

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1561 OF 2015

ORDER:

The present Criminal Revision Case came to be filed by the petitioner under Sections 397 and 401 Cr.P.C., challenging the order dated 17.06.2015 passed in M.C.No.63 of 2012 by the Family Court-IV Additional District and Sessions Judge at Vijayawada.

2. The petitioner herein is the respondent, whereas the respondents herein are the petitioners in M.C.No.63 of 2012. For the sake of convenience, parties hereinafter will be referred to as arrayed in the Court below.

3. The averments in the M.C., are as under:

The 1st petitioner is wife and the 2nd petitioner is son of the respondent. The 1st petitioner was married to the respondent on 04.12.2007 at Sri Venkateswara Swamy vari Devasthanam, Labbipet, Vijayawada as per Hindu rites and customs. At the time of marriage, the parents of the 1st petitioner gave Rs.50,000/- towards dowry and 5 sovereigns of gold. On 02.07.2008 the 1st petitioner gave birth to a female child. When she intimated the same through telephone to the respondent, he replied stating that as she gave birth to a female child, he did not come to see the child. Unfortunately the female child expired on the same day. After October, 2008 the parents of the 1st petitioner dropped her at the house of the respondent. Since then the respondent and his family

members used to ill-treat her in all possible ways without providing food and used to harass her without any fault on her part.

On one occasion the respondent tried to kill her by catching hold of her tuft, beat her against the wall, tried to make her to consume poison mixed in cool drink and also tried to push her down from the first floor of the building saying that no one can do anything as he is an Advocate by profession. On 11.09.2011 the respondent dropped her at Gosala village by obtaining her signatures on blank white papers and informed her that he was going to Chennai to act in films and will take her back as and when he returns from Chennai. By that time, she was two months pregnant and later gave birth to a male child-2nd petitioner on 17.04.2010, but the respondent did not turn up to see her son. At the request of the respondents, her parents sent her to the respondent's house on 17.10.2011. Since then the respondent again started harassing the 1st petitioner by insisting her to cook the rice and curry only on wooden oven, even though the doctors advised her not to do such things. The respondent further demanded her to perform his marriage with her younger sister, who studied M.Sc Micro Biology and doing job. When she bluntly refused for the same, the respondent and his family members grew wild against her and increased their harassment against her. The respondent also used to suspect her character, abuse in filthy language and also demanded Rs.1,00,000/- towards additional dowry. On 01.11.2011 the respondent and his family members threatened her and beat her in

the presence of her family members and necked her out of the house with an intention to get rid of her. Upon which, she lodged a report, which came to be registered a case in Crime No.15 of 2012 of Penamaluru Police Station for an offence punishable under Section 498-A of IPC against the respondent and his family members.

It is said that the petitioner has no means and capacity to maintain herself and also to maintain the 2nd petitioner and that she is suffering with ill-health. Therefore, she claimed Rs.10,000/- per month for her and Rs.5,000/- per month to the 2nd petitioner towards maintenance and medical aid. It is further averred that the respondent is an Advocate by profession, earning Rs.30,000/- per month and also having immovable properties nearly Ac 8.00 of land and that he is financially well off.

4. The respondent filed his counter denying the averments in the petition except the relationship between the parties. Soon after the marriage, the 1st petitioner joined him and they lived happily for two years and blessed with a male child initially but died due to negligent acts of the 1st petitioner in not eating the fruits even though he provided the same. Thereafter he came to know that she is suffering with high B.P. and that he spent huge amount for her treatment. He further stated that the 1st petitioner did not care for him, acted as per the tunes of her parents and used to harass his family members by uttering vulgar language, but he tolerated the

same and helped her in looking after her parents. The petitioner used to pick up quarrels with him and his family members without any reason. He further stated that the 1st petitioner got married to one Poliseti Srinivasa Rao prior to the present marriage, which was suppressed at the time of marriage, thereby cheating him. It is further stated that the petitioner has also not taken divorce from her former husband at the time of their marriage. The said P.Srinivasa Rao is none other than her brother-in-law and due to some disputes they were residing separately without taking divorce. After performing her marriage with the respondent, she and her first husband and her parents colluded together and made a false report against the respondent only with an intention to get unlawful gain from him and later she filed the present petition. He further stated that he already paid a sum of Rs.4,00,000/- towards permanent alimony, for which she executed a letter before the elders stating that she will not claim anything against the respondent. But surprisingly got filed this M.C.

It is further stated that the respondent, who is a Junior Advocate, is earning Rs.2,000/- per month and has to look after his old aged parents. He has no movable and immovable properties of his own since he sold away his Ac 1.00 of land to meet the treatment of the 1st petitioner on two occasions of her pregnancy and later gave Rs.4,00,000/- to her. On the other hand, the 1st petitioner, who is working as Supervisor in Priya Pickles, Vijayawada is earning Rs.10,000/- p.m. and is capable to maintain herself and

the minor child. Hence, it is urged that the petitioners are not entitled to claim maintenance against the respondent.

