

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE Nos. 827 & 828 of 2016

COMMON ORDER:

Criminal Revision Case No.827 of 2016 is filed against the final order dated 24.08.2015 passed in F.C.M.C. No.18 of 2014 by the Judge, Family Court, Kurnool, wherein an amount of Rs.8,000/- per month was directed to be paid towards maintenance to the petitioners 1 and 2 therein from the date of petition. Criminal Revision Case No.828 of 2016 is filed against an order passed in Criminal Appeal No.66 of 2015 on the file of the Special Judge for Trial of Cases under S.Cs., and S.Ts., (POA) Act-cum-VI Additional Sessions Judge, Kurnool, wherein the Appellate court reduced the interim maintenance of Rs.15,000/- awarded by the trial Court to Rs.8,000/- per month, while confirming other directions. Challenging the same these two revisions came to be filed.

Since parties in both the cases and the issue relates to payment of maintenance, both the revisions are heard together and disposed of by this common order, with the consent of both the parties.

The facts in issue are as under :

For the sake of convenience, the parties will hereinafter be referred to as arrayed in F.C.M.C. No.18 of 2014.

(Crl.R.C.No.827 of 2016)

The first Petitioner is legally wedded wife of the respondent, whose marriage was solemnized with the respondent on 30.05.2010 at Vignanamandiram Kalyana Mandapam, Kurnool. Out of wedlock, the

second petitioner was born to them. It is said that right from the date of marriage, the respondent never took care of the first petitioner and her child-second petitioner. The respondent used to harass the first petitioner on the simple things and never treated her as his wife. It is said that the respondent was neither provided food, clothing and medical aid to the petitioners nor discharged marital duties as a husband. It is further said that the respondent used to beat the first petitioner demanding her to get additional dowry and ultimately drove her out of the house. It is said that the respondent has independent source of income and by working as a private employee is earning Rs.30,000/- per month. Since the first petitioner has no independent source of income to maintain herself and the child and except maintaining the petitioners 1 and 2 he has no other obligations, the present case came to be filed.

A counter came to be filed admitting the relationship between the parties, but however, denied taking dowry and the harassment as alleged in the petition. It is said that the first petitioner is a very moody lady and was not behaving properly with him. It is said that she used to talk in cell phones for hours together and never responded when he returns to home after completion of his duty. It is alleged that the first petitioner used to pressurize him to live as illatum son-in-law. It is alleged that the first petitioner and her parents used to threaten to mend him to act as per wishes and whims of the petitioner. Since the requests of the first petitioner were not considered, she is alleged to have left the house without any intimation to her husband. On coming to know that the first petitioner was carrying, the respondent is said to have gone there and requested the petitioner to join him but she refused. It is said that even after the birth of the child the respondent approached the petitioner but she did not respond. It is said that before filing D.V.C., a counseling was held before Project Director, Women and Child Care Department, Kurnool where the first petitioner

agreed to join him. She stayed with respondent for few days and later left without any reason. It is said that he lost his job, pursuant to which cases are filed and that he is leading a miserable life by doing daily wage work.

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(Crl.R.C.No.828 of 2016)

The averments in the D.V.C.27 of 2014, which was filed under Section 12 of the Protection of Women from Domestic Violence Act, by the first petitioner, claiming various reliefs including maintenance of Rs.22,500/- per month are also to the same effect as narrated earlier. It is further alleged that the respondents failed to attend “Namakaranam ceremony” and also refused to take back the petitioner. The counter filed by the respondent in D.V.C. is on the same lines to the one filed in M.C.

In F.C.M.C.No.18 of 2015 filed under Section 125 Cr.P.C., the petitioner examined two witnesses and got marked Exs.A-1 and A-2. The respondent examined himself as R.W.1, but no documentary evidence was adduced on his behalf. After appreciating the evidence available on record and also taking into consideration the pendency of D.V.C., awarded a sum of Rs.8,000/- to the petitioners payable by the respondent from the date of petition. It is to be noted that pending D.V.C.27 of 2014 the petitioner herein filed Crl.M.P.No.926 of 2014 seeking interim maintenance of Rs.15,000/-, which was allowed directing the respondent to pay interim maintenance of Rs.15,000/- per month to the first petitioner alone from the date of petition. Challenging the same, the Criminal Appeal No.66 of 2015 came to be filed by the respondent, wherein the lower appellate court reduced the interim maintenance to Rs.8,000/- while confirming the other directions. These two Revisions are filed challenging the above two orders. The

learned counsel for the petitioner submits that these two revisions are filed by the husband.

