

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 2571 of 2014

ORDER:

Assailing the order dated 29.11.2014 passed in M.C. No.4 of 2013 on the file of Additional Family Court at Hyderabad, the present Revision is filed under Sections 397 and 401 of Cr.P.C.

For the sake of convenience, the parties hereinafter will be referred to as arrayed in the M.C.

The factual matrix of the case is as under :

The first petitioner is the legally wedded wife of the respondent. Their marriage took place on 30.10.2009 at Shan Bagh, Eddi Bazar, Hyderabad as per Muslim rites and customs. At the time of marriage, on a demand made by the respondent and his parents, petitioner's mother gave Rs.50,000/- cash, 7 tulas gold, 20 tulas silver, Hero Honda Passion Motorcycle, costly clothes, household articles and Jahez articles worth Rs.2,50,000/- . The mother of the first petitioner invested, in all, a sum of Rs.6.50 lakhs to perform the marriage. After marriage, the first petitioner joined the company of the respondent, and out of wedlock the first petitioner gave birth to a female child i.e., the second petitioner herein, on 30.11.2011, for which the respondent and his family members abused her and demanded Rs.2.00 lakhs as additional dowry. When the mother of the first petitioner invited the respondent and his family members for "Chilla function", neither the respondent nor his parents attended the same. On 10.01.2012 when the first petitioner was not allowed into the house. When she explained that giving birth to a female child is not in the hands of the first petitioner, the respondent allowed the first petitioner. But the respondent continued harassing the first

petitioner for additional dowry of Rs.2.00 lakhs. After knowing about the next pregnancy of the first petitioner, the respondent proposed to give, the to be born child, to his elder sister Naseem Begum for adoption. As such differences between the first petitioner and respondent arose on the proposal of adoption. While things stood thus, the respondent stated that he fell in love with one Afshan Begum whom he wanted to marry, but due to pressure from the mother of the deceased he married the petitioner. The respondent and his sister beat the petitioner and drove her away from the matrimonial house on 05.05.2012 with wearing apparels by retaining her gold, silver and jahez articles. When the brother of the first petitioner and elders tried to reconcile, the respondent refused to settle the matter. When the first petitioner went to the house of the respondent on coming to know the death of her mother-in-law, the respondent threatened her to bring Rs.2.00 lakhs or else he would pronounce divorce. On 28.09.2012 the respondent beat the first petitioner, on which the first petitioner gave a report which led to registration of Crime No.268 of 2012 u/s.498-A IPC. Since the respondent was earning Rs.1,50,000/- per month, the petitioners filed the present M.C. seeking maintenance of Rs.15,000/- p.m., to each petitioner i.e., Rs.30,000/- per month in addition to costs of the petition at Rs.10,000/-.

The respondent filed counter contending that the petitioner herself left the company of the respondent with a demand to provide separate residence in the locality of her parents or else to pronounce divorce. He also states that the first petitioner is an educated lady having sufficient source of income and the respondent always treated the first petitioner with love and affection but the first petitioner used to quarrel with respondent on

petty issues and left the house without any intimation as she preferred to stay at her parents house. It is stated that the respondent is earning Rs.3,000/- per month by doing petty business and he has to look after his old age father being the only bread winner of his family.

The first petitioner examined herself as P.W.1 and in support of her evidence got marked Exs.P-1 to P-10. The respondent examined himself as R.W.1 but no documents were marked on his behalf. The trial court after appreciating the oral and documentary evidence on record, partly allowed the M.C. directing the respondent to pay Rs.5,000/- per month towards maintenance to the first petitioner. It further directed the petitioner to pay Rs.2,000/- per month towards maintenance to the second petitioner from the date of the petition till second petitioner attained majority. The respondent was also directed to pay Rs.5,000/- towards costs of the petition.

As against the said order, the present Criminal Revision is preferred by the respondent/husband.

Heard the learned counsel appearing for the Revision petitioner and learned counsel appearing for the respondents.

As seen from the record, there is no dispute with regard to the relationship of the revision petitioner with the second respondent herein. The only ground raised by the learned counsel for the revision petitioner is that the quantum of the maintenance awarded by the trial court is on higher side and hence seeks reduction of the same. He submits that he is doing business in chicks and getting only Rs.3,000/- per month and he is having old age father to be looked after. Hence submits that awarding

maintenance of Rs.7,000/- (Rs.5,000/- + Rs.2,000/-) per month is on higher side. He further submits that he being petty business man in chicks will not be in a position to pay such huge amount to the respondents.

On the other hand, the learned counsel for the second respondent opposed the same contending that the petitioner is doing business in foreign birds and getting Rs.25,000/- per month as income. He further submits that the second respondent herein has to maintain her child i.e., 3rd respondent herein who is a one year old baby.

In view of the fact that there is no dispute with regard to the relationship between the parties the question would be whether the quantum of maintenance awarded by the trial Court can be said to be on a higher side.

As seen from the impugned order, the petitioner admitted in his counter that he is selling chicks, but he did not produce any document with regard to his income. The petitioner also admitted in his evidence that he is the only earning member to the family, as such the claim of the petitioner that he is earning Rs.3,000/- per month appears to be incorrect. In view of the admission made by the petitioner with regard to his business and his failure to produce any cogent evidence to show his income, he is liable to pay suitable amount as maintenance. At the same time, it is to be noted that since respondent No.2 has no independent source of income she has to be provided with substantial amount to make out her decent living and also to look after her child, who is aged about one year. Taking into consideration, not only the income of the petitioner but also the cost of living and expenditure which are incurred in day today life, this Court is of the view that the

quantum of maintenance awarded by the trial Court Rs.7,000/- (Rs.5,000/- and Rs.2,000/-) per moth cannot be said to be on higher side. In view of the evidence of PW.1 and RW.1 and also considering the financial status of the petitioner, the order under challenge warrants no interference.

Accordingly, the Criminal Revision Case is dismissed. As a sequel to it, miscellaneous petitions, pending if any in this Criminal Revision Case shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Date: 14.03.2016
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