5. During the course of enquiry, the petitioners got examined PWs.1 and 2 and got marked Exs.P.1 to P.8. On behalf of the respondent, RWs.1 and 2 were examined and Exs.R.1 to R.4 were marked.

6. After considering the oral and documentary evidence available on record, the trial Court granted maintenance @ Rs.2,000/- each per month to the petitioners from the date of petition. Aggrieved thereby, the present Criminal Revision Case is filed.

7. Though the learned counsel for the revision petitioner/respondent mainly submits that the allegations made in the M.C., are invented for the purpose of this case, but however, confines his argument to the quantum of maintenance stating that he already gave an amount of Rs.4,00,000/- to the 1st petitioner towards permanent alimony, and as such, the question of paying further maintenance would not arise. He further submits that the Court below erred in not considering the document showing mutual consent of the parties; and as the respondent is a Junior Advocate, it would be very difficult for him to pay monthly maintenance

8. One of the main grounds urged by the learned counsel for the petitioner herein/respondent is that there was no valid marriage between the 1st petitioner and the respondent as per Section 5 of

the Hindu Marriage Act. Since there is no valid marriage, the 1st petitioner cannot be treated as his wife so as to claim maintenance under Section 125 Cr.P.C.

9. The material on record would show that the respondent married the 1st petitioner by suppressing the fact of first marriage but after obtaining divorce from his first wife by name Billa Rajyalakshmi vide O.P.No.136/2007 on the file of the Senior Civil Judge's Court, Eluru. On the other hand, the 1st petitioner also married the respondent by suppressing the fact of her first marriage with one Polisetti Srinivasa Rao, who is none other than her cousin. To prove the marriage between the 1st petitioner and the respondent, the 1st petitioner examined herself as P.W.1 and also filed Ex.P.1 i.e. marriage photo of the 1st petitioner with the respondent.

10. A perusal of evidence on record would show that the 1st petitioner has not taken any pleading in her petition that the respondent suppressed the fact of his first marriage and married her. Likewise the respondent has also not taken any plea in his counter that the 1st petitioner suppressed the fact of her first marriage with one Polisetti Srinivasa Rao and got married the respondent. Therefore, the points which arise for consideration are whether the marriage between the 1st petitioner and the respondent is valid or not and whether she is legally wedded wife of the

respondent or not so as to grant maintenance under Section 125 Cr.P.C.?

11. The respondent would contend that his first wife is alive and he obtained divorce from his first wife after his marriage with the 1st petitioner. Therefore, she is second wife and hence she is not entitled for any maintenance under Section 125 Cr.P.C. He further raised an objection that the 1st petitioner got married to one Polisetti Srinivasa Rao even prior to marriage with him and has obtained divorce from her first husband at the time of marriage with him. Likewise also she is not entitled for maintenance. To prove his contention the respondent got marked one photo of the 1st petitioner alleged to have taken with one Polisetti Srinivasa Rao as Ex.R.3. If it is seen with a naked eye, one can say that it is a morphed photo, as there is a difference between the shades of the person. Apart from that on background of the photo there was American English dictionary and some books relating to law, which itself creates doubt in the mind of the Court that the respondent being an advocate must have taken a photo in his office, morphed the same with the photo of the 1st petitioner and filed before the court to show the 1st petitioner has first husband. But he has not filed any negative of the said photo and has also not given any suggestion to the 1st petitioner by confronting the photo. Apart from that the said person was not summoned nor examined to prove his allegations. The neighbours of 1st petitioner were also not examined

to show Polisetti Srinivasa Rao is her 1st husband and that she has not taken divorce from him and got married the respondent by suppressing the said fact.

12. The respondent further contended that at the time of reconciliation the 1st petitioner admitted the fact of her first marriage and that the court below granted maintenance to the 2nd petitioner alone. On perusal of docket order dated 17.07.2012 there was a reconciliation between both the parties and nowhere it is mentioned in the docket order that the 1st petitioner admitted her first marriage with Polisetti Srinivasa Rao and that the court below refused to grant maintenance to her and passed maintenance only to the 2nd petitioner. It clearly negated the contention of the respondent that the 1st petitioner admitted her marriage with one Polisetti Srinivasa Rao and her parents suppressed the same at the time of her marriage with him. In view of the above circumstances, it can be said that the respondent failed to prove the 1st marriage of the 1st petitioner with one Polisetti Srinivasa Rao in all aspects.

