

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.1225 OF 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 23-02-2015 in F.C.M.C.No.28 of 2014 on the file of the Judge, Family Court-cum-III Additional District and Sessions Judge at Vizianagaram.

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

3. The contention of the learned counsel for the respondent (petitioner herein-husband) is three fold viz., (1) the Court below without taking into consideration the salary of the respondent enhanced the maintenance amount from Rs.1500/- per month to Rs.10,000/- per month, (2) the findings recorded by the Court below are not supported by any oral or documentary evidence and (3) the order of the Court below directing the respondent to pay arrears of maintenance amount of Rs.300/- per month to the petitioner from 16-04-2003 to 07-07-2014 is not sustainable under law.

4. Per contra, learned counsel for the petitioner (1st respondent herein-wife) submitted that the respondent has been working as Junior Assistant in Government Degree College, Palakonda, Srikakulam District, and drawing salary of Rs.45,000/- per month. He further submitted that the findings recorded by the Court below are supported by oral and documentary evidence available on record and there is

no illegality or irregularity in the order passed by the Court below, which warrants interference of this Court.

5. The facts, leading to filing of the present revision are as follows: The marriage of the petitioner with the respondent was performed on 29-11-1995 as per Hindu Rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead happy marital life. Out of their lawful wedlock, the petitioner and the respondent were blessed with one child, but unfortunately, the child died within 24 hours. For one reason or the other, disputes arose between the petitioner and the respondent. The petitioner has been residing at her brother's house along with her mother. The case of the petitioner is that the respondent intentionally and willfully neglected to provide maintenance to her. Therefore, the petitioner filed M.C.No.18 of 2003 against the respondent on the file of the Judicial Magistrate of I Class, Vizianagaram, under Section 125 Cr.P.C. seeking maintenance. The trial Court allowed the above M.C. by granting maintenance at the rate of Rs.1500/- per month to the petitioner.

6. Being not satisfied with the maintenance amount granted by the trial Court, the petitioner filed the above FCMC under Section 7 (1) (cf) of the Family Courts Act, 1984 r/w Section 127 Cr.P.C. for enhancement of maintenance amount from Rs.1500/- per month to Rs.15,000/- per month.

7. The respondent filed counter denying the averments made in the petition and contended that the petitioner is not entitled to file petition under Section 127 Cr.P.C.

8. During the course of trial, the petitioner herself was examined as P.W.1 and Exs.A1 to A3 were marked on her behalf. The respondent himself was examined as R.W.1 and Ex.R1 was marked on his behalf.

9. The Court below after considering both oral and documentary evidence available on record, enhanced maintenance amount from Rs.1500/- per month to Rs.10,000/- per month to the petitioner. The Court below further directed the respondent to pay arrears of maintenance amount of Rs.300/- per month from 16-04-2003 till the date of filing of the petition i.e.,07-07-2014 within three months from the date of the order. Aggrieved thereby, the respondent filed this revision.

10. Now the point for consideration in this revision is whether the trial Court is not justified in enhancing the maintenance amount from Rs.1500/- per month to Rs.10,000/- per month?

11. It is needless to say that the burden of proof lies on the wife to establish that her husband intentionally and willfully neglected to look after her welfare, which constrained her to file a petition under Section 125 Cr.P.C. The petitioner filed M.C.No.18 of 2003 on the file of the Judl. Magistrate of I Class, Vizianagaram and the same was allowed granting maintenance at the rate of Rs.1500/- per month to the petitioner. For one reason or the other, the respondent did not choose to file revision challenging the order in the above M.C. Therefore, the findings recorded in the above M.C. that the respondent intentionally and willfully neglected to provide maintenance to the petitioner has become final.

12. While granting maintenance or enhancing maintenance, the Court has to take into consideration the financial status of both parties. To substantiate the case of the petitioner, herself was examined as P.W.1. To demolish the case of the petitioner, the respondent himself was examined as R.W.1. The oral and documentary evidence placed before this Court clinchingly establishes that the respondent has been working as Junior Assistant in Government Degree College, Palakonda, Srikakulam District. As per Ex.A3-salary certificate, the respondent is drawing gross salary of Rs.30,006/- and after deductions, he is getting net salary of Rs.26,188/-. A perusal of the record reveals that the respondent has been paying Rs.4,000/- per month towards car loan and Rs.11,000/- per month towards housing loan. The respondent denied the suggestion that he is having Ac.10.00 of land in Ungarada village of Srikakulam District. The material placed before this Court clinchingly establishes that the respondent has source of income. Absolutely, there is no material on record to establish that the petitioner is having movable or immovable property. A perusal of the record reveals that the petitioner is not having any source of income, therefore, she has been residing at her brother's house. The petitioner being the wife of the respondent, (who is Junior Assistant in Govt. Degree College), is legitimately entitled for a decent life. As observed earlier, the gross salary of the respondent is Rs.30,006/-. The Court has to take into consideration the statutory deductions only. After taking into considering the financial status of both parties, the Court below enhanced maintenance amount from Rs.1500/- per month to Rs.10,000/- per month. I am fully agreeing with the findings recorded by the Court below with regard to financial status of both parties. Therefore, granting of maintenance to the

petitioner at the rate of Rs.10,000/- per month is not in higher side in view of prevailing price index. Hence, finding of the Court below in respect of granting of maintenance amount at Rs.10,000/- per month requires no interference by this Court and liable to be confirmed.

13. Learned counsel for the respondent submitted that if there is any arrears of maintenance amount, the petitioner ought to have filed a separate application and without such an application, the Court below suo motu directed the respondent to pay arrears of maintenance amount of Rs.300/- per month from 16-04-2003 to 07-07-2004.

14. The Court below has not considered the scope of Section 125 Cr.P.C. in right perspective while directing the respondent to pay arrears of maintenance. It is needless to say that the petitioner has to file separate petition claiming arrears of maintenance within a period of limitation. In the absence of any such petition, it is not fair on the part of the Court below to suo motu direct the respondent to pay arrears of maintenance. Therefore, the order passed by the Court below directing the respondent to pay arrears of maintenance is not sustainable either in law or on facts. Hence, the finding of the Court below for payment of arrears of maintenance amount is liable to be set aside.

15. Accordingly, the Criminal Revision Case is partly allowed confirming the order, dated 23-02-2015 in F.C.M.C.No.28 of 2014 on the file of the Judge, Family Court-cum-III Additional District and Sessions Judge at Vizianagaram, insofar as granting of maintenance to the petitioner at the rate of Rs.10,000/- per month is concerned and setting aside the above order insofar as directing the

respondent to pay arrears of maintenance amount of Rs.300/- per month from 16-04-2003 to 07-07-2014 is concerned. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 14-12-2016.

Hsd

