

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No. 2376 of 2010

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioner/husband is directed against the orders dated 09.11.2010 in MC.No.162 of 2005 passed by the learned Judge, Family Court-cum-IV Additional District Judge, Vijayawada whereby the learned Judge awarded a monthly maintenance of Rs.2,000/- to the 2nd respondent herein/wife and Rs.1,000/- each to the respondents 3 and 4 herein/minor children from the date of the filing of the petition.

2. I have heard the submissions of the learned counsel for the petitioner/husband and the learned counsel for the respondents 2 to 4 and also of the learned Additional Public Prosecutor representing the first respondent-State. I have carefully perused the material record. The parties in this revision shall herein after be referred to as the petitioner/husband and the respondents 2 to 4 as arrayed in this case for convenience and clarity.

3. Now the points for determination in the Criminal Revision Case are as under:

- 1) Whether the respondents 2 to 4 are not entitled to award of any maintenance as contended by the petitioner?
- 2) Whether the respondents 2 to 4 have made out valid and sufficient grounds for award of maintenance to them?
- 3) And, if so, whether the quantum of maintenance awarded to them is on the higher side and is liable to be reduced in the facts and circumstances urged by the petitioner?

4. POINTS:

4. (a) The relationship of husband and wife between the

petitioner and the second respondent is admitted. The respondents 3 and 4 are the children of the petitioner and the second respondent is also admitted. Whatever may be the reasons, there were disputes between the spouses and those disputes had lead to estrangement is admitted. The petitioner and the respondents 2 to 4 are living separately is also not in dispute.

4. (b) The case of the second respondent is this: 'The petitioner had harassed and meted out cruelty to her by beating and by making demands for additional amount of Rs.1 lakh. The said amount was paid by the father of the second respondent in the month of March, 2002 by selling his land. Subsequently, the second respondent gave birth to the third respondent on 24.04.2002. Later she had joined the petitioner in the month of July 2002. But, the petitioner and his family members had again demanded more money. On that, the brother of the second respondent sent Rs.1,10,000/- through bank. The same was handed over to the parents of the petitioner. Despite all that, the harassments had continued. The petitioner was addicted to bad vices and had kept a mistress by name Nalla Nagamani. The said mistress gave birth to a female child through the petitioner. When the second respondent had questioned the petitioner about his illegal contact, the petitioner and his family members grew wild and had beat the second respondent. When the second respondent became pregnant once again, she was necked out of the house by the petitioner and his family members. Thereafter, on 04.02.2004, the second respondent gave birth to the fourth respondent. Later, the respondents 2 to 4 had joined the petitioner at the instance of the caste elders and on payment of an amount of Rs.50,000/- by the father of the second respondent to the petitioner. But, the petitioner had never cared for the respondents 2 to 4 and their health and had failed to provide proper medical treatment to the fourth respondent. Therefore, the second respondent was constrained to give a police complaint in the month of July 2004. Since then, the petitioner had never turned up and had completely neglected the respondents 2 to 4. Afterwards the second respondent had again given a police report against the petitioner and his family members for the offences punishable under Sections 498A of the IPC

and Sections 3 and 4 of the Dowry Prohibition Act. The petitioner is having Ac.10.00 cents of agricultural land under Ayakattu and one Tractor, which he is giving on hire. He is getting an income of Rs.2 lakhs per annum; and, he is capable of paying maintenance to the respondents 2 to 4. The respondents 2 to 4 have no means of their own.' The respondents 2 to 4, therefore, prayed for award of maintenance @ Rs.3,000/- per month to the second respondent and @ Rs.1,500/- per month each to the respondents 3 and 4.

4. (c) The petitioner had filed a counter denying all the allegations and had *inter alia* urged as under: 'Since the date of marriage the second respondent and her parents demanded the petitioner to put up a separate family at Vijayawada or Gannavaram. For that, the petitioner had expressed his inability. On that, the second respondent and her parents had threatened him with dire consequences. Since September 2002 the second respondent is residing with her parents. The second respondent had filed a false and frivolous complaint giving rise to a case in Cr.No.57 of 2005 against the petitioner and his family members. The petitioner had never harassed the second respondent at any point of time during her stay at his house. The petitioner has no properties and income to maintain the respondents 2 to 4 separately. The petitioner believes that the second respondent is having illicit intimacy with some other persons and gave birth to the fourth respondent after the date of desertion in the month of September 2002.'

4. (d) Before the trial Court, PWs1 to 3 were examined and exhibits P1 to P6 were marked. The petitioner/husband was examined as RW1 and no documents were marked on his side. On merits, the learned Judge, Family Court had awarded monthly maintenance of Rs.2,000/- to the second respondent herein and Rs.1,000/- each to the respondents 3 and 4 herein from the date of petition.

4. (e) I have carefully perused the evidence on record. Exhibit P1 is the wedding card. Exhibit P2 is the copy of the FIR. Exhibits P3 and P4 are the birth certificates of the respondents 3 and 4. Exhibit P5 is the adangal no.F 14/6 issued by VRO, Arugolanu village. Exhibit P6 is said to

be the birth certificate of the girl child of the petitioner born to him through one Nagamani. In the considered view of this court, there is no reason to deny award of maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for the sustenance of the wife. Unless the husband establishes that his wife has income of her own and needs no financial support from him, she cannot be denied maintenance from the husband. So far as the children who are minors, the petitioner/father is obliged under facts and law to pay reasonable amount of monthly maintenance to them. The maintenance awarded shall be adequate for sustenance, food, clothing and shelter. In case of children, it takes in its compass the educational expenses of the children also. The law is well settled that the maintenance has to be awarded keeping in view the social status and the economic condition of the husband and the reasonable amount which the wife and children would require for their sustenance and upkeep. The provision for maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of maintenance under the Code of Criminal Procedure is subject to final determination of their rights in a civil court. The provision provides for speedy remedy for maintenance to the wife and eligible children and the maintenance awarded shall be adequate for sustenance, food, clothing and shelter as already observed.