13. The crux of the matter is whether the respondent has first wife? and whether the respondent suppressed the marriage with one B.Rajya lakshmi, who is the first wife of the respondent, at the time of marriage with the 1st petitioner. A perusal of record shows that the 1st petitioner no where mentioned that she came to know the fact that she is 2nd wife of the respondent and that the respondent has suppressed his first marriage with Rajya Lakshmi. A

perusal of exchange of legal notices under Ex.P.3 reply notice given by the 1st petitioner also do not indicate the existence of 1st marriage of the respondent with one B.Rajya Lakshmi and therefore, it shows that at the time of filing of this petition, the 1st petitioner is not aware of first marriage of her husband and subsequently after filing this petition, she came to know the same and obtained documents in respect of divorce taken by the respondent with his first wife before the competent Court at Eluru and got marked through her as Exs.P.6 to P.8. Even after marking the same, the respondent has not cross-examined P.W.1 on that aspect and he admitted Exs.P.6 to P.8 at the time of his cross-examination by stating that he married one B.Rajya Lakshmi initially and thereafter their marriage was dissolved. He admitted about the order passed in O.P.No.136 of 2007 which is marked as Ex.P.6.

14. Admittedly as per Section 5 of the Hindu Marriage Act, 1955 if any person marries another woman when his first wife is alive, the marriage between them is void. But here the respondent suppressed his 1st marriage at the time of his marriage with the 1st petitioner and he has not even cross-examined P.W.1 to elicit that the 1st petitioner has knowledge about his first marriage with Rajya Lakshmi at the time of their marriage and that she is not entitled to claim maintenance U/s.125 of Cr.P.C., on the said ground. As per cross-examination of R.W.1, he admitted before the court about his existence of his first marriage with one Rajyalakshmi even prior to

the marriage of the 1st petitioner. It shows that the respondent suppressed his first marriage with one Rajya Lakshmi at the time of marriage with the 1st petitioner. Therefore, as per the decision of the Hon'ble Supreme Court in Badshah V. Sou.Urmila Badshas Godse and another in CrI.M.P.No.19530/2013 in Spl. Leave Petition (CRL) No.8596/2013, the 1st petitioner shall be construed as legally wedded wife of the respondent for the purpose of granting maintenance under Section 125 Cr.P.C. Admittedly, the respondent took divorce in the year 2008 from his first wife and he also filed divorce petition against the 1st petitioner even before the filing of M.C. against him on the ground that the 1st petitioner is suffering with Hypertension, B.P. and ill-health but not on the ground that the 1st petitioner has not taken divorce from her 1st husband and suppressed the said fact and that the marriage between him and the 1st petitioner is null and void. It is evident under Ex.P.5 that the respondent filed a divorce petition before the Principal Senior Civil Judge, Eluru in O.P.No.25 of 2012.

15. As seen from the above circumstances, it can be said that the respondent suppressed his marriage with one Rajya Lakshmi at the time of marriage between him and the 1st petitioner. Therefore, the 1st petitioner has to be treated as legally wedded wife for the purpose of claiming maintenance under Section 125 Cr.P.C. as per the decision of the Apex Court.

16. As per the version of the 1st petitioner, the respondent necked her out on 1.11.2011 by beating her in the presence of their family members and threatened to kill her with an intention to get divorce from her. The petitioner lodged a report against the respondent in Crime No.15 of 2012 for the offence punishable under Section 498-A I.P.C of Penamaluru Police Station. Such being the position, the next point for consideration is whether the 1st petitioner discard the respondent without any sufficient reason as alleged by the respondent.

17. As per version of the 1st petitioner the respondent and his family members harassed her for want of additional dowry, after giving birth to a female child at the first instance, she went to her parents' house, and thereafter she rejoined him at the instance of the elders. Thereafter again, disputes arose between them and the respondent insisted the 1st petitioner to perform his marriage with her younger sister, who was doing job. The same was admitted by P.W.2, who is the mother of P.W.1, that his younger daughter was doing job and was a earning member. The respondent took a plea in his chief affidavit that when the 1st petitioner left the conjugal life in September 2009, he placed the matter before the elders viz. P.Lakshmi Swathi, N.Chanti, Ch.Suri Babu, but the 1st petitioner did not come forward to join him and that she intentionally deserted him about two years prior to lodging of report in Crime No.15 of 2012 under Section 498-A IPC. But he has not examined any of the

elders to prove the same. But, it was elicited through the respondent that his wife gave birth to the 2nd petitioner on 17.04.2010 at American Hospital and the 2nd petitioner was born out of their wedlock. If really the 1st petitioner discarded him in the year 2009 itself, giving birth to the 2nd petitioner in April, 2010 would not arise. As per the version of the 1st petitioner he left her on 01.11.2011 by beating her and insisting her to perform marriage of him with his younger sister, threatened her in the presence of elders and necked her out of the house for getting divorce through a competent court.

