family Court, Visakhapatam, in Maintenance Case No.173 of 2002, whereunder and whereby the maintenance of Rs.500/- p.m is awarded to the second revision petitioner herein, while rejecting the claim of the first revision petitioner herein.

2. The revision petitioners herein are the petitioners and first respondent herein is the respondent in M.C.No.173 of 2002 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the M.C. before the trial Court.

3. The brief facts of the case are that the first petitioner belongs to 'Reddy' community and the respondent belongs to 'Telaga' community. In the year 1995-1996, while the first petitioner used to work in a telephone booth, respondent used to visit the telephone booth and talk with her. They both developed friendship and fell in love with each other. When the mother of the first petitioner asked the respondent, whether he intend to marry her daughter not, the respondent promised to marry the first petitioner, and requested her to put up a separate family with the first petitioner and thereafter, he put up a separate family by taking a house near R.K. Beach, Visakhapatnam. At the time of setting up of family, the mother of the first petitioner gave Rs.30,000/- to the respondent and valuable articles towards 'sare saman'. But, on one pretext or the other, the respondent used to postpone the marriage with the first petitioner. In the year 1997, the first petitioner became pregnant and delivered the second petitioner. Further, the respondent being not satisfied with the dowry

given to him, harassed the first petitioner to bring more money and pressurised the first petitioner to execute the sale deed in his favour with regard to the site situated near her mother's house. The respondent also used to beat the first petitioner indiscriminately and when the first petitioner expressed her inability to pay the same, he dragged her out of the house and used to beat her in a drunken state.

On 13.03.1998, second petitioner was born at K.G Hospital, Visakhapatnam and after the birth of the female child, the elders pressurised the respondent to marry the first petitioner. With great difficulty, the respondent married the first petitioner on 12.04.1998 in the presence of the second petitioner, who was aged about 30 days. Subsequently, the respondent addicted to bad vices like gambling, womanizing, and used to neglect petitioner Nos.1 & 2 and used to come to the house once or twice in a week. As there was no other option, the first petitioner came to the house of her mother along with the second petitioner. The respondent threatened the first petitioner by stating that he has no relationship with her and he would marry another girl and get more dowry. On 7.11.1998, the respondent came to the house of the mother of the first petitioner, beat her and took away the second petitioner from her custody without her permission or consent. Then, she gave complaint to the Station House Officer, II-town, Visakhapatnam, who registered the case in Cr.No.358 of 1999 against the respondent under Section 498-A IPC.

The respondent is working in the School of Correspondence, Andhra University, Visakhapatnam, and getting Rs.5,000/- p.m towards his salary and he has sufficient means to maintain the petitioners. Hence, the petitioners filed M.C.No.173 of 2002 under Section 125 of Cr.P.C for grant of maintenance.

4. The brief averments made in the counter filed by the respondent in M.C.No.173 of 2002 are as follows;

The respondent denied the facts that he married the first petitioner and that he is the father of the second petitioner. According to him, there was no love affair between him and first petitioner and they never lived in any house at any place and with a view to harass the respondent to squeeze money, a false case has been filed claiming maintenance. The respondent stated that the first petitioner forcibly took him to the police station after the complaint was lodged The respondent also denied the fact that he demanded the first petitioner to bring more money and valuable articles and also that the mother of the petitioner gave him the dowry and valuable articles. The respondent specifically stated that he is not a permanent employee in Andhra University and he is only a waged employee in the School of Correspondence, Andhra University, and getting Rs.1,000/- per month towards his wages and originally, the first petitioner gave a complaint on 12.11.1999 and subsequently, she filed M.C.No.72 of 2000 and not pressed the same. Therefore, with a view to extract money from the respondent, the present maintenance case is filed and finally prayed the Court to dismiss the petition.

5. In order to prove the case, the revision petitioners got examined PWs.1 to 3 and got marked Exs.A1 to A4, while, respondent got examined himself as RW.1 and got marked Exs.B1to B3.

6. After considering the oral and documentary evidence and after hearing the arguments, the trial Court held that the first petitioner failed to prove her marriage with the respondent and awarded monthly maintenance of Rs.500/- to the second petitioner. The Tribunal, further dismissed the claim of the first petitioner.

