

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15794 of 2016

ORDER :

This criminal petition is filed by the petitioner/revision petitioner under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the order dated 04.07.2016 in CrI.R.P.No.52 of 2015 passed by the VI-Additional Sessions Judge, Anantapur at Gooty.

2. Respondent Nos.2 and 3 herein filed a petition under Section 125 Cr.P.C. seeking maintenance against the petitioner herein alleging that the marriage of respondent No.2 was performed with the petitioner on 01.02.2004 at Hubli as per the custom prevailing and after marriage they lived together at Kalyanadurg. At the time of marriage, father of respondent No.2 paid Rs.1,50,000/- in cash, presented 25 tolas of gold, a Hero Honda Motor Cycle and other house hold articles as dowry besides incurring Rs.1,00,000/- towards marriage expenses. During wedlock they were blessed with a daughter named as V. Manasa Chandra, who is respondent No.3 herein. The petitioner herein addicted to vices like drinking, womanizing etc., and neglected respondent Nos.2 and 3 and subjected respondent No.2 to cruelty for her failure to meet the illegal demand for payment of additional dowry. Respondent No.2 had no independent source of income to lead ordinary life and whereas the petitioner is working as teacher in High School at Rayaladoddi,

drawing salary of Rs.20,000/- per month and also owned and possessed house at Atmakur, Anantapur District and getting Rs.1,500/- per month as rent. Thus, the petitioner herein got sufficient means to maintain respondent Nos.2 and 3, but without any reasonable or justifiable cause, he refused to maintain respondent Nos.2 and 3.

3. The petitioner herein filed counter in the maintenance petition, while admitting the relationship between the petitioner and respondent Nos.2 and 3, contending that respondent No.2 is working in a private school and imparting tuitions for Prathamika and Madyamika (Primary and upper primary) students and earning Rs.5,000/- per month apart from Rs.5,000/- as rent on the house which was allotted to her share at Guntakal and also earning Rs.2,000/- per month by tailoring work. Thus, respondent No.2 has got sufficient means to maintain herself, therefore, she is not entitled to claim maintenance and prayed to dismiss the petition.

4. During enquiry before the trial Court, on behalf of respondent Nos.2 and 3 i.e., petitioners in maintenance petition, respondent No.2 herself was examined as PW.1 besides examining V. Mahanadu, M.V.Ramanjaneyulu and J.Venkateswarlu as PWs.2 to 4 and whereas the respondent i.e., petitioner herein examined himself as RW.1, but no documents were marked on behalf of either respondents Nos.2 and 3 and petitioner herein before the trial Court. Upon hearing argument of both counsel and considering the oral and documentary evidence,

the trial Court came to the conclusion that the petitioner herein refused and neglected to maintain respondent Nos.2 and 3 without any reasonable cause and that respondent No.2 had no means to maintain herself, awarded maintenance of Rs.5,500/- to respondent No.2 and Rs.2,500/- to respondent No.3 herein from 01.10.2012. Aggrieved by the order passed by the trial Court, the petitioner herein preferred a revision under Section 397 Cr.P.C. in Crl.R.P.No.52 of 2015 and the same was dismissed by the VI-Additional Sessions Judge, Anantapur at Gooty, by order dated 04.07.2016 affirming the order passed by the trial Court.

5. The present criminal petition is filed challenging the order on the ground that the trial Court did not consider the oral evidence of RW.1 regarding means possessed by respondent No.2 and that the trial Court and revisional Court, while awarding maintenance of Rs.5,500/-, did not consider various aspects for deciding the quantum of maintenance payable to respondent No.2. The petitioner herein did not challenge the maintenance awarded in favour of respondent No.3.

6. During hearing, learned counsel for the petitioner would contend that if respondent No.2 earning income from different sources mentioned in the counter, the trial Court would not have granted maintenance at the rate of Rs.5,500/- per month and even otherwise the maintenance amount awarded by the trial Court and affirmed by the revision Court is excessive and while fixing quantum of maintenance, the trial Court has to take into consideration the income

of the petitioner/husband and record a finding about the income from different sources, but both the trial Court and revisional Court committed error in awarding maintenance at Rs.5,500/- per month to respondent No.2 and finally prayed to set aside the same.

7. Undisputedly, respondent No.2 is the legally wedded wife of the petitioner. The only challenge to the order before this Court is non-consideration of oral evidence of RW.1 i.e., petitioner herein, while fixing quantum of maintenance, without taking into consideration of the income of respondent No.2.

8. It is the contention of the petitioner from the beginning that respondent No.2 is working as a teacher in a private school and earning Rs.5,000/- per month and she is also earning Rs.5,000/- per month by imparting tuitions to Prathamika and Madyamika students and Rs.5,000/- by way of rental income being paid by the tenant in occupation of house, which was allotted to her in a family partition. When the petitioner is contending that respondent No.2 possessed sufficient means to maintain herself, it is for the petitioner to adduce satisfactory and cogent evidence to rebut the evidence of respondent No.2 by producing documentary evidence. In the present case from the beginning, respondent No.2 contended that she has no means to maintain herself. Though the petitioner herein contended that respondent No.2 possessed means did not produce any iota of evidence to prove the income of respondent No.2. The alleged imparting of tuitions and earning Rs.5,000/- per month can be proved

atleast by examining any one of the students, to whom she is imparting tuition and similarly the alleged tenant, who is in occupation of the house, is a competent witness who is paying rent to respondent No.2 for occupation of the house property allotted to her share in a family partition. Obviously for different reasons, no evidence is brought on record to substantiate such contentions. Therefore, the trial Court rightly disbelieved the contention of the petitioner herein that respondent No.2 possessed sufficient means to maintain herself, thereby, I find no error in the conclusion arrived by the trial Court regarding the contention of the petitioner that respondent No.2 has means to maintain herself.

9. The second ground is that the trial Court did not properly fixed monthly maintenance and awarding maintenance at Rs.5,500/- is excessive. Undisputedly, the petitioner is working as a teacher and he is supposed earn not less than Rs.20,000/- per month and he did not deny possessing house and earning Rs.1,500/- as rent. Respondent No.2, being the wife, is expected to lead the same standard of life which the petitioner, being a teacher, is leading and in the present case, Rs.5,500/- is hardly sufficient to meet both the ends. Taking into consideration of the price index and other requirements like medical, etc., I find no ground to set aside the order or to reduce the maintenance amount of Rs.5,500/- awarded to respondent No.2 by the trial Court and affirmed by the Revision Court.

10. Accordingly, the criminal petition is dismissed at admission stage.

11. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

8th November 2016

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