18. As per the evidence of R.W.1, he filed divorce petition vide O.P.No.25 of 2012 on 24.04.2012, which is prior to filing M.C. It clearly proves the case of the 1st petitioner that the respondent himself harassed the 1st petitioner and deserted her without any sufficient reason and filed a divorce petition on the ground the 1st petitioner is suffering from Hyper tension and B.P. and ill-health. Therefore, it can be concluded that the 1st petitioner has not deserted the respondent without any sufficient reason, but she was subjected to harassment and then necked out of the house on 01.11.2011. Thereafter he filed divorce petition before the concerned court in O.P.No.25 of 2012.

19. The next point for consideration is whether the 1st petitioner is unable to maintain herself and whether the respondent is having sufficient means to provide maintenance to petitioners 1 and 2. As

per the version of the 1st petitioner, the respondent is a practicing advocate, earning Rs.30,000/- per month and having landed properties in S.No.190/1 of Duggirala village. As per the version of the respondent he is only a junior advocate practicing under a senior and getting Rs.2000/- per month as remuneration and he has no capacity to maintain himself. A perusal of evidence on record would show that the respondent admitted with regard to having landed property to an extent of Acs.2.60 in R.S.No.190/1 of Duggirala village. Apart from that he is a practising advocate, which fact is not in dispute. Further, the respondent pleads that the 1st petitioner got separated from him by executing a settlement deed under Ex.R.2, wherein she is said to have received Rs.4,00,000/- as permanent alimony. To prove the same, he got examined R.W.2.

20. The learned counsel for the respondent (husband) pleads that there is a difference between Exs.R.2 and R.4. To prove that the consideration has been passed under Ex.R.2, the respondent examined R.W.2, who is one of the attestors to Ex.R.2. As per the evidence of R.W.2 the 1st petitioner received a sum of Rs.4,00,000/- on 15.09.2010 towards permanent alimony to her and her child and to that effect she executed a letter before him, Kundiraju Lakshmi Swathi and N.Chanti, who attested the same. The said document was scribed by Naripati Kantha Rao and Suragani Satyanarayana. However, he pleaded ignorance about the marriage of the 1st petitioner with the respondent. He further stated that he never

acted as mediator to settle the dispute between 1st petitioner and the respondent. He does not know the reason for filing divorce petition by the respondent. As per his version, the 1st petitioner is suffering from ill-health and that the respondent filed divorce petition against the 1st petitioner. He further admitted that he does not know the nomenclature of rupees mentioned under Ex.R.2. He has not read the recitals under Ex.R.2 and he does not know that an amount of Rs.4,00,000/- was mentioned in Ex.R.2 and he pleaded ignorance about giving the said amount towards permanent alimony. He further admits that the signature of the 1st petitioner was obtained on Ex.R.2 after giving the settlement amount mentioned therein across the stamp. A perusal of the oral evidence of R.W.2, and Ex.R.2 marked through R.W.1 would show that there was no stamp on the said undertaking letter and it refers to one Dasturi opposite the name of one Kantha Rao who is shown as 2nd witness under Ex.R.2. A copy of Ex.R.2 was marked as Ex.R.4, in which there is no description of Dasturi as mentioned under Ex.R.4 though it is said to be an attested copy of Ex.R.2. Apart from that there is no stamp on the said paper, which clearly falsifies the plea that the 1st petitioner signed across the stamp.

21. R.W.2 further admitted that he has no knowledge about the contents of Ex.R.2 and also he has no knowledge about mentioning of Rs.4,00,000/- being given to the 1st petitioner as permanent alimony. If really Ex.R.2 was in existence even prior to filing this

petition, the respondent ought to have mentioned about the same in his counter along with the name of witness. But he has not mentioned about existence of Ex.R.2 and name of attested witness in his counter. In view of the above circumstances, the Court below rightly disbelieved the evidence of R.W.2 to come to a conclusion that the 1st petitioner received Rs.4,00,000/- towards permanent alimony towards her and 2nd petitioner and rightly concluded that the respondent being an advocate and having agricultural landed property at Duggirala is having sufficient means to provide maintenance to the petitioners.

22. The respondent further contended that the 1st petitioner is working as Supervisor in Priya Pickels and earning Rs.10,000/- per month, but he failed to prove the same by examining the colleague workers of the 1st petitioner or her employer. From the circumstances stated above, it is clear that the 1st petitioner is unable to maintain herself and is dependant on her parents. As there is no dispute with regard to the paternity of the 2nd petitioner; as the respondent agreed to pay maintenance of Rs.2,000/- per month to the 2nd petitioner at the time of reconciliation; having regard to the facts and circumstances of the case, the financial status and other conditions, the Court below rightly granted maintenance of Rs.2,000/- each per month to the petitioners from the date of petition.

23. Having regard to the circumstances stated above, I see no ground to interfere with the order passed by the Court below. However, the time granted to pay the arrears is extended by three months from today.

24. Hence, the Criminal Revision Case is dismissed. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:22.09.2016
INL

