

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.2535 OF 2013

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of the Criminal Procedure (Cr.P.C.) challenging the order dated 26.06.2013 in M.C.No.55 of 2009 on the file of the Family Court-cum-IV Additional District & Sessions Judge at Vijayawada.

The parties will be referred to as they were arrayed before the trial Court to avoid confusion.

Learned counsel for the petitioner submitted that the trial Court, without taking into consideration the financial status of the respondent, granted meager amount of Rs.4,000/- per month to the petitioner. He further submitted that the trial Court ought to have granted maintenance from the date of petition instead of from the date of the order.

None appeared on behalf of the respondent.

The facts leading to filing of the present petition are briefly as follows.

The marriage of the petitioner was performed with the respondent on 27.05.1967 as per Hindu rites and caste customs at Kothapet, Vijayawada. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, the petitioner and the respondent were blessed with one son and two daughters. The respondent intentionally and willfully neglected the petitioner to provide maintenance to her. Hence, the petitioner filed petition seeking maintenance of Rs.8,000/- per month from the respondent. The respondent filed a counter admitting the *inter se* relationship *inter alia* contending that the petitioner left the matrimonial home of the respondent on 05.01.2005 without any justifiable cause or reason.

Before the trial Court, on behalf of the petitioner, P.W.1 was examined and Exs.P1 to P4 were marked. On behalf of the

respondent, R.W.1 was examined. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the respondent intentionally and willfully neglected the petitioner to provide maintenance to her and allowed the petition in part by granting Rs.4,000/- per month to the petitioner.

A perusal of the record reveals that the petitioner and the respondent performed marriages of their daughters. The material available on record clearly reveals that the respondent did not attend the marriage of his son. Unfortunately bad weather prevailed in the family life of the petitioner and the respondent in the year 2005 after living together for a period of 38 years. The petitioner has been residing separately from the year 2005 onwards. By the time of filing of the petition in the year 2009, the petitioner was aged about 58 years and the respondent was aged about 62 years. Even as per the testimony of the respondent, he is having houses bearing Nos.9-3-96 and 9-3-97 in Vijayawada Town. The respondent let out one of the houses. As per the testimony of P.W.1, the respondent is getting monthly income of Rs.40,000/- per month out of business and Rs.15,000/- towards rent. If the testimony of P.W.1 is taken into consideration, the respondent is getting a monthly income of Rs.55,000/- per month. But the petitioner did not choose to examine the neighbours to prove that the respondent is getting monthly rent of Rs.15,000/- per month. The petitioner did not file even a single scrap of paper to establish that the respondent has been carrying on cloth business in Vijayawada Town and earning Rs.40,000/- per month. If really the respondent has been carrying on cloth business, what prevented the petitioner to examine the neighbours of the shop of the respondent. The petitioner also did not choose to examine her daughters or son to prove the income of the respondent. It is not uncommon to exaggerate the things by the parties to the proceedings in order to gain sympathy of the Court, more particularly in matrimonial cases. Now the respondent is aged about 67 years and the petitioner

is aged about 63 years. Normally at this age they have to take rest and live in a peaceful manner. Unfortunately, the petitioner and respondent are fighting in the Courts at this age by ignoring family reputation and the future of their grand children. Further, the son and the daughters of the parties have not taken any steps to pacify the matter. In the absence of proof of income of the respondent, some guess work is inevitable to determine the quantum of maintenance amount. The trial Court, after taking into consideration the financial status of the respondent, granted maintenance of Rs.4,000/- per month. Nothing is placed before this Court to prove the actual income of the respondent. In the absence of evidence, much less legally admissible evidence, it is not fair on the part of this Court to enhance the maintenance amount. Taking into consideration the facts and circumstances of the case and also the age of the respondent, I am of the considered view that granting maintenance amount of Rs.4,000/- per month to the petitioner is just and reasonable. The normal rule is that the Court has to grant maintenance from the date of the order only. If the Courts grant maintenance from the date of the petition, it has to give specific reasons. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the trial Court committed error while granting maintenance from the date of order only. There is no illegality or irregularity in the order of the trial Court warranting interference by this Court by exercising jurisdiction under Section 397 Cr.P.C.

The Criminal Revision Case lacks merits and is, accordingly, dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(T.SUNIL CHOWDARY, J)

8th July 2016
RRB

