

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.1579 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 02-04-2013 in M.C.No.9 of 2011 on the file of the Judge, Family Court-cum-VI Additional District Judge, Kadapa.

2. Learned counsel for the petitioner herein submitted that the trial Court without considering the financial status of both parties, dismissed the M.C. He further submitted that mere granting of maintenance under the provisions of the DVC Act by itself is not a valid ground to dismiss the M.C.

3. Per contra, learned counsel for the 1st respondent herein submitted that the petitioner is having sufficient means to maintain herself and therefore, she is not entitled to claim maintenance under Section 125 Cr.P.C. She further submitted that even as per the evidence of P.W.2, family of the petitioner is having three houses and therefore, she is not entitled to claim maintenance.

4. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed before the trial Court in the above M.C.

5. The facts, leading to filing of the present revision are as follows: The marriage of the petitioner was solemnized with the respondent on 15-12-2002 at K.S.R. Kalyanamantapam, D.C. Road at Kadapa according to the Muslim customs. After marriage, the petitioner joined the respondent at Kadapa to lead happy marital life. As the respondent and his family members started harassing the

petitioner for additional dowry, she lodged a complaint before the police. The respondent faced trial in C.C.No.24 of 2009 on the file of the Special Judl. I Class Magistrate, Prohibition and Excise, Kadapa, for the offence punishable under Section 498-A IPC. Thereafter, the petitioner filed DVC No.27 of 2007 on the file of the I Addl. Judl. Magistrate of I Class, Kadapa, and the same was allowed by granting maintenance at Rs.1500/- per month. The petitioner also filed the above M.C. under Section 125 Cr.P.C. seeking maintenance.

6. The respondent filed counter denying the allegations made in the petition.

7. During the course of trial, on behalf of the petitioner P.Ws. 1 and 2 were examined and Exs.A1 to A4 were marked. The respondent himself was examined as R.W.1 and got marked Exs.B1 to B4 on his behalf.

8. After considering both oral and documentary evidence available on record, the trial Court dismissed the above M.C. Hence, this revision.

9. Now the point that arises for consideration in this revision is whether the trial Court is justified in dismissing the M.C.?

10. There is no dispute with regard to the *inter se* relationship between the parties. It is an admitted fact that the respondent is working as a Photographer in Andhra Jyothi daily newspaper and getting gross salary of Rs.14,281/- and net salary of Rs.13,118/- per month. The petitioner and the respondent were not blessed with children out of their lawful wedlock. The petitioner brought up one child. The trial Court dismissed the M.C. on the sole ground

that when the petitioner is capable of maintaining one child, she is not entitled for maintenance. There is a social and moral obligation on the part of the respondent to provide reasonable amount for maintenance of the petitioner. The only question to be considered under Section 125 Cr.P.C. is whether the husband is intentionally and willfully neglecting to provide maintenance to his wife. The trial Court has not considered that aspect. The Court has to consider the financial status of both parties. The trial Court has not given a finding that the respondent is not financially sound to provide maintenance to the petitioner. The trial Court dismissed the petition on the sole ground that she is bringing up a child. The ground on which, the trial Court dismissed the petition is not legally sustainable.

11. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the order of the trial Court and to remand the case to the trial Court to consider the same afresh.

12. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 02-04-2013 in M.C.No.9 of 2011 on the file of the Judge, Family Court-cum-VI Additional District Judge, Kadapa. However, the matter is remanded to the trial Court with a direction to dispose of the above M.C. afresh after affording reasonable opportunity to both parties to adduce evidence and also after framing points for consideration. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 16-11-2016.

Hsd