

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1738 OF 2012

ORDER:

This Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C. challenging the order dated 08.02.2012 in M.C.No.65 of 2011 on the file of the Judge, Family Court, Secunderabad.

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 03.02.2001 at Tirupati as per Hindu Rites and Caste Custom. At the time of marriage, the parents of the first petitioner gave cash of Rs.50,000/- and gold ornaments to the respondent towards dowry. Immediately after the marriage, the first petitioner joined the respondent at Hyderabad to lead happy marital life. Out of lawful wedlock, the first petitioner and the respondent were blessed with a son i.e., petitioner No.2. The respondent subjected the first petitioner to cruelty for additional dowry. The respondent filed O.P.No.111 of 2004 on the file of the Court of the I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad seeking restitution of conjugal rights. The first petitioner joined the respondent at Kukatpally, Hyderabad, but the respondent left the house without any reasons. The first petitioner has been staying at her parents' house along with her son. The respondent is earning Rs.40,000/- per month on the real estate business. Hence, the petitioners filed a petition claiming maintenance of Rs.10,000/- per month each. The respondent filed counter denying all the averments made in the petition *inter alia* contending that O.P.No.111 of 2004 filed by him for restitution of

conjugal rights was allowed on 02.02.2006, but the first petitioner did not join with him. Therefore, he filed O.P.No.692 of 2008 on the file of the Judge, Family Court, Ranga Reddy District at L.B.Nagar, Hyderabad seeking divorce and the same was allowed on 31.12.2008. At present, the respondent is residing in his native place. Hence, the petition may be dismissed.

4. To substantiate the case, the first petitioner examined herself as PW.1 and got marked Exs.A.1 and A.2. To demolish the case of the petitioners, the respondent examined himself as RW.1.

5. Basing on the oral evidence and other material available on record, the trial Court allowed the petition in part by awarding maintenance of Rs.2,000/- per month each to the petitioners. Feeling aggrieved by the order of the trial Court, the respondent (husband) preferred the present revision.

6. The contention of the learned counsel for the respondent is two fold: (1) the trial Court ought not to have granted maintenance to the petitioners as the first petitioner left the matrimonial house of the respondent without any justifiable grounds; and (2) the quantum of maintenance granted to the petitioners is on higher side.

7. Now the crucial question that falls for consideration is whether the first petitioner herself left the matrimonial house of the respondent with justifiable cause or not?

8. It is an admitted fact that the marriage of the first petitioner was performed with the respondent on 03.02.2001 at Tirupati as per Hindu Rites and Caste Custom. Out of lawful wedlock, the first petitioner and the respondent were blessed with a son i.e., petitioner No.2. For one reason or other, the first petitioner has been residing at her parents' house. As seen from the testimony of PW.1, she joined the respondent in pursuance of orders passed in O.P.No.111 of 2004, but the

respondent left the house without any reasons. The fact remains that bad weather prevailed in the family life of the first petitioner and the respondent. As rightly pointed out by the trial Court, the respondent filed O.P.No.111 of 2004 for restitution of conjugal rights and O.P.No.692 of 2008 seeking divorce. In such circumstances, the first petitioner is justified in staying at her parents' house. A perusal of the record reveals that the respondent has obtained *ex parte* divorce. The material placed before this Court establishes that due to the behaviour of the respondent, the first petitioner left the matrimonial house. For the reasons best known, the respondent requested the trial Court to handover the second petitioner to him. If really the respondent is interested to take custody of the second petitioner, the remedy available to him is to file a petition before the appropriate forum for custody of the second petitioner. A perusal of the record clearly reveals that the respondent has not evinced any interest to look after the welfare of his son also. The first petitioner is justified to left the matrimonial home of the respondent. I am fully agreeing with the finding recorded by the trial Court. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the respondent that the first petitioner left the matrimonial home of the respondent without any justifiable cause. The question is answered accordingly._____

9. The second question that falls for consideration is whether the quantum of maintenance granted to the petitioners is on higher side or not?_____

10. As per the testimony of PW.1, the respondent used to earn Rs.11,000/- per month on real estate business. Even as per the testimony of respondent, he did real estate business in Hyderabad previously. Taking into consideration the financial status of the parties, the trial Court granted maintenance of Rs.2,000/- each to the petitioners. It is not the case of the respondent that the first petitioner is

having source of income. The Court has to take into consideration the ground realities while disposing of the petitions of this nature. It may not be possible for the first petitioner to look after the welfare of the second petitioner with a meager amount of Rs.2,000/- per month each. It is a matter of common knowledge that the amount of Rs.4,000/- per month is hardly sufficient for sustenance of the petitioners in view of the prevailing price index. Viewed from any angle, awarding of maintenance of Rs.2,000/- per month each to the petitioners is not on higher side. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court.

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