

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.773 OF 2010

ORDER:

This revision is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 24-02-2009 in F.C.Crl.Mis.Case No.9 of 2008 on the file of the Judge, Family Court, Karimnagar.

2. Learned counsel for the petitioner submitted that the Court below ought not to have passed the order without service of notice on the petitioner. He further submitted that the Court below enhanced the maintenance amount from Rs.2,000/- to Rs.3,500/- per month to the respondents 2 and 3 herein on erroneous and untenable grounds.

3. Per contra, learned counsel for the respondents 2 and 3 submitted that the notice sent to the petitioner herein returned with an endorsement unclaimed, therefore, the Court below passed the orders on merits. He further submitted that there are grounds, much less valid grounds to interfere with the order of the Court below.

4. The facts, leading to filing of the present revision are briefly, as follows:

The marriage of the 2nd respondent with the petitioner herein was performed on 18-11-2004 at Karimnagar as per Hindu Rites and Caste Customs. Immediately after the marriage, the 2nd respondent joined the petitioner to lead marital life. Out of their lawful wedlock, they were blessed with one daughter i.e., the 3rd respondent. Due to one reason or the other, disputes arose between the 2nd respondent and the petitioner. Therefore, the 2nd respondent along with her daughter i.e., 3rd respondent has been residing at her parents house. Respondents 2 and 3 filed M.C.No.16 of 2006 on the file of the Additional Judicial Magistrate of I Class, Karimnagar against the petitioner seeking maintenance. The trial Court after considering the oral and documentary evidence available on record, allowed the M.C. by granting maintenance at the rate of Rs.1,000/- each to the respondents 2 and 3 from the date of order. Aggrieved by the said order, the petitioner filed Crl. Revision Petition 52 of 2007 on the file

of the V Additional Sessions Judge, Karimnagar and the same was dismissed. Thereafter, the respondents 2 and 3 filed F.C.CrI.Mis.Case No.9 of 2008 before the Judge, Family Court, Karimnagar for enhancement of maintenance amount. The Judge, Family Court, after considering the material on record, partly allowed the petition by enhancing maintenance of Rs.1,000/-per month to Rs.2,000/- per month to the 2nd respondent and from Rs.1,000/- per month to Rs.1500/- per month to the 3rd respondent. Hence, this revision by the petitioner.

5. Now, the points that arise for consideration in this revision are; 1) whether the Court below is not justified in enhancing the maintenance amount of the respondents 2 and 3 herein from Rs.2,000/- per month to Rs.3,500/- per month and 2) whether there is any illegality or irregularity in the order of the Court below, which warrants interference of this Court?

6. The first and foremost contention of the learned counsel for the petitioner herein is that the Court below passed the order without service of notice on the petitioner. A perusal of the record reveals that the Court below sent notice to the petitioner herein and the same was returned with an endorsement "intimation served, addressee not claimed". A perusal of the record reveals that for one reason or the other, the petitioner has not taken notice. In such circumstances, the Court can safely presume that notice was served on him. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioner herein that the Court below passed an ex-parte order.

7. At the time of filing M.C.No.16 of 2006, the petitioner was working in Reliance Infocom Ltd.,. The fact remains that the petitioner is an employee. Ex.P2 is salary certificate of the petitioner. A perusal of the record reveals that the 3rd respondent is studying in Gouthami School in Bolawada, Karimnagar town. As per the recitals of Ex.P3, the 2nd respondent is paying monthly school fee of Rs.300/-. Absolutely, there is no material on record to establish that the 2nd respondent is having any landed property or any source of income. In such circumstances, it may not be possible for her to provide basic amenities to the 3rd respondent.

Now the 3rd respondent is aged about 10 or 11 years. It may not be possible for her to prosecute her studies without financial help of the petitioner. The Court has to take into consideration the ground realities as well as financial status of the parties while disposing of the petition of this nature. Respondents 2 and 3 have been residing in Karimnagar, which is municipal corporation. It is not the case of the petitioner that the 2nd respondent is having own house in Karimnagar. It is very difficult to survive two individuals with an amount of Rs.2,000/- per month. The Court below has taken into consideration the problems being faced by the respondents 2 and 3 and enhanced maintenance amount from Rs.1,000/- to Rs.2,000/- to the 2nd respondent and from Rs.1,000/- to Rs.1,500/- to the 3rd respondent. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner herein that the Court below enhanced the maintenance amount without taking into consideration the financial status of the petitioner. I am fully agreeing with the findings recorded by the Court below. There is no illegality or irregularity in the order of the Court below, which warrants interference of this Court. Hence, both points are answered in favour of the respondent.

8. Accordingly, the Criminal Revision Case dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 13-07-2016.

Hsd