

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1079 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the orders dated 01.11.2011 in M.C.No.130 of 2008 on the file of the Family Court-cum-IV Additional District and Sessions Judge at Vijayawada.

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 are briefly as follows:

The marriage of the petitioner was performed with the respondent on 01.04.1999 as per Muslim Rites and Caste Custom. Immediately after the marriage, the petitioner joined the respondent at Mylavaram to lead marital life. On the advice of the respondent, the petitioner started a kirana shop in the front room of the house. The respondent used to take away money from the petitioner. The respondent and his mother subjected the petitioner to cruelty demanding additional dowry. The petitioner filed a complaint against the respondent and his family members on the file of the Station House Officer, Mylavaram Police Station, who in turn registered a case in Crime No.76 of 2008 for the offence punishable under Section 498-A read with 34 I.P.C. The respondent has been working as an Accountant and earning Rs.3,000/- per month. The petitioner is not having any source of income. Hence, she filed a petition seeking maintenance of Rs.3,000/- from the respondent. The respondent filed counter denying all the averments made in the petition *inter alia* contending that the petitioner herself left the matrimonial house; therefore, she is not entitled for maintenance. The further case of the respondent is that the petitioner has been running the kirana shop;

therefore, she is not entitled to claim maintenance. Hence, the petition may be dismissed.

4. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and no documents were marked. On behalf of the respondent, RWs.1 to 3 were examined and no documents were marked.

5. Basing on the oral evidence and other material available on record, the trial Court arrived at a conclusion that the respondent willfully and intentionally neglected to provide maintenance to the petitioner and allowed the petition by awarding maintenance of Rs.1500/- per month to the petitioner. Feeling aggrieved by the orders of the trial Court, the respondent (husband) preferred the present revision.

6. The contention of the learned counsel for the respondent is two fold: (1) the finding of the trial Court that the respondent failed to provide maintenance to the petitioner is not sustainable; and (2) the trial Court allowed the petition on assumptions and presumptions.

7. *Per Contra*, the learned counsel for the petitioner submitted that the findings recorded by the trial Court are based on material much less legally admissible material. He further submitted that there is no illegality or irregularity in the orders of the trial Court, which warrants interference of this Court.

8. Now the point that arises for consideration is whether the petitioner is entitled for maintenance, if so, to what amount?

POINT:

9. To substantiate the case, the petitioner examined herself as PW.1 and PW.2 is none other than the own brother of the petitioner. To demolish the case of the petitioner, the respondent examined

himself as RW.1. RWs.2 and 3 were examined to prove the financial status of the respondent. It is an admitted fact that the marriage of the petitioner was performed with the respondent on 01.04.1999 as per Muslim Rites and Caste Custom. Immediately after the marriage, the petitioner joined the respondent at Mylavaram. It is also an admitted fact that the petitioner run the kirana shop for some time at Mylavaram. By the time of filing the petition, the petitioner was residing at her parents' house at Vijayawada. As per the testimony of PWs.1 and 2, the respondent and his family members subjected the petitioner to cruelty for additional dowry. A perusal of the record clearly reveals that the Station House Officer, Mylavaram Police Station registered a case in Crime No.76 of 2008 against the respondent and his family members for the offence punishable under Section 498-A read with 34 I.P.C. The oral testimony of PWs.1 and 2 clearly indicates registration of criminal case against the respondent and his family members, which lends support to the version of the petitioner. RWs.2 and 3 did not state anything about the conduct of the petitioner. Unfortunately, bad weather prevailed in the family life of the petitioner and respondent. The material placed before this Court clinchingly establishes that the respondent intentionally and willfully neglected to provide maintenance to the petitioner. The contention of the learned counsel for the respondent that the petitioner herself left the matrimonial home of the respondent cannot be accepted in view of the registration of the criminal case against the respondent and his family members. The finding of the trial Court that the respondent intentionally and willfully neglected to provide maintenance to the petitioner 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 failed to provide maintenance to the petitioner.

10. There is a moral and social obligation on the part of the husband

to provide maintenance to his wife unless the wife herself voluntarily left the matrimonial home of the husband. The petitioner has taken a specific stand in the petition that the respondent has been working as an Accountant. As per the testimony of RWs.2 and 3, the respondent has been working as an Accountant and earning Rs.3,000/- per month. Even as per the testimony of RW.1, he used to earn Rs.60/- per day. The oral testimony of RWs.2 and 3 supports the version of the petitioner that the respondent has been working as an Accountant. Absolutely there is no material on record to establish that the respondent used to earn Rs.9,000/- per month. The fact remains that the respondent has been earning Rs.3,000/- per month. It is not the case of the respondent that the petitioner is having source of income to maintain herself. In such circumstances, the petitioner is entitled to claim maintenance from the respondent by filing a petition under Section 125 Cr.P.C. The Court has to take into consideration the socio-economic conditions of the parties while granting the quantum of maintenance. An amount of Rs.1500/- per month is hardly sufficient for sustenance of an individual in view of the prevailing price index. The finding of the trial Court that the petitioner is entitled for maintenance of Rs.1500/- per month is sustainable either on facts or on law. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that granting of an amount of Rs.1500/- per month is on higher side. There is no illegality or irregularity in the orders passed by the trial Court, which warrants interference of this Court. Hence, the criminal revision lacks merits and *bona fides*.

11. In the result, the Criminal Revision Case is dismissed.

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

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T.SUNIL CHOWDARY, J

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Date: 21.06.2016

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