7. Being aggrieved by the order dated 07.03.2005 passed by the trial Court the revision petitioners preferred the present revision case.

8. The learned counsel appearing for the revision petitioners/

petitioners argued that without considering the evidence on record, the trial Court dismissed the petition against the first petitioner and granted a meagre amount of maintenance to the second petitioner; that the first petitioner is entitled for maintenance along with the second petitioner and also prayed the Court to enhance the maintenance awarded to the second petitioner; that the trial Court grossly erred in holding that the marriage between the first petitioner and respondent is not proved though there is an ample evidence on record and finally prayed the court to allow the revision by granting maintenance to the first petitioner and enhancing the amount of maintenance awarded to the second petitioner.

9. On the other hand, the learned counsel appearing for the first respondent/respondent argued that the trial Court after considering the oral and documentary evidence, rightly held that the first petitioner failed to prove her marriage with the respondent and there is no independent evidence on record to show that first petitioner and respondent used to live together in the house near Rama Krishna Beach, Visakhpatnam, before or after the alleged marriage; that the evidence of PW.3 is a setup witness, who was unable to give details about the alleged marriage between the first petitioner and respondent and trial Court rightly dismissed the petition against the first petitioner and awarded reasonable maintenance to the second petitioner; that the first petitioner also filed a criminal case C.C.No.764 of 1999 for the offence punishable under Sec.498-A IPC and the same was ended in acquittal; that the first petitioner also filed M.C.No.72 of 2000 against the respondent and the same was not pressed by her, and thus the first petitioner filed the false case against the respondent and the trial Court after considering the oral and documentary evidence rightly granted maintenance to the second petitioner and dismissed the petition against the first petitioner and the finding of the trial court needs no interference.

10. Now, the point for determination is --

Whether the first revision petitioner herein is entitled for maintenance and second revision petitioner herein is entitled for enhancement of maintenance or not?

11. **P O I N T**: A perusal of the oral and documentary evidence shows that the first petitioner claimed that she married the respondent on 12.04.1998 in the presence of her mother, second petitioner and elders of the locality; that she is a legally wedded wife of the respondent; and that respondent, who is working as a plumber in the School of Correspondence in Andhra University, was drawing Rs.5,000/- per month as salary and he neglected to maintain them. Though in the evidence of PW.1, she stated that respondent married her on 12.04.1998, and thereafter they lived in a house at Ramakrishna Beach, Visakhapatnam, PWs.1 & 2 are the interested witnesses. PW.2 is the mother of PW.1. The only independent witness available is PW.3, who categorically stated that she is the maternal aunt of PW.1 and she attended the marriage of the first petitioner with the respondent. But, in the cross-examination, she deposed that no muhoortham was fixed for the marriage and she cannot say the date of the marriage and the trial Court after considering her evidence, came to the conclusion that she is a set up witness to support the evidence of PWs.1 & 2.

12. The petitioners has not filed any documentary evidence to show that after the marriage, they took a rented premise near Rama Krishna Beach, Visakhapatnam, and lived in the said house. On the other hand, the respondent denied his marriage with the first petitioner and stated that the first petitioner had already married to one Chiranjeevi.

13. In the maintenance case, though strict proof of marriage between a couple is not required for granting maintenance, she must prove that herself and respondent lived as husband and wife for a considerable

period of time. The first petitioner has not stated that herself and respondent lived for considerable period as wife and husband. Thus, the first petitioner failed to prove her marriage and also failed to prove that herself and respondent lived under one roof and cohabited for number of years. The trial Court after considering the evidence on record held that the first petitioner failed to establish that she is the legally wedded wife of the respondent and not entitled to claim any maintenance from the respondent. The trial Court rightly awarded maintenance to the second petitioner and the finding of the trial Court in that regard needs no interference. Further, the respondent also not preferred any appeal or revision against the orders of granting maintenance to the second petitioner. Thus, the trial Court rightly observed and the findings of the trial Court vide order dated 07.03.2005 in Maintenance Case No.173 of 2002 needs no interference.

14. Accordingly, the Criminal Revision Case is dismissed confirming the order dated 07.03.2005, passed by the Judge, Family Court, Visakhapatnam, in Maintenance Case No.173 of 2002.

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

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ANIS, J

Date: 28.01.2015
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