

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.1958 OF 2007

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 petitioners herein challenging the order dated 21-09-2007 passed by the Judge, Family Court, Warangal in M.C.No.65 of 2005.

2. The revision petitioners herein are the petitioners, whereas respondent No.1 is the respondent in M.C.No.65 of 2005 before the trial Court and respondent No.2 is the State. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the petitioners is that the first petitioner is the wife and the second petitioner is the daughter of the respondent filed a petition under Section 125 Cr.P.C. claiming Rs.3,000/-each for maintenance on the ground that the marriage of the petitioner was taken place with the respondent on 14-12-1996 in Hanamkonda as per Hindu customs and rites. After the marriage, they lived in Bombay and gave birth to the second petitioner. The first petitioner stated that after the marriage, the respondent harassed her and fed up with his harassment, once she attempted suicide by consuming phenyl but she was saved in the hospital. Her husband and in-laws also treated her cruelly.

On 04-06-2005 when the petitioner and respondent got down in Warangal Railway station from Dadhar at about 10.30 am, the respondent indiscriminately beat the first petitioner in the presence of her parents demanding additional dowry and left her on the platform. Thereafter, she was admitted in the hospital and a case was registered by the police which is pending in the IV Additional Judicial

Magistrate of First Class, Warangal. Ever since both the petitioners are living with first petitioner's parents house at Hanmakonda. The second petitioner is studying in English medium school by paying Rs.3,000/- as tuition fee apart from other expenses. Both the petitioners are destitutes, they have no means to maintain themselves. Whereas, the respondent is manager in Karox Technology, Ghatkopar, Mumbai and earning Rs.12,000/- per month and he is having sufficient means and capacity to maintain both the petitioners.

4. On the other hand, the respondent filed counter denying all the allegations levelled by the petitioner and also stated that the first petitioner is very adamant, egoistic and under the influence of her parents used to pick-up quarrels without any reason and she used to demand comfortable life and she used to harass him. When they came to Warangal and trying to visit Vemulavada and Tirupathi on 04-06-2005 the first petitioner took her belongings and left him without informing the respondent. Later on, she filed complaint with the police and respondent was arrested by the police and released on bail. Respondent made efforts personally and through elders to see his wife join his company proved futile as the petitioner declined and she voluntarily withdrawn from the society of respondent from 04-06-2005. As such, she is not entitled for any maintenance and the respondent is ready to pay maintenance to the second petitioner at the rate of Rs.1,000/- per month.

5. During the course of enquiry, the petitioner herself examined as PW.1 and respondent is examined as RW.1. Exs.A-1 to A-6 marked on behalf of the petitioner and Exs.B1 and B2 marked on behalf of the respondent.

6. The trial Court after considering the evidence on record granted maintenance of Rs.2,000/- to the second petitioner and

dismissed the petition against the first petitioner on the ground that the first petitioner herself withdrawn from the marital society of the respondent and the petitioner failed to establish that she has justification for living separately from her husband or that her husband i.e. the respondent treated her with cruelty so as to justify her living separately with him. On that ground, the trial Court has not granted any maintenance to the first petitioner. Aggrieved by the orders of the trial Court, the petitioners preferred the present revision.

7. Learned counsel for revision petitioners argued that the respondent is working as Manager in Karox Technology, Ghatkopar, Mumbai and earning Rs.12,000/- per month. After birth of second petitioner, the respondent started harassing the petitioner and on 04-06-2005 the respondent beat her at Warangal railway station in the presence of her parents. As such, the first petitioner gave police complaint under Section 498-A IPC and a case was registered against the respondent. It is also argued that the respondent has not proved that the first petitioner is having sufficient means to maintain herself. Now his earnings are doubled and it is also not proved that the first petitioner has voluntarily deserted the company of the respondent and the trial Court erred in not granting maintenance and prayed the Court to set aside the order.

8. On the other hand, the learned counsel for the respondent argued that the first petitioner herself withdrawn from the marital society of the respondent and she filed a case under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act on the file of IV Additional Judicial Magistrate of First Class, Warangal, which was ended in acquittal. Thereafter, she neither joined the company of the respondent nor filed any petition for restitution of conjugal rights. The trial Court rightly granted maintenance to the second petitioner and she/1st petitioner has not given any reason as to why she has not joined the company of her husband. Therefore, the trial Court after

considering the evidence on record rightly dismissed the petition against the first petitioner and granted reasonable maintenance to the second petitioner. Learned counsel also argued that now the second petitioner is aged about 18 years and if the petitioners want enhancement of the maintenance to the second petitioner, they have liberty to file application for enhancement of maintenance and finally prayed the Court that the findings of the trial Court for not granting maintenance to the first petitioner needs no interference and prayed the Court to dismiss the revision petition.

9. The point for consideration is, whether the petitioners are entitled to set aside the order dated 21-09-2007 passed by the Judge, Family Court, Warangal in M.C.No.65 of 2005?

10. There is no dispute that the first petitioner is the wife and the second petitioner is the daughter of the respondent and the marriage of the first petitioner and respondent took place at Hanmakonda on 14-12-1996 as per Hindu customs and rites. Thereafter, the first petitioner joined the second respondent at Bombay. It is also admitted fact that the respondent is working as Manager in Karox Technology, Ghatkopar, Mumbai and earning Rs.12,000/- per month as salary and it is the case of the first petitioner that after joining with the respondent, he started harassment and once he beat him in the railway station at Warangal in the presence of her parents. Thereafter, the respondent neglected to maintain the petitioners. Before the trial Court, the first petitioner herself examined as PW.1 and filed Exs. A-1 to A-6 documents, whereas the respondent examined himself as RW.1 and filed two documents Exs B.1 and B.2. There is no dispute that the second petitioner was born on 09-06-1998. The only incident she stated that on 04-06-2005 in the presence of her parents, the respondent beat her and thereafter, he harassed her. As such, she filed a criminal case against the

respondent. Admittedly the case under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act was ended in acquittal on the file of IV Additional Judicial Magistrate of First Class, Warangal. Thereafter, the petitioner has not joined the company of the respondent nor she issued any notice to the respondent in that regard. Except the oral evidence of PW.1 and RW.1, there is no other evidence to say that even after the case ended in acquittal, the petitioner has made efforts to join the company of the respondent. The best persons for speaking cruelty of the respondent is the parents of the petitioner who alleged to have seen the respondent beating the petitioner in the railway station, Warangal. No such evidence on record is available. Only the evidence of PW.1 on oath is available against the evidence of RW.1 who totally denied the allegations of the petitioner. As such, the trial Court rightly observed that the petitioner has no justification for living separately from her husband and that finding needs no interference by this Court.

11. Coming to the maintenance of the second petitioner, the trial Court granted Rs.2,000/- per month. Learned counsel for the respondent argued that the second petitioner is now grown-up and if she files any application for enhancement of the maintenance that can be considered in the trial Court.

12. With these observations, the Criminal Revision Case is dismissed.

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

ANIS, J

18-02-2015
nvl