The learned counsel for the petitioner, who is appearing for the husband in these two revision petitions, strenuously contends that the wife left the company of the husband without any reason and as such he is not entitled to pay the maintenance. He further submits that the quantum of maintenance awarded by the Court below, which amounts to Rs.16,000/- is on higher side and the same needs to be reduced. He submits that the husband has lost his job and is now working as a daily wage labourer. In view of the above, he submits that the order under challenge needs interference.

On the other hand, the learned counsel for the respondent/wife opposed the applications contending that the petitioner is working as an Engineer in a reputed company and earning more than Rs.35,000/- per month and as such it cannot be said that the quantum of compensation awarded is on a higher side.

In order to answer the first objection raised by the counsel for the petitioner that wife left the company of the husband on her own without any reason, it may be necessary to refer to the relevant portion of the evidence of P.W.1. On 21.08.2010 the respondent, his parents, sisters and their husbands had a quarrel with the petitioner at Anantapur stating that she brought less dowry amount and gold and if they had perform the marriage of the respondent with another girl, they might have got more amount as dowry. So saying they abused her father in filthy language. After two days, the respondent left Anantapur to go to Hyderabad to continue his job. On 03.09.2010 she was taken by the parents of the respondent to Hyderabad. At the time of leaving Hyderabad, her mother-in-law took all the gold ornaments except Mangalasutram with gold chain. It is said that on 12.09.2010 respondent wantonly caused an accident to her when she was traveling with him. Again on 16.09.2010 there was a quarrel with

regard to not providing household articles by her father. Unable to bear the harassment, the petitioner left to her parents' house. Counseling was held at Anantapur on 25.09.2010 in the presence of Obulaiah, who advised the respondent to look after the petitioner well. Accepting the proposal made, he promised to take her back on 30.09.2010 to Hyderabad but failed to do so. However, on 06.10.2010 the respondent took her to Hyderabad and lived with her till 24.04.2011. The harassment continued during the said period also. On 25.04.2011 she was brought by her father for writing an examination. At that time it was noticed that she was pregnant, but the respondent forced her to get aborted, to which the petitioner was not willing. On 29.12.2011 the petitioner gave birth to a male baby but the respondent came there only once, saw the child and left the place without any reason. The respondent did not attend the "naming function" even after sending an invitation. As the respondent was not answering the phone calls or visiting her, D.V.C.27 of 2014 came to be filed on 18.08.2012. Pursuant to which, counseling was held between the petitioner and respondent and then respondent agreed to take her back along with their son, but failed to do so.

The material on record more particularly an analysis of evidence of P.W.1 and R.W.1 reveals issuance of notice for restitution of conjugal life and also an undertaking given before the Court to take back the informant, which were never done. From the evidence of R.W.1 it is to be noticed that except counseling before the Project Director nothing is proved to show that the allegations made and the panchayats held are false. Admittedly, the petitioner was residing with her parents since longtime and all her efforts to join her husband proved futile. From the above, it cannot be said that the petitioner left the company of the respondent on her own and started staying with her parents since the respondent failed to join her as an illatom son-in-law. Infact, except the self-serving statement, there is no other material to show that the petitioner forced the respondent to join him as an

illatom son-in-law. Even assuming for the sake of argument that there was an application filed for restitution of conjugal rights, that by itself will not establish that the petitioner, on her own, left the house. Hence, the argument of the learned counsel for the petitioner that the petitioner left the company on her own cannot be accepted.

Coming to the quantum of maintenance, which has been awarded, it is to be noted that the plea of the petitioner is that the respondent is earning a total sum of Rs.50,000/- per month. But, however failed to adduce any material in support of the same. It is further stated by her that the respondent is working as an Interior designer at Ananthapuram and earning nearly Rs.50,000/- per month. In view of the above, she pleads for payment of atleast Rs.15,000/- per month as maintenance towards herself and her son. The evidence of P.W.2 is to the effect that at the time of marriage, the respondent was working at Kenar company, Hyderabad and used to get Rs.25,000/- per month towards salary. It is her case that by staying at Bellary, he used to work as an interior decorator for private houses and used to get Rs.40,000/- per month, which fact is strongly denied by the respondent. The respondent's case is that he used to work at Kenar Company Private Limited, Hyderabad as Site Engineer at the time of his marriage, but having regard to the attitude of the petitioner and her parents, he was unable to do his job with concentration and as such lost the same. It is contended that the respondent is working as a Private Architect and earning Rs.5,000/- to Rs.7,000/- per month.

