

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1734 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 08.04.2011 in M.C.No.30 of 2010 on the file of the Family Court-cum-Additional District Judge, East Godavari at Rajahmundry.

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

3. The facts leading to filing of the present criminal revision case are briefly as follows:

The marriage of the petitioner was performed with the respondent on 17.05.2009 at Rajahmundry, as per Hindu Rites and Caste Custom. As per the allegations made in the petition, the respondent subjected the petitioner to cruelty for additional dowry. Hence, she lodged a complaint to the Station House Officer, III Town Police Station, Rajahmundry. The respondent is earning Rs.30,000/- per month as proclainer driver. The petitioner is not having any source of income. The respondent filed counter admitting the factum of his marriage with the petitioner *inter alia* contending that the petitioner herself left the matrimonial home of the respondent without justifiable cause. The petitioner is having sufficient means to maintain herself. Hence, the petition may be dismissed.

4. During the course of trial, to establish the case of the petitioner, the petitioner examined herself as PW.1, and PW.2 was examined and got marked Exs.P.1 and P.2. To demolish the case of the petitioner, the respondent examined himself as RW.1 and no documents were marked on his behalf.

5. Basing on the oral, documentary evidence and other material

available on record, the trial Court arrived at a conclusion that the respondent is getting monthly income of Rs.15,000/- per month and granted maintenance of Rs.4,000/- per month to the petitioner.

6. The contention of the learned counsel for the respondent/petitioner herein is two fold: (1) the trial Court failed to consider that the petitioner herself left the matrimonial home of the respondent; therefore, she is not entitled to claim maintenance; and (2) the trial Court granted the maintenance amount without taking into consideration the financial status of the respondent.

7. The petitioner/first respondent herein having received the notice did not choose to appear before this Court. Hence, this Court is inclined to dispose of the revision on merits.

8. Now the points that arise for consideration are:

1. Whether the petitioner is entitled to claim maintenance from the respondent or not?

2. Whether there is any illegality or irregularity in the order of the trial Court, which warrants interference of this Court or not?

9. Point Nos.1 and 2 are interlinked with each other; hence, this Court is inclined to address both points simultaneously in order to avoid recapitulation the facts and evidence.

10. It is an admitted fact that the marriage of the petitioner was performed with the respondent on 17.05.2009. The fact remains that the petitioner lodged a complaint to the Station House Officer, III Town Police Station, Rajahmundry alleging that the respondent subjected her to cruelty for additional dowry. There is no material on record in order to ascertain the stage of the criminal case. As per the testimony of PWs.1 and 2, the respondent subjected the petitioner to cruelty for additional dowry. In the cross examination of PWs.1 and 2, nothing is

elicited to shake their testimony. Registration of the criminal case against the respondent by itself is sufficient for the petitioner to stay at her parents' house. The material available on record clinchingly establishes that the respondent intentionally and willfully neglected to provide maintenance to the petitioner. The finding recorded by the trial Court on this aspect is supported by material much less legally admissible material. I am fully agreeing with the finding recorded by the trial Court on this aspect. Having regard to the facts and circumstances of the case, I am of the considered view that the respondent intentionally and willfully neglected to provide maintenance to the petitioner.

11. It is needless to say that the Court has to grant maintenance basing on the financial status of the both parties. It is not uncommon to exaggerate the income of the husband by the wife in order to claim maintenance amount. As per the averments made in the petition, the respondent used to earn Rs.30,000/- per month. It is not the case of the petitioner that the respondent is having landed property. The fact remains that the respondent is a driver by profession. As per the finding of the trial Court, the respondent used to earn Rs.15,000/- per month as proclainer driver. An experienced and skilled person alone is competent to drive the proclainer. While deciding the petitions of this nature, the Court has to take into consideration the ground realities. A driver may continue so long as he enjoys the confidence of his owner. Even a lorry driver may earn Rs.6,000 to Rs.8,000/- per month. Absolutely there is no material on record to establish that the petitioner is having landed property or any other source of income to maintain herself. The material placed before this Court clinchingly establishes that the petitioner has been residing at her parents' house. The income of the driver may depends upon various factors. Taking into consideration the facts and circumstances of the case, I am of the considered view that granting of maintenance amount of Rs.4,000/- is on higher side. Hence, this Court is inclined to reduce the

maintenance amount from Rs.4,000/- to Rs.3,500/- per month. Point Nos.1 and 2 are answered accordingly.

12. In the result, the Criminal Revision Case is partly allowed at the stage of admission by reducing the maintenance from Rs.4,000/- to Rs.3,500/- per month to the petitioner.

13. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 11.07.2016

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