

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1040 of 2012

ORDER:

This criminal revision case is filed by the petitioner under Section 397 and 401 Cr.P.C. aggrieved by the order dated 19.06.2010 in M.C.No.29 of 2009 on the file of the Court of Judge, Family Court, Prakasam District at Ongole.

The contention of the learned counsel for the petitioners is two fold:

1. The trial Court ought to have taken the income of the first respondent as Rs.20,000/- per month.
2. He further submitted that the trial Court failed to consider that the respondent was having Ac.6.46 cents of land in Vinjanampadu village, Yeddnapudi Mandal of Prakasam District; and
3. The order passed by the Court below is not sustainable either on facts or on law.

The facts leading to file the present revision are briefly as follows:

The marriage of the first petitioner was performed with the respondent on 23.04.1994 at Uppugundur village of Naguluppapadu Mandal, Prakasam District as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent at Appikatla village of Bapatla Mandal to lead marital life. Out of lawful wedlock, the first petitioner and respondent were blessed with two children, i.e. petitioners No.2 and 3. It is the case of the petitioners that the respondent subjected them to cruelty. The respondent is having landed property of Ac.6.46 cents at Vinjanampadu village. Hence, the

petitioners filed a petition seeking maintenance of Rs.10,000/- per month to the first petitioner and Rs.5,000/- per month each to petitioners 2 and 3. Respondent filed counter denying all the averments made in the petition *inter alia* contending that the first petitioner herself left the house of the respondent, therefore, they are not entitled to claim maintenance under Section 125 Cr.P.C. Hence, the petition may be dismissed.

During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined. On behalf of the respondent, R.W.1 was examined. Basing on the oral evidence and other material available on record, the trial Court arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioners and allowed the petition in part granting maintenance of Rs.2,000/- per month to the first petitioner and Rs.1,000/- per month each to petitioners 2 and 3. Hence, the present revision petition.

Now, the points that arise for consideration are

1. Whether the petitioners are entitled to claim maintenance from the respondent or not.
2. Whether there is any illegality or irregularity in the orders of the trial Court which warrants interference of this Court.

As both points are interlinked to each other, I am inclined to address both points together in order to avoid repetition of facts.

The marriage of the first petitioner was performed with the respondent on 23.04.1994 at Uppugundur village of Naguluppalapadu Mandal of Prakasam District as per Hindu rites and caste customs. Immediately after the marriage, the first petitioner joined with the respondent to lead happy marital life. Out

of their lawful wedlock, the first petitioner and respondent were blessed with one son, i.e. petitioner No.2 and one daughter i.e. petitioner No.3. To substantiate the case, the first petitioner examined herself as P.W.1. P.W.2 is none other than the father of the first petitioner. R.W.1 is none other than the father of the respondent. As per the testimony of P.Ws.1 and 2, the respondent addicted to bad vices and neglected to provide maintenance to the petitioners. In the petition, the first petitioner has taken a specific stand that the respondent harassed her suspecting her fidelity.

The testimony of P.Ws.1 and 2 clearly reveals that having no other alternative the petitioners left the matrimonial home of the respondent. The material placed before the trial Court clinchingly establishes that the respondent subjected the petitioners to cruelty on one ground or other. In such circumstances, it may not be possible for the petitioners to live with the respondent. The contention of the respondent is that the first petitioner herself left the house of the respondent without any justifiable reason. As per the testimony of R.W.1, the petitioners left the house without any justifiable ground. R.W.1 being father of the respondent is entitled to depose evidence on his behalf. Whether the respondent subjected the first petitioner to cruelty suspecting her fidelity or not is within the exclusive knowledge of the respondent. For the reasons best known to him, the respondent did not choose to come into witness box to substantiate his stand. Non-appearance of the respondent before the trial Court creates any amount of doubt in the mind of the Court. The material available on record clinchingly establishes that the petitioners left the matrimonial house of the respondent because of his behaviour. The respondent miserably failed to establish that the petitioners left the house of the respondent without any justifiable cause. The finding

of the trial Court that the respondent failed to provide maintenance is supported by oral and documentary evidence. I am fully agreeing with the findings of the trial Court.

As per the testimony of P.Ws.1 and 2, the respondent used to draw an amount of Rs.20,000/- per month. Their testimony further reveals that the respondent is having Ac.6.46 cents of land at Vinjanampadu village of Yeddnapudi Mandal of Prakasam District. Except the self-served testimony of P.Ws.1 and 2, there is no convincing evidence to establish that the first respondent was drawing a salary of Rs.20,000/- per month. The petitioners did not file a single scrap of paper to show that the respondent is having landed property. However, as per the testimony of R.W.1, the respondent is having Ac.1.96 cents of land in Vinjanampadu village. There is a moral and social obligation on the part of the respondent to provide maintenance to the petitioners. Absolutely there is no material on record to establish that the petitioners are having sufficient means to maintain themselves. Taking into consideration the socio economic conditions of both parties, the trial Court granted maintenance of Rs.2,000/- per month to the first petitioner, Rs.1,000/- each to petitioners 2 and 3. The material available on record clinchingly establishes that the respondent is having sufficient means to provide maintenance to the petitioners. In my considered view the granting of an amount of Rs.4,000/-per month to the petitioners is just and reasonable. There is no illegality or irregularity in the orders of the trial Court to set aside or modify the same. This Criminal Revision Case lacks merits and hence the same is liable to be dismissed.

Accordingly, Criminal Revision Case is dismissed at the stage of admission. As a sequel, the miscellaneous petitions,

pending if any in this revision, shall stand closed.

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T.SUNIL CHOWDARY, J.

June 24, 2016

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