It is to be seen that while reducing interim maintenance from Rs.15,000/- to Rs.8,000/-, the lower appellate court found that the petitioner herein is having a Degree in Nursing course and there is a lot of demand for qualified Nurses for the reason of mushroom growth of super specialty hospitals. A counter which was filed to the pleadings in D.V.C. show that the petitioner is working in a reputed hospital and earning Rs.8,000/- per month. But no document is filed to

prove the same. The lower appellate Court was of the view that since the petitioner is a qualified Nurse, she would earn not less than Rs.8,000/- per month. Having regard to the fact that the respondent is earning Rs.30,000/- to Rs.40,000/- per month, the Court ordered Rs.8,000/- as interim maintenance to the petitioner and to the new born child. From the above, it is clear that the total amount which the respondent has to pay to the petitioner is about Rs.16,000/- per month. It is also to be noted that the order in M.C. awarded Rs.8,000/- has become final, but the main D.V.C. is still pending, wherein the plea of the petitioners and the respondent with regard to quantum of income if any earned, can be decided after adducing reasonable and cogent evidence.

As seen from the record, the respondent herein was earning substantial amount in the year 2010 itself which fact stands established through the evidence of P.W.2. Therefore, it is very difficult to accept that over a period of time his income has gone down though he is capable of working hard. Having regard to the circumstances referred to above the quantum of Rs.8,000/- awarded by the trial court as maintenance the petitioner and her minor son, cannot be said to be on a higher side. Accordingly, the order passed in F.C.M.C. is hereby confirmed.

Insofar as the interim maintenance in D.V.C. is concerned, the lower Appellate Court found that the wife is qualified to work as a Nurse which are not challenged by preferring any revision or appeal. On the other hand, the trial court while awarding interim maintenance of Rs.15,000/- to the petitioner found that the respondent is earning Rs.30,000/- to Rs.40,000/- per month. Both the trial court and the appellate court in D.V.C., while dealing with the interim application, found that the respondent is earning about Rs.30,000/- to Rs.40,000/- per month. Whereas the lower appellate court after referring to the qualifications and the evidence of P.W.1 observed as under :

“Therefore, I am of the view that the income of the petitioner can be taken as Rs.8,000/- per month. It is important to note that, wife shall be placed in the same financial status of the husband. When the first respondent is earning Rs.30,000/- to Rs.40,000/- per month, even if the lower ends at Rs.30,000/- per month is taken he can certainly pay Rs.8,000/- as interim maintenance to the petitioner.”

Having held so, the Court awarded Rs.8,000/- per month to be paid to the petitioner and the new born child. Since the main D.V.C. itself is still pending, the issue as to Whether the petitioner is earning Rs.8,000/- p.m., as held by the lower appellate court needs to be decided basing on the evidence adduced therein.

Having regard to the facts and circumstances of the case and since the amount of Rs.8,000/- awarded in F.C.M.C. No.18 of 2014 was not dealt with while fixing the quantum of interim maintenance in D.V.C., by the trial court and also by the appellate court, it would be just and proper to fix the interim maintenance to be paid as an interim measure in D.V.C. No.27 of 2014 at Rs.4,000/- per month to the petitioner and to the new born child.

Hence, for the aforesaid reasons Crl.R.C.No.827 of 2016 filed against the order in F.C.M.C. No.18 of 2014 is dismissed, while the Crl.R.C. No.828 of 2016 is allowed in part by reducing the payment of interim maintenance from Rs.8,000/- to Rs.4,000/- per month to be paid on or before 5th of every month. It is needless to mention that the trial court shall proceed with D.V.C. No.27 of 2014 and decide the matter as expeditiously as possible preferably within a period of four months from the date of receipt of the order, uninfluenced by the findings arrived at. Miscellaneous petitions pending if any, in these Criminal Revisions shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 06.04.2016

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