

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1640 of 2008

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. challenging the order dated 29.10.2008 passed in M.C.No.88 of 2008 on the file of Judge, Family Court, East Godavari at Rajahmundry, wherein and whereby the petition filed by the first respondent herein under Section 125 Cr.P.C was partly allowed awarding maintenance of Rs.4,000/- p.m to the first respondent.

2 For the sake of convenience, parties to the present revision will hereinafter be referred to as they are arrayed before the trial Court.

3 The facts leading to the filing of the present revision case are briefly as follows:

4 The marriage of the petitioner was performed with the respondent on 06.05.2006 at Aryapuram of Rajahmundry town as per Hindu rites and caste custom. Immediately after the marriage, the petitioner joined the respondent to lead marital life. For one reason or the other, bad weather prevailed in the family life of the petitioner and the respondent. The petitioner and the respondent have hardly lived together for a short span of seven months. Since December, 2006 the petitioner has been living at her parents' house. The petitioner filed M.C.No.88 of 2008 under Section 125 Cr.P.C before the trial Court seeking maintenance from the respondent.

5 Before the trial Court, to substantiate the case, on behalf of the petitioner P.Ws.1 to 3 were examined and Exs.P.1 and P.2 were marked. On behalf of the respondent, besides examining himself as

R.W.1, the respondent got examined one more witness on his behalf as R.W.2, but no documentary evidence was adduced on behalf of the respondent.

6 Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the respondent had intentionally and wilfully neglected to provide maintenance to the petitioner and accordingly allowed the petition partly by granting maintenance of Rs.4.000/- p.m. to the petitioner, by order dated 29.10.2008. Feeling aggrieved by the said order of the trial Court, the respondent – husband has preferred the present revision case.

7 The contention of the learned counsel for the respondent is three fold:

a) The trial Court failed to consider that the petitioner herself left the matrimonial home of the respondent and hence she is not entitled to claim maintenance under Section 125 Cr.P.C.

b) The trial Court failed to see that the petitioner is a qualified person, therefore, she is not entitled to claim maintenance, and

c) The findings of the trial Court are not sustainable either on facts or in law.

8 Per contra, the learned counsel for the petitioner submitted that the finding of the trial Court that the respondent intentionally and wilfully neglected to provide maintenance to the petitioner is supported by oral and documentary evidence. She further submitted that the findings recorded by the trial Court are based on material

much less legally admissible evidence and that there are no grounds much less valid grounds to interfere with the well considered order passed by the trial Court in exercise of revisional jurisdiction by this Court under Section 397 Cr.P.C.

9 Now the point that arises for determination in this Criminal Revision Case is:

“Whether the petitioner is entitled to claim
Maintenance from the respondent?”

10 There is no dispute with regard to the inter se relationship between the parties. Unfortunately bad weather prevailed in the family life of the petitioner and the respondent within a short span of seven months from the date of marriage. As per the testimony of P.Ws.1 to 3, the respondent intentionally and willfully neglected to provide maintenance to the petitioner. In the cross-examination the respondent as R.W.1 in unequivocal terms deposed that the petitioner has been residing at her parents’ house since December 2006. It is the case of the respondent that the petitioner voluntarily left the matrimonial house. To substantiate the same, the respondent mainly relied on the testimony of R.Ws.2 and 3 who are his close friends and colleagues. For one reason or the other, R.W.2 did not chose to come into the witness box for the purpose of cross examination. Hence the trial Court eschewed the evidence of R.W.2.

11 As per the testimony of R.W.3, he went to the parents’ house of the petitioner and requested her to join with the respondent. If the testimony of R.W.3 is taken into consideration, in spite of his best efforts, the petitioner did not agree to join with the respondent.

12 As per the testimony of R.W.1, R.Ws.2 and 3 acted as mediators. The respondent has not taken a specific plea in the counter that at his instance R.Ws.2 and 3 requested the petitioner to join with him. It is needless to say that any amount of oral and documentary evidence without pleading is of no avail. If really the respondent sent R.Ws.2 and 3 for mediation, what prevented him to take such a plea in the counter? In the cross-examination R.W.3 in unequivocal terms deposed that he is a close friend of R.W.1. In such circumstances, the possibility of R.W.3 deposing falsehood with an intention to help the version of the respondent cannot be ruled out completely.

13 A glance at the entire record reveals that even prior to the filing of the petition the petitioner got issued a legal notice to the respondent on 23.02.2008 with a request to provide maintenance to her. The respondent got issued a reply on 14.03.2008. Exchange of legal notice would not yield any fruitful result. The material placed before the Court clinchingly establishes that the respondent had intentionally and willfully neglected to provide maintenance to the petitioner.

14 The next question that arises for consideration is 'whether the trial Court had committed any error by granting maintenance at the rate of Rs.4,000/- p.m. to the petitioner?

15 It is the case of the respondent that the petitioner is highly qualified person and