4. (f) The learned counsel for the petitioner had submitted that the court below has not properly appreciated the evidence on record and that it had erroneously granted maintenance in stead of refusing to grant maintenance and that the award of maintenance from the date of filing of the petition without assigning any reasons is not correct and that when the petitioner is able to establish that the second respondent herself has deserted the petitioner, the court below ought to have held that she is not entitled to any maintenance and that the court below ought to have seen that the ingredients of Section 125 of the CrPC are not satisfied and that at any rate

the maintenance awarded is excessive and unreasonable.

4. (g) On the other hand, the learned counsel for the respondents 2 to 4 had submitted that the petitioner went to the extent of even denying the paternity of his own child/the 4th respondent and that had caused lot of mental agony and humiliation to the 2nd respondent and that the evidence on record was properly appreciated by the court below and that the court below after taking into consideration all the relevant aspects had awarded the maintenance and that the maintenance awarded in the present day cost of living is a meagre amount and that unless maintenance as awarded is confirmed, it is difficult for the respondents to sustain and that the contentions urged by the petitioner are devoid of merit and that the well reasoned order of the court below does not call for any interference.

4. (h) Coming first to the issue that the 4th respondent is an illegitimate child, the said contention was not raised in the grounds of revision before this court and is not seriously urged before this court. It is to be noted that when a serious allegation that the 4th respondent is not the legitimate son of the petitioner and the 2nd respondent is made, the burden is on the petitioner to prove that there is no marital/conjugal relationship between him and the 2nd respondent during the relevant period prior to the birth of the child. Except the interested testimony of RW1, no reliable evidence was produced on record. Even his parents or other inmates of his house were not examined to show that the petitioner and the 2nd respondent never lived together during the relevant time prior to the birth of the 4th respondent, the second child of the spouses. It is baldly alleged in the counter of the petitioner that he believes that the 2nd respondent is having some illicit intimacy with some persons even without naming any person particularly. Therefore, the said contention of the petitioner, which does not stand the test of scrutiny stands rejected. The very vague defence that the 2nd respondent is having extra marital relationship and that the 4th respondent is an illegitimate child which was not established is by itself a ground for the

respondents 2 to 4 to stay away from the petitioner and claim maintenance. It is not the case of the petitioner that the second respondent is an earning member and is having independent source of income and that she is getting income from any source.

4. (i) Now coming to the income of the petitioner, the 2nd respondent having pleaded that the petitioner is having Ac.10.00 cents of agricultural land and also a tractor, which he is giving on hire, and that he is getting an annual income of Rs.2 Lakhs had deposed accordingly. She had exhibited exhibit P5 adangal extract issued by the VRO, Arugolanu village of Bapulapadu Mandal. Further RW1 in his cross examination had admitted that he is the only son of his parents and that his father is also the only son of his grand parents. According to him, he is attending to agricultural works along with the father. Further, he had testified that he is only cultivating Ac.0.50 cents of agricultural land. PW2 was examined to support the case of the second respondent that the petitioner is having Ac.15.00 cents of agricultural land, a tractor and a house. Exhibit P5 on a perusal would show that there is land of an extent of Ac.4.50 cents standing in the name of the father of the petitioner besides another extent of Ac.2.81 cents of land in the name of one B.Rangamma. Be that as it may. The petitioner is an able bodied man capable of earning. By taking into consideration the economic condition of the petitioner, the capacity of the petitioner to earn, the basic needs of the respondents 2 to 4 and the present day cost of living, the court below had awarded a monthly maintenance of Rs.2,000/- to the 2nd respondent and Rs.1,000/- each to the respondents 3 and 4. On a careful examination of the facts and the evidence this Court is satisfied that there is no merit in the contentions of the petitioner.

5. It is to be noted that the learned counsel for the petitioner contended that the learned Judge of the Court below ought to have awarded maintenance from the date of the order but not from the date of the petition. In a recent decision in **Jaiminiben Hirenbbhai Vyas & ANR. Vs. Hirenbbhai Rameshchandra Vyas & ANR** the Hon'ble Supreme Court having referred to the earlier decision in *Shail Kumari Devi v. Krishan Bhagwan Pathak* held

as follows:

‘This Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In Shail Kumar Devi, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance.’

In the case on hand, considering the plight of the respondents 2 to 4 and the facts and circumstances in which they are placed, it is just and fair to award maintenance from the date of the application, as no interim maintenance was awarded during the pendency of the maintenance case.

6. Having regard to the facts and the evidence on record and the present day cost of living, this Court is satisfied that there is no infirmity or illegality or impropriety in the order of the Court below. Hence, the impugned order brooks no interference. Viewed thus, this court finds that there is no merit in the revision and that therefore, the revision is liable to be dismissed.

7. In the result, the Criminal Revision Case is dismissed confirming the order of the Family Court. There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

19th January 2015

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