

THE HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No.2429 OF 2011

ORDER:

This revision is filed by the petitioner under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Order dated 06.09.2011 passed in M.C. No.50 of 2010 by the Judge, Family Court, Warangal, wherein the learned Judge granted monthly maintenance of Rs.4,000/- to the petitioner / respondent herein from the date of order and further directed the respondent/ petitioner herein to deposit the said amount on or before 10th of every month starting from September, 2011 directly to the petitioner/ respondent herein.

02. The petitioner herein is the respondent and the respondent herein is the petitioner in M.C. No.50 of 2010.

03. The brief facts of the case are that the respondent is legally wedded wife of the petitioner; their marriage was performed on 05.06.1983; thereafter they lived happily for a few days; during their wedlock they were blessed with three children; thereafter the family of the revision petitioner started harassing the respondent. The respondent herein purchased a plot and constructed house by mortgaging her certificates in the Bank for obtaining loan; that after construction of the said house the revision petitioner herein started creating problems; he addicted to bad vices and also developed extra marital

relations, and harassed the respondent, driven out from the house.

04. The revision petitioner herein is working as Technical Grade-III in South Central Railway at Kazipet, earning Rs.25,000/- per month and also getting income from agriculture. Since the petitioner/ respondent herein unable to maintain herself, she filed M.C.

05. In the counter, the respondent/ revision petitioner denied the allegations levelled against him, he admitted their relationship and giving birth to three children.

06. The main contention of the respondent/ revision petitioner is that on 26.03.2006 the petitioner/ respondent herein wilfully deserted him on the pretext of petty issues and refused to have matrimonial relationship. In spite of best efforts, the petitioner/ respondent herein did not join his society. He specifically stated that he is working in Railway Department, getting Rs.10,000/- per month and with that amount he is maintaining his three sons and finally prayed to dismiss the M.C.

07. During the course of trial, on behalf of the petitioner/ respondent herein, P.Ws.1 to 3 were examined and on behalf of the respondent/ revision petitioner, R.Ws.1 and 2 were examined and Exs.B.1 to B.5 were marked.

08. After considering the oral and documentary evidence, the trial court considered that the respondent/

revision petitioner is a Railway employee and getting more than Rs.25,000/- per month. Basing on the facts and circumstances of the case, the trial court granted Rs.4,000/- per month as maintenance to the petitioner. Aggrieved thereby, the respondent/ revision petitioner preferred the present revision.

09. Heard learned counsel for the revision petitioner and learned counsel for the respondent.

10. Learned counsel for the revision petitioner submits that the respondent has not filed any evidence to show that the revision petitioner was earning Rs.25,000/- per month; further it is submitted that the respondent is working as Aaya in Lifeline hospital and she is not dependent on anybody and he is looking after his children who are with him and finally prayed the Court to set aside the order dated 06.09.2011.

11. On the other hand, learned counsel for the respondent contended that the revision petitioner has not filed any proof in respect of the respondent is working as Aaya in Lifeline hospital; it is further contended that since their sons are grown up elders, they are not dependents on the earnings of the petitioner/ respondent, the respondent is only dependent on the earnings of the petitioner. It is further submitted that the revision petitioner is not paying maintenance regularly and committed default in depositing the maintenance amount and finally prayed to dismiss the petition.

12. Upon hearing the arguments of learned counsel of both the parties, the point that arise for consideration is, whether the order dated 06.09.2011 passed in M.C. No.50 of 2010 by the Judge, Family Court, Warangal is liable to be set aside?

POINT:

13. A perusal of the record reveals that the marriage of the petitioner and the respondent was performed on 05.06.1983; after their marriage, they lived happily for sometime and they were blessed with three children. As per the argument of both the learned counsel, it is considered that now the sons are grown up and during their childhood they lived with the respondent.

14. The main contention of the respondent is that her husband addicted to bad vices and developed extra marital relationship as such she left the petitioner and started living separately. On the other hand, learned counsel for the petitioner denied the allegations about the extra marital relationship of the petitioner with one Padma.

15. As per the evidence on record, the respondent is residing separately from her husband and the revision petitioner is working in Railways as Technical Grade III. Though it is stated that the revision petitioner is earning Rs.25,000/- per month, the trial court considered the income of the revision petitioner Rs.12,000/- per month

and rightly awarded Rs.4,000/- per month towards maintenance.

16. The revision petitioner claims that the respondent is working in Lifeline hospital as Aaya. It is for the petitioner to prove the same by producing the cogent evidence. According to the evidence of R.W.1, who is son of the petitioner and respondent, the respondent herein is working as Aaya in Lifeline hospital. But in the cross examination he stated that her mother is not trained in nursing. Admittedly, respondent is not residing with the revision petitioner. It is also not proved that respondent had sufficient means to maintain herself. The revision petitioner has not made out any case to reduce the maintenance or to set aside the orders dated 06.09.2011 passed in M.C. No.50 of 2010 and the findings of the trial court in granting maintenance needs no interference and hence the revision is liable to be dismissed.

17. Accordingly, the revision is dismissed.

18. Miscellaneous petitions, if any, pending in this revision shall stand closed.

ANIS, J

February 24, 2015

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