

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Criminal Revision Case No.1570 of 2015

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., challenging the impugned order dated 24.07.2015 made in Cr.I.M.P.No.2544 of 2014 in MC No.20 of 2008 on the file of the Additional Judicial Magistrate of First Class, Tiruvuru.

2. Heard the learned counsel for the petitioner and the learned counsel for respondents 1 to 3.

3. The contention of the learned counsel for the petitioner is two fold. (1) The trial court without giving cogent findings with regard to the income of the petitioner, allowed the petition. (2) The findings recorded by the court below are not based on evidence, much less, legally admissible evidence; therefore, it is a fit case to set aside the order of the lower court.

4. Per contra, learned counsel for respondents 1 to 3 submitted that for the reasons best known to the petitioner, he did not chose to file counter, opposing the petition. He further submitted that the petitioner is having sufficient means and source of income to pay maintenance to the respondents.

5. The facts, which are relevant for disposal of the present case, are briefly as follows:

The marriage of the petitioner was performed with the 1st respondent in the year 1996 as per Hindu rites and caste customs. Immediately after the marriage, the 1st respondent joined the petitioner to lead the marital life. Out of lawful wedlock, the petitioner and 1st respondent were blessed with one son (2nd respondent) and one daughter (3rd respondent). For one reason or the other, disputes arose between the petitioner and the 1st respondent. The respondents 1 to 3 have filed MC

No.20 of 2008 on the file of the Judicial Magistrate of I Class, Tiruvur seeking maintenance from the petitioner. After full-fledged trial, the trial court allowed MC No.20 of 2008 vide order dated 18.12.2009 by granting maintenance of Rs.1500/- per month to the 1st respondent and Rs.750/- per month each to respondents 2 and 3. Feeling aggrieved by the orders dated 18.12.2009 of the trial court, the petitioner herein filed Crl.R.C.No.500 of 2010 on the file of this court and the same was allowed in part by reducing the quantum of maintenance to the 1st respondent from Rs.1500/- per month to Rs.1000/- per month.

6. While things stood thus, the respondents 1 to 3 herein have filed Crl.M.P.No.2544 of 2014 in MC No.20 of 2008 before the lower court, under Section 127(1) of Cr.P.C., seeking enhancement of maintenance from Rs.1000/- to Rs.5000/- per month to the 1st respondent and Rs.750/- to Rs.5000/- per month to each respondents 2 and 3.

7. In the said Crl.M.P.No.2544 of 2014, on behalf of the petitioners, PW.1 was examined and Exs.P.1 to P.3 were marked and on behalf of the respondent, RW.1 was examined and Exs.R.1 to R.3 were marked. Basing on the oral and documentary evidence and other material available on record, the trial court allowed the petition by enhancing the maintenance from Rs.1000/- to Rs.2,000/- to the 1st petitioner therein and from Rs.750/- each to Rs.3000/- each to the petitioners 2 and 3 therein. Aggrieved by the same, the respondent therein filed the present revision case.

8. Now the point for consideration is whether there are any grounds to set aside the orders of the trial court?

9. There is no dispute between the parties with regard to *inter se* relationship. The 2nd respondent is aged 16 years, studying Intermediate and the 3rd respondent is aged 14 years, studying 10th Class, by the time of filing of Crl.M.P.No.2544 of 2014.

10. A perusal of the record reveals that the respondents 1 to 3 have filed OS No.46 of 2008 on the file of the Senior Civil Judge, Nuzvid and the same was allowed by granting a preliminary decree. At the time of arguments, learned counsel for the petitioner submitted that the father of the petitioner had filed an appeal challenging the decree and judgment in OS No.46 of 2008. It is not in dispute that the petitioner is having mango garden in an extent of Ac.1.00 cents and 70 cents of non-agricultural land in Visannapeta village. It is the duty of the petitioner to provide reasonable amount to the respondents towards their maintenance. MC No.20 of 2008 was allowed way back in the year 2009. It is a known fact that the cost of living has been increasing day by day due to the prevailing price index. Now a days, parents have to spend huge amounts for education of their children. Admittedly, respondents 2 and 3 are students and the 1st respondent has been residing at her parents' house.

11. The petitioner has not adduced any evidence before the trial court that the respondents are having any source of income. At the time of arguments, learned counsel for the petitioner submits that the petitioner has been working in rice mill and getting a meager salary of Rs.6000/- per month. While deciding this type of matters, the court has to take into consideration the financial status of the parties to the proceedings. In the absence of positive evidence, some guess work is inevitable to grant maintenance.

12. A perusal of the record further shows that the petitioner herein has not filed any counter in CrI.M.P.No.2544 of 2014. If really, he has no source of come, what prevented him to file a counter? There is no doubt mere non-filing of the counter by itself is not a sufficient ground to accept the case of the petitioner. Without filing the counter before the trial court, the petitioner is not entitled to say that he is not having sufficient means or source of income.

13. The trial court considered the oral and documentary evidence in right prospective and arrived at a conclusion that the respondents are not having any source of income and hence I accept the findings recorded by the trial court.

14. An amount of Rs.2000/- per month is hardly sufficient for the sustenance of the 1st respondent and an amount of Rs.3000/- each per month is hardly sufficient for education of respondents 2 and 3. The trial court considered the various aspects and granted maintenance at Rs.2000/- per month to the 1st respondent and Rs.3000/- per month each to respondents 2 and 3.

15. Viewed from any angle, I am of the considered view that the amount of maintenance granted by the trial court to the respondents is not on higher side. There is no illegality, irregularity or impropriety in the orders of the trial court, which warrants interference by this court while exercising revisional jurisdiction under Section 397 Cr.P.C.

16. Having regard to the facts and circumstances of the case, the criminal revision case is liable to be dismissed and is accordingly, dismissed. Miscellaneous petitions, if any pending in this case, shall stand closed.

Date: 26.10.2016.
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T. SUNIL CHOWDARY, J

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

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Date: 26.10.2016

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