

HON'BLE SMT. JUSTICE ANIS

Crl.P. No. 8079 of 2012

DATE: 27.02.2015

Between:-

Bhushanam Ravi Kishore .. Petitioner

and

- 1) The State of A.P.
2) Bhushanam Sree Thulasi
3) Bhushanam Meghana Saisri Gouri
4) Bhushanam Venkata Sai Manoj ..
Respondents

—

—

—

—

-
-
-
-
-
-
-
-
-
ORDER:-

This Criminal Petition is filed seeking to quash the order dated 09.11.2011 passed in M.C.No. 1 of 2010 by the Judicial First Class Magistrate, Koilakuntla which was confirmed by III Additional Sessions Judge, Kurnool, Nandyal by order dated 02.07.2012 passed in CrI.R.P.No. 23 of 2012.

The petitioner herein - husband is the respondent, the 1st respondent herein - wife is the 1st petitioner and the 2nd and 3rd respondents herein - children are the 2nd and 3rd petitioners in M.C.No. 1 of 2010.

For the sake of convenience, the parties are hereinafter referred to as they are arrayed in M.C.No. 1 of 2010.

The case of the petitioners in brief is that on 12.10.2002, the 1st petitioner's marriage was performed with the respondent according to Hindu rites and customs prevailing in their community. At the time of the marriage, the parents of the 1st petitioner gave Rs.1.20 lakhs and 15

tulas of gold as dowry to the respondent and out of that amount, Rs.50,000/- was deposited jointly in the name of the 1st petitioner and the respondent in Koilkuntla Co-operative Town Bank. After the marriage, the 1st petitioner joined with the respondent and both of them lived happily, as a result, they were blessed with two children i.e. 2nd and 3rd petitioners. Later, the respondent started harassing the

1st petitioner demanding her to bring additional dowry from her parents and also insisted to cancel the fixed deposit bond of Rs.50,000/- and get encashed. When the 1st petitioner has not accepted the same, the respondent started harassing her. The 1st petitioner also stated that her husband had illegal intimacy with one Dhanalakshmi, and on that ground, the

1st petitioner was sent to her parents' house forcibly. As Dhanalakshmi is living with him, he failed to provide maintenance to the petitioners, as such, unable to maintain herself and her children and due to harassment meted out to her, the 1st petitioner gave a complaint to the police which was registered as a case in Crime No.174 of 2009 of Tadipatri Town Police Station for the offences punishable under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. The

1st petitioner further stated that when her children grew up, they were admitted in the school and she had to pay

school fees, etc. and the respondent failed to maintain the children also. The petitioners stated that they have no means and capacity to maintain themselves and respondent is having capacity to maintain them, and therefore, it is prayed to grant maintenance of Rs.5,000/- p.m. to the 1st petitioner and Rs.2,000/- p.m. each to petitioner Nos.2 and 3.

The respondent filed counter affidavit in the trial Court admitting both his marriage with the 1st petitioner and the birth of petitioner Nos.2 and 3 out of their wedlock.

The main contention of the respondent-husband is that the 1st petitioner, who is living separately, colluded with her parents and as the respondent did not set up a separate family, she gave a false complaint to the police against him. He has also submitted that the petitioners are having sufficient means to maintain themselves and the respondent has no capacity to maintain them, and prays to dismiss the criminal petition.

During the course of enquiry, PWs.1 to 3 were examined and got marked Exs.P1 and P2 on behalf of the petitioners and RWs.1 and 2 were examined and Ex.R1 was marked on behalf of the respondent.

After considering the oral and documentary evidence and after hearing the learned counsel for both the parties, the trial Court, by order dated 09.11.2011 in M.C.No. 1 of 2010, granted Rs.2,000/- per month to the 1st petitioner

and Rs.1,500/- p.m. each to petitioner Nos.2 and 3. Being aggrieved by this order, the respondent filed CrI.R.P.No. 23 of 2012, and the learned III Additional Sessions Judge, Kurnool, Nandyal, by order dated 02.07.2012, dismissed the Revision Petition. Now, the present Criminal Petition is filed seeking to quash the order dated 09.11.2011 passed in M.C.No.1 of 2010.

The learned counsel for the petitioner herein who is the husband, has contended that the petitioner is earning only Rs.3,000/- p.m. and the Tahsildar issued Ex.R1 – income certificate to that effect, but the trial Court did not consider it and granted a total maintenance of Rs.5000/- p.m. to the wife and the children. He has further contended that even though the husband is willing to maintain his wife and the children, the wife left matrimonial house on her own accord and both the Courts below, without properly appreciating the evidence, gave erroneous finding, as such, the order dated 09.11.2011 passed in M.C.No. 1 of 2010 is liable to be quashed.

Notices sent to respondent Nos.2 to 4 herein have been returned unserved.

A perusal of the record shows that the marriage of the 1st petitioner with the respondent was performed on 12.10.2002 in Koilkuntla Town as per Hindu rites and customs prevailing in their community. They lived happily for sometime and out of their wedlock, petitioner Nos.2 and 3 were born.

The main contention of the respondent-husband is that the 1st petitioner-wife left her matrimonial house on her own accord and insisted her husband to leave his old-age parents, however he is always ready and willing to maintain his family. On the other hand, the grievance of the 1st petitioner-wife is that the respondent is living with one Dhanalakshmi and with her instigation, he harassed the 1st petitioner, and due to such harassment, she left the matrimonial house and further contended that her husband is not maintaining them.

During the course of trial, the wife got examined three witnesses. PW3 is the crucial witness, who deposed as to the dispute between the parties. In his evidence, he stated that the respondent-husband had an affair with a woman and he does not want to swerve his relationship with that woman. The evidence of PW2 also supports that case of the 1st petitioner-wife. The respondent himself examined as RW1 and put forth all his contentions raised in the counter.

Admittedly, the respondent is having photo studio and filed Ex.R1 –income certificate alleged to have been issued by the Tahasildar. It is also not in dispute that when the revisional petitioner – husband harassed his wife, she gave a complaint to the police and the same was registered as a case in Cr.No. 174 of 2009 for the

offence punishable under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. Even though the husband is ready and willing to maintain his wife and children, he has stated that he is getting only an income of Rs.36,000/- per annum and produced Ex.R1 to that effect. The respondent-husband has not produced any evidence to show that the petitioners are having sufficient means to maintain themselves and the evidence of PW1 shows that the children are having their own necessities not only for maintenance but also for education. The trial Court rightly awarded Rs.2,000/- p.m. to the 1st petitioner and Rs.1,500/- p.m. each to petitioner Nos.2 and 3 and the revisional Court, after considering the evidence on record, clearly held that a reasonable amount of maintenance has been granted by the trial Court and such finding needs no interference. Now, the grievance of the respondent-husband that the trial Court has neither considered his evidence about Ex.R1 nor considered that the 1st petitioner left the matrimonial house on her own accord cannot be accepted because as per the evidence of PW1, she left the company of her husband as the respondent himself is living with one lady and the 1st petitioner submits that only with the instigation of that woman, he started harassing the 1st petitioner and due to such harassment, the 1st petitioner left the company of the respondent. The trial Court and revisional Court, after

Careful consideration of the evidence on record, disallowed the contentions of the respondent, and the concurrent finding arrived at by both the Courts below, in my considered opinion, needs no interference. Hence, the Criminal Petition is devoid of merit and accordingly dismissed.

Inasmuch as no adverse orders are passed against respondent Nos.2 to 4 herein, the wife and the children, service of notices on them is dispensed with.

As a sequel to the dismissal of the Criminal Petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

ANIS, J

27.02.2015

bcj