

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CrI. R.C. No.833 of 2014

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 28.02.2014 passed in M.C.No.11 of 2013 on the file of the Judicial Magistrate of First Class cum Special Mobile Court, Krishna at Machilipatnam.

2. For the sake of convenience, the parties to this revision are hereinafter referred to as petitioners and respondent as arrayed in the lower court.

3. Heard both sides and perused the record.

4. The contention of the learned counsel for the respondent-husband is in two fold. (1) The 1st petitioner-wife intentionally and willfully left the matrimonial home and therefore, she is not entitled for maintenance; (2) The 1st petitioner is not cooperating with the respondent, therefore, she is not entitled to claim maintenance under Section 125 Cr.P.C. Per contra, the contention of the learned counsel for the 1st petitioner-wife is three fold: (1) the respondent intentionally and willfully neglected to look after the welfare of the petitioners, (2) the 1st petitioner has no source of income to maintain herself and her children (petitioners 2 and 3), and (3) there is no illegality or irregularity in the order passed by the trial court, which warrants interference of this court.

5. The facts leading to filing of the present petition are stated briefly as follows:

The marriage of the 1st petitioner was performed with the respondent on 31.04.2009 at Pedana Village of Krishna District, as per

Muslim Rites and Customs. At the time of the marriage, the respondent was working as a temporary employee in VTPS, Vijayawada. Immediately after the marriage, the 1st petitioner joined the respondent at Vijayawada and out of their lawful wedlock, they were blessed with two children i.e., petitioners 2 and 3. The respondent got job as Sub-Engineer in KTPS, Palvoncha and drawing monthly salary of Rs.40,000/-. After getting permanent employment, the respondent neglected the petitioners. In the year 2013, the 1st petitioner lodged a complaint before the police against the respondent. The 1st petitioner has been residing at her parents' house along with her children, due to the attitude of the respondent. The 1st petitioner filed a petition under Section 125 Cr.P.C. against the respondent claiming of maintenance in MC No.11 of 2013 on the file of the Judicial Magistrate of First Class cum Special Mobile Court, Krishna at Machilipatnam. The respondent filed a counter denying the allegations made in the petition and contending that the 1st petitioner herself left the matrimonial home and she is having source of income to maintain herself.

6. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and no documents were marked. On behalf of the respondent, no oral or documentary evidence was adduced. After thoughtful consideration of the evidence on record, the trial court allowed the petition by granting maintenance at Rs.8000/- per month to the 1st petitioner and Rs.5000/- per month each to petitioners 2 and 3. Feeling aggrieved by the said orders, the respondent-husband filed the present revision.

7. Now the points for consideration are (1) Whether the respondent intentionally and willfully neglected to maintain the petitioners? and (2)

Whether the amount of maintenance awarded by the trial court is on higher side, which warrants interference by this court?

8. Point No.1: To substantiate the case, the 1st petitioner herself examined as PW.1. PW.2 is the brother of 1st petitioner. There is no dispute with regard to *inter se* relationship between the parties. A perusal of the record reveals that by the time of marriage, the respondent was working as a temporary employee in VTPS, Vijayawada. Out of lawful wedlock, the 1st petitioner and respondent blessed with two children i.e., petitioners 2 and 3. For one reason or the other, disputes arose between the 1st petitioner and respondent, therefore, the 1st petitioner has been residing at her parents' house. A perusal of the record further reveals that the 1st petitioner lodged a complaint to the police stating that the respondent subjected her to cruelty. As per the testimony of PWs.1 and 2, the respondent intentionally and willfully neglected to look after the welfare of the petitioners. In the cross-examination of PWs.2 and 3, nothing is elicited to disbelieve their testimony.

9. Learned counsel for the respondent-husband strenuously contended that the 1st petitioner herself left the matrimonial home of the respondent without any justifiable cause. If really the 1st petitioner left the matrimonial home, what prevented the respondent to enter in to the witness box and substantiate his stand? For the reasons best known to him, the respondent did not enter in to the witness box. Whatever submitted by the learned counsel for the respondent-husband, is not substantiated by any oral or documentary evidence. In the absence of any evidence, much less legally admissible evidence, much weight cannot be attached to the contention of the learned counsel for the respondent-husband. The material available on record clinchingly establishes that the respondent intentionally and willfully neglected to maintain the petitioners. Therefore,

I am fully agreed with the findings recorded by the trial court on this aspect. Having regard to the facts and circumstances of the case, I am of the considered view that the respondent-husband intentionally and willfully neglected to maintain the petitioners, therefore, the petitioners are entitled to claim maintenance under Section 125 Cr.P.C.

10. Point No.2: It is the case of the 1st petitioner that she has no source of income whatsoever. The respondent did not adduce any oral or documentary evidence to substantiate that the 1st petitioner is having source of income, thereby, she is not entitled to claim maintenance under Section 125 Cr.P.C. On the other hand, the oral evidence of PWs.1 and 2 clinchingly establishes that the 1st petitioner has no source of income. In the cross-examination of PWs.1 and 2, nothing is elicited to establish that the 1st petitioner is having any source of income. The 1st petitioner, being the wife and petitioners 2 and 3, being the children of respondent, are entitled to claim a reasonable amount of maintenance from the respondent.

11. As per the testimony of PWs.1 and 2, the respondent has been working as Sub-Engineer in KTPS, Palvoncha of erstwhile Khammam District and drawing salary of Rs.40,000/- per month. In the cross-examination of PWs.1 and 2, nothing is elicited to shake their testimony so far as the factum of employment and salary of the respondent are concerned. Thus, the material on record clinchingly proves that the respondent is drawing monthly salary of Rs.40,000/-.

12. Taking into consideration of the financial status of both parties, the trial court granted maintenance at Rs.8000/- per month to the 1st petitioner and Rs.5000/- per month each to petitioners 2 and 3. By the time of filing of the petition, the 2nd petitioner is aged about 4 years and

3rd petitioner is aged about 2 years. The amount of Rs.8000/- to the 1st petitioner and a sum of Rs.5000/- per month to petitioners 2 and 3 is hardly sufficient for their maintenance, as well as for the educational expenses. Viewed from any angle, I am unable to accept contention of the learned counsel for the respondent that the amount of maintenance granted by the trial court is on higher side. The trial court has rightly considered various aspects and granted a reasonable amount of maintenance to the petitioners. There is no illegality or irregularity in the orders of the trial court, which warrants interference of this court while exercising the jurisdiction under Section 397 Cr.P.C.

13. The criminal revision case lacks merit and the same is accordingly, dismissed. Miscellaneous petitions, if any pending in this case, shall stand closed.

Date: 05.12.2016.
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T. SUNIL CHOWDARY, J

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

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Crl. R. C. No. 833 of 2014



Date: 05.12.2016

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