

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1708 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 18.07.2012 in M.C.No.9 of 2012 on the file of the Family Court-cum-Additional District Judge, East Godavari District 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 are briefly as follows:

The marriage of the first petitioner was performed with the respondent on 06.05.1999 at Devi Kalyana Mandapam, Devi Chowk, Rajahmundry as per Hindu Rites and Caste Custom. Immediately after the marriage, the first petitioner joined the respondent to lead happy marital life. Out of lawful wedlock, the first petitioner and the respondent were blessed with two children i.e., petitioner Nos.2 and 3. The respondent subjected the first petitioner to cruelty for additional dowry. The respondent did not visit the house of the first petitioner since April, 2011. The respondent is earning Rs.1,00,000/- per month as a Civil Contractor. Hence, the petitioners filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs.10,000/- per month to petitioner No.1 and Rs.5,000/- per month each to petitioner Nos.2 and 3. For one reason or other, the respondent did not choose to appear before the trial Court.

4. To substantiate the case, the first petitioner examined herself as PW.1 and got marked Exs.A.1 to A.3.

5. Basing on the oral evidence and other material available on record, the trial Court allowed the petition by awarding maintenance of

Rs.6000/- per month (Rs.3,000/- to petitioner No.1 and Rs.1,500/- each to petitioner Nos.2 and 3). Feeling aggrieved by the order of the trial Court, the petitioners preferred the present revision.

6. The contention of the learned counsel for the petitioners is two fold: (1) the trial Court granted meager amount to the petitioners without taking into consideration the financial status of the respondent; and (2) the order passed by the trial Court is not sustainable either on facts or on law.

7. Now the points that arise for consideration is:

1. Whether the petitioners are entitled for enhancement of the maintenance amount or not?

2. Whether there is any illegality or irregularity in the order passed by the trial Court or not?

8. Point Nos.1 and 2 are interlinked with each other hence,

I am inclined to address both points simultaneously to avoid repetition.

9. It is an admitted fact that the marriage of the first petitioner was performed with the respondent in the year 1999. Out of lawful wedlock, the first petitioner and the respondent were blessed with two children i.e., petitioner Nos.2 and 3. As per the allegations made in the petition, the respondent did not visit the house of the first petitioner. The material placed before this Court clinchingly establishes that the respondent intentionally and willfully neglected to provide maintenance to the petitioners. The petitioners having no other alternative approached the trial Court by filing a petition under Section 125 Cr.P.C. A perusal of the record reveals that the first petitioner herein filed D.V.C.No.2 of 2012 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry seeking various reliefs under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the D.V.C. Act'). It appears that the first petitioner

also seeking maintenance under the D.V.C. Act. If really the petitioners are not entitled to claim maintenance, what prevented the respondent to appear before the trial Court and file counter opposing the petition. Basing on the material available on record, this Court can safely arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioners.

10. As per the averments made in the petition, the respondent used to earn Rs.1,00,000/- per month as a Civil Contractor. Ex.A.1 is the Marriage photograph, Ex.A.2 is the Photocopy of ration card and Ex.A.3 is the Electricity bill. If really the respondent used to earn Rs.1,00,000/- per month as a Civil Contractor, what prevented the first petitioner to produce the necessary documents before the trial Court. Except the self-served testimony of PW.1, there is no other convincing evidence to establish that the respondent used to earn Rs.1,00,000/- per month. It is not uncommon to exaggerate the things by the parties to the proceedings, more particularly in matrimonial cases, in order to gain the sympathy of the Court. Absolutely there is no material on record to establish the income of the respondent. In view of absence of documentary evidence, the trial Court made some guess work and allowed the petition in part. In the absence of any documentary evidence, it may not be possible for this Court to arrive at a conclusion that the amount of maintenance awarded by the trial Court is on lower side. Taking into consideration the socio-economic conditions of the parties, I am of the considered view that awarding of maintenance of Rs.3,000/- per month to petitioner No.1 and Rs.1,500/- per month each to petitioner Nos.2 and 3 is just and reasonable. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court. There are no grounds much less valid grounds to enhance the maintenance amount. Point Nos.1 and 2 are answered accordingly.

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

stage of admission. _____

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

-

T.SUNIL CHOWDARY, J

Date: 24.06.2016

lvd

-

-