

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1114 OF 2014

ORDER:

The present revision is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 28.03.2014 passed in F.C.O.P. No.97 of 2012 on the file of the Family Judge at Vizianagaram, wherein and whereunder an application filed under Section 125 CrPC by the first respondent herein seeking maintenance was allowed awarding maintenance at the rate of Rs.7,500/- per month to be paid by each of the petitioners herein.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in the F.C.O.P.

The case of the petitioner in F.C.O.P. is as under :

The petitioner is none other than the mother of the two respondents. She was having three sons i.e., the respondents and another son by name Ganta Narasinga Rao. All three of them were born to her through her late husband Suryarao, who died in the year 2000. During the lifetime of her husband, he is said to have purchased a house at Payakaraopeta. During his lifetime he advised the petitioner and his three sons to get the same partitioned equally and that the petitioner shall enjoy the rents arising thereon. The said house consists of ground floor and first floor and the petitioner used to reside in the first floor. The ground floor of the building was let out on a monthly rent of Rs.600/- per month. It is said that the said house was constructed about 50 years back and the same is in a totally dilapidated condition. Having regard to the condition of the building, the tenant is said to have vacated the ground floor. The petitioner also

shifted herself to Vizianagaram and started staying with her younger brother. It is said that the respondents who are her grown up children are doing business independently and earning enough money to provide substantial maintenance to the petitioner, who is their mother. Her averments in O.P. also disclose that the condition of her third son is not good and he was not able to sustain himself. The averments in the report also disclose that at times the petitioner used to pay money to her third son. It is stated that the petitioner, who is aged about 80 years is a heart patient and is taking regular treatment at Seven Hills, Visakhapatnam by spending about Rs.5,000/- per month. Exs.A-1 to A-6 are the documents which are placed on record to show the treatment taken and also the expenditure incurred. It is stated that though the petitioner wanted to live with the respondents, none of them agreed for the same and as such she was forced to stay at the house of her brother byname Thatikayala Chandra Rao. The averments in the report also disclose that both the respondents are doing business and earning not less than Rs.1,00,000/- per month and the second respondent is also constructing a house at Payakaraopeta at a cost of Rs.80,00,000/-. Having regard to the said circumstances, the petitioner filed a petition under Section 125 Cr.P.C. claiming a sum of Rs.10,000/- per month as maintenance.

In support of her case, the petitioner examined herself as P.W.1, her maid-servant as P.W.2 and her third son as P.W.3 apart from marking Exs.A-1 to A-7. The respondents examined themselves as R.Ws.1 and 2 and got marked Exs.R-1 and R-2.

After analyzing the evidence on record, the trial court awarded maintenance at a rate of Rs.7,500/- per month to be paid by each of the respondent.

The only contention raised by the learned counsel for the respondents/petitioners herein is that the trial Court did not take into consideration Ex.R-1 the “Kararnama” said to have been executed in the year 2001 between the petitioner and the respondents. According to him, a reading of the “Kararnama” discloses that the petitioner was paid substantial amount at the time of execution of the “Kararnama” and the amount paid by both the respondents was towards her permanent alimony. In view of Ex.R-1 he submits that the question of respondents paying maintenance again does not arise.

The learned counsel for the petitioner/respondent herein opposed the same contending that the contents of “Kararnama” nowhere refers to payment of money towards full and final settlement. He submits that as the petitioner is the mother of the respondents and having regard to the age of the petitioner, there is nothing wrong in awarding maintenance to be paid by both the sons.

It is true that the petitioner has not made one of her sons as a party to the proceedings. A reading of the averments in the petition and also the evidence on record clearly establishes that the third son of the petitioner was not in a position to sustain himself. Non making the third son of the petitioner as a party to the proceedings does not in any way help the respondents, for the reason that the question in the present case is; “Whether the respondents are liable to pay any maintenance to their mother?”

As stated above the only ground urged by the learned counsel for the respondents is that the trial court did not take into account the “Kararnama” executed on 12.05.2001 between R.W.1, R.W.2 on one side and the petitioner on the other side. A perusal of impugned judgment discloses that the Court below did refer to the contents of the

“Kararnama”. Sri Ganta Ramachandra Rao, who is the second son of the petitioner and who got examined himself as R.W.2 in the above O.P. clearly admitted in his cross-examination that Ex.R-1- “Kararnama” does not refer to payment of money to the petitioner towards full and final satisfaction. He also admits that it is not mentioned in the “Kararnama” that Rs.1,20,000/- which was paid by him and R.W.1 to the petitioner was towards her permanent alimony. It may be useful to extract the relevant portion of the evidence of R.W.2 which is as under :

“It is true that it is not mentioned in Ex.R-1 about the amount paid by R.W.1 and R.W.2 is towards full and final satisfaction of maintenance amount to the petitioner. It is true that it is also not mentioned in Ex.R-1 that the Rs.1,20,000/- paid by me and R.W.1 to the petitioner towards her permanent alimony.”

From the admissions made by R.W.2, it is clear that the amount of Rs.1,20,000/- paid by both the sons of the petitioner at the time of execution of “Kararnama” in the year 2001 was not towards her permanent alimony and that it was not towards her full and final satisfaction amount. Therefore, the argument of the learned counsel for the respondents that in view of the “Kararnama” the sons of the petitioner are not liable to pay any amount towards maintenance to the petitioner, cannot be accepted.

Coming to the quantum of maintenance, which according to the respondents is on higher side, the evidence of R.Ws.1 and 2 itself reveal they are in a position to pay the said amount to their mother. R.W.1 in his evidence admitted that he is having a house at Visakhapatnam and he is paying Income Tax and Sales Tax. The evidence on record also discloses that Naga Jyothi Traders belonging to the wife of the second respondent is situated opposite to panchayat office and it is a cement shop. R.W.2 in his evidence admits that his

wife has shown the VAT turnover for the period 08.01.2012 to January 2013 to a tune of Rs.27,00,000/-. Having regard to the said circumstances, it cannot be said that the quantum of maintenance awarded by the trial court is on a higher side.

The material on record discloses that both the respondents are having properties and income by which they can maintain their mother. Though it is tried to contend that one Chakradhara Rao, with whom the petitioner is staying, was responsible for filing this case due to disputes with the wife of the second respondent, but the same cannot be accepted. Merely because some civil dispute is pending between the parties, as held by the trial Court, no mother would venture to file a false case against her own sons, if they are not in a position to pay any amount. In view of the above, I see no reason to interfere with the findings arrived at by the trial court and as such the Criminal Revision is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

As a sequel to it, miscellaneous petitions pending if any in this Criminal Revision shall stand closed.

C. PRAVEEN KUMAR, J

Date:20.01.2015
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