

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.2064 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 28-06-2016 in M.C.No.90 of 2015 on the file of the Judge, Family Court-cum-IV Additional District and Sessions Judge at Vijayawada.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed before the trial Court in M.C.

3. The contention of the learned counsel for the respondent (petitioner herein-husband) is two fold viz., (1) the trial Court has not considered the messages sent by the petitioner and granted maintenance at the rate of Rs.15,000/- per month to the petitioner on erroneous grounds and (2) the petitioner failed to prove the monthly income of the respondent and the amount of maintenance granted by the trial Court is on higher side.

4. Per contra, learned counsel for the petitioner (2nd respondent herein-wife) submitted that the petitioner has no source of income and the same was rightly considered by the trial Court. He further submitted that the amount of maintenance granted by the trial Court is not on higher side and there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court.

5. The facts, leading to filing of the present revision are as follows: The marriage of the petitioner with the respondent was performed on 07-10-2012 at Vijayawada as per Muslim Rites and caste customs. Immediately after the

marriage, the petitioner joined with the respondent at Guntur to lead happy marital life. They lived together for eight months. For one reason or the other, disputes arose between the petitioner and the respondent. Therefore, the petitioner has been residing at her parents house. The case of the petitioner is that the alleged divorce given by the respondent is not sustainable either in law or on facts.

6. The respondent filed counter denying all the averments made in the petition *inter alia* contending that the petitioner herself left the matrimonial home of the respondent. It is further alleged that the petitioner has source of income and therefore, she is not entitled to claim maintenance by invoking Section 125 Cr.P.C. Hence, the respondent prayed to dismiss the petition.

7. During the course of trial, on behalf of the petitioner, P.Ws. 1 to 3 were examined and Exs.P1 to P5 were marked. On behalf of the respondent, R.W.1 was examined and Exs.R1 to R7 were marked.

8. The trial Court after considering both oral and documentary evidence available on record, arrived at a conclusion that the petitioner is entitled to claim maintenance under Section 125 Cr.P.C. and accordingly, granted maintenance at the rate of Rs.15,000/- per month to the petitioner from the date of application i.e., 24-03-2015. Challenging the said order, the present revision is filed.

9. Now the point for consideration in this revision is whether the order passed by the trial Court is not sustainable under law?

10. To substantiate the case, before the trial Court, the petitioner herself was examined as P.W.1. To demolish

the case of the petitioner, the respondent himself was examined as R.W.1. As seen from the testimony of the witnesses, the marriage of the petitioner was performed with the respondent on 07-10-2012 as per Muslim Rites and caste customs. Ex.P1 is the marriage certificate, dated 06-11-2012. There is no dispute with regard to the factum of marriage is concerned. As per the contention of the respondent, he gave divorce to the petitioner by following the procedure as contemplated under the Muslim Law. It is the contention of the petitioner that the alleged divorce is not sustainable either in law or on facts.

11. At the time of arguments, learned counsel for the respondent submitted that the petitioner filed O.P.No.1449 of 2016 on the file of the Additional Family Court, Hyderabad, challenging the validity of divorce alleged to have given by the respondent. In view of pendency of above O.P., it is not fair on the part of this Court to express any opinion with regard to the validity or otherwise of the divorce.

12. Learned counsel for the respondent submitted that the petitioner gave messages requesting the respondent to give divorce. In the cross-examination, P.W.1 admitted that she sent messages to the respondent. Her testimony further reveals that the respondent has not produced all the messages and produced only few messages. Whether the petitioner is at fault or the respondent is at fault will be decided in the above O.P.

13. The respondent has taken a specific plea in the counter that the petitioner is having source of income. A perusal of testimony of P.W.1 reveals that the petitioner is studying M.Pharmacy in NIMRA college of Pharmacy. This itself clearly indicates that the petitioner has no source of

income. The respondent has not produced oral and documentary evidence to substantiate his stand that the petitioner is having source of income. As seen from the testimony of P.Ws 1 to 3, it is clear that the respondent is a Software Engineer. As seen from the testimony of R.W.1, it is clear that he worked in T.C.S. Company. During that period, he visited Norway. His testimony further reveals that he got monthly salary of Rs.45,000/- while working in T.C.S. Company prior to marriage. In order to appreciate the contention of the respondent, it is not out of place to extract the relevant portion of cross-examination of R.W.1:

“I do not remember the account number but my account is in HDFC Bank, Cheenai branch. From 2006 to 2010, I worked in Chennai and since then I have been working at Chennai till date,. I do not remember my salary at the time of joining in the company. I am not supposed to disclose employee ID number. I do not want to file my account statement which reveals the particulars of my salary. I do not want to reveal the transactions of my account as such I am not willing to file account statement. Except PF I do not have any other savings. I do not remember the contribution for PF. Even I cannot say approximate contribution for PF.”

A perusal of the above clearly indicates that the respondent is not willing to disclose his bank balance or monthly income. In such circumstances, drawing an adverse inference by the trial Court is perfectly justified. It appears that the trial Court granted maintenance at the rate of Rs.15,000/- per month to the petitioner basing on the salary of the respondent while he was working in T.C.S. Company. The petitioner being a wife or divorced wife, as the case may be, is legitimately entitled to expect a decent life.

14. While granting maintenance, the Court has to take into consideration the socio-economic conditions of the parties to the proceedings. The trial Court has considered the socio-economic conditions of both parties and granted maintenance at the rate of Rs.15,000/- per month. Viewed

from any angle, I am unable to accede to the contention of the learned counsel for the respondent that the amount of maintenance granted by the trial Court to the petitioner at the rate of Rs.15,000/- per month is on higher side. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court by exercising the revisional jurisdiction under Section 397 Cr.P.C.

15. Accordingly, the Criminal Revision Case is dismissed. Observations, if any, made by this Court in this Criminal Revision Case are only confined to this order. Miscellaneous petitions, if any pending, in this revision shall stand closed.

DATED: 21-12-2016.
Hsd

T.SUNIL CHOWDARY, J

