

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.69 of 2015

ORDER:

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This Criminal Revision Case is preferred by the petitioner/husband, challenging the judgment dated 24.09.2014 passed in CrI.R.P.No.47 of 2013 on the file of VII Additional District and Sessions Judge, Kakinada, wherein and whereunder the learned Judge set aside the default order dated 05.06.2013 in M.C.No.2 of 2010 passed by the file of Special Mobile Judicial First Class Magistrate, Kakinada.

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

The brief facts of the case are as follows:

Respondent No.2 herein is the wife of the petitioner herein. The marriage of the petitioner with respondent No.2 took place on 29.07.2001 at Kakinada. At the time of marriage, the parents of respondent No.2 gave cash of Rs.1 lakh, Rs.20,000/- as adapaduchu lanchanams, five tulas of gold and one ring as dowry. After the marriage, the petitioner and respondent No.2 resided at Kamalanagar, Hyderabad. From the beginning, the petitioner, who used to suspect the character of respondent No.2 demanded respondent No.2 to get luxurious items like T.V., Fridge, double cot bed and also additional dowry. After knowing that respondent No.2 was pregnant, the petitioner used to suspect her fidelity and also abused her in filthy and vulgar language. Later the petitioner got addicted to bad vices. The petitioner used to come in drunken stage in late nights, beat the petitioner and used to harass her physically and mentally. In

December, 2009, petitioner telephoned to the father of respondent No.2 demanding to take back respondent No.2 to his house. At the time of mediation also the petitioner demanded the father of respondent No.2 to get additional dowry of Rs.3 lakhs, failing which the petitioner refused to take her back. Since January, 2010, respondent No.2 was residing with her father. It is stated that the petitioner was working as an Administrative Officer in St.Mary's Institution at Deshmukh and getting salary of Rs.16,000/- p.m and he was also having immovable properties. As the petitioner has no means to maintain herself, she filed the above said M.C.

The petitioner contested the matter by filing counter.

Basing on the above said pleadings, the trial Court framed the following point for consideration:

"Whether the petitioner is entitled to claim maintenance under Section 125 Cr.P.C, if so what is the quantum of maintenance and from which date?"

During the course of trial, respondent No.2 examined herself as P.W.1, examined another witness as P.W.2 and got marked Exs. P1 to P3. The petitioner examined himself as R.W.1 and got marked Exs. R1 to R3.

After analyzing the evidence available on record, the learned Magistrate allowed the above said M.C by granting maintenance at Rs.3,000/- p.m. to respondent No.2 herein. Challenging the same, the petitioner herein preferred the revision CrI.R.P.No.22 of 2011 on the file of VII Additional District Court, Kakinada. The learned Judge, by his order dated 15.12.2011 set aside the order passed by the learned Magistrate, remanded the matter to the Magistrate with a direction to dispose of the matter afresh by giving opportunity to both parties for adducing

evidence and also by giving an opportunity to adduce evidence to petitioner herein with regard to validity of Ex.P1-salary certificate.

After remanding the matter, the learned Magistrate by his order dated 05.06.2013 dismissed the said M.C. for default.

Aggrieved by the said order, respondent No.2 filed revision in Crl.R.P.No.47 of 2013 on the file of VII Additional District and Sessions Judge, Kakinada.

After hearing both sides, the learned Sessions Judge by judgment dated 24.09.2014, allowed the revision, set aside the order dated 05.06.2013 passed in M.C.No.2 of 2010 on the file of the Special Mobile Judicial First Class Magistrate, Kakinada, and remanded the matter back to the trial Court to dispose of the matter afresh by restoring the same on its file.

Aggrieved by the same, the present revision is preferred by the petitioner/husband herein.

The docket order passed in M.C.No.2 of 2010 on 18.05.2012, it is noted that the orders passed by the Special Mobile Magistrate, Kakinada in M.C.No.2 of 2010 is set aside by VII Additional District Judge, Kakinada vide Crl.R.P.No.22 of 2011 dated 15.12.2011. On that day both the parties called absent, hence the matter was adjourned to 04.06.2012. On 04.06.2012 the petitioner and respondent absent. Again the matter was adjourned to 05.07.2012 and on that day both parties were absent. Again it was adjourned to 12.07.2012. On 12.07.2012 the petitioner, who was present requested time. Hence it was posted to 23.08.2012. On 23.08.2012 both parties called absent and as there was no representation, the matter was adjourned to 10.09.2012. On 10.09.2012 both parties called absent and the matter was adjourned to 05.10.2012. On

05.10.2012 both parties again called absent and the matter again adjourned to 05.11.2012. On 05.11.2012 both parties called absent, adjourned to 04.12.2012. On 04.12.2012 the respondent present, petitioner called absent and matter was adjourned to 21.12.2012 on payment of costs. On 21.12.2012 both parties called absent and as costs were not paid, it was adjourned to 31.01.2013. On 31.01.2013 respondent absent, petition filed and allowed, petitioner called absent, no representation and as costs were not paid, the matter got adjourned to 22.02.2013 on payment of costs of Rs.100/-. On 22.02.2013 petitioner called absent and respondent called absent, the petition filed and allowed and the matter was adjourned to 22.04.2013. On 22.04.2013 both parties called absent and the matter was adjourned to 05.06.2013. On 05.06.2013 costs not paid as directed and the matter was kept aside till 1.30 p.m. and as there was no representation on behalf of the petitioner and costs were not paid, the learned Magistrate dismissed the petition.

A perusal of the above docket order would show that there was some negligence on the part of the respondent/wife in prosecuting the case. But definitely, it is not a case to be dismissed for default. Though the Court below found that there was negligence on behalf of the petitioner and the respondent in prosecuting the case, the trial Court should have at least passed an order on merits instead of dismissing the M.C. for default. It is to be noted that the matter was contested in both the forums and thereafter it was remanded back for disposal after giving an opportunity to both the parties. Having regard to the circumstances of the case, I see no reason to interfere with the impugned order.

Accordingly, the Criminal Revision Case is dismissed.

As sequel to it, miscellaneous petitions, if any pending,
shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

11th February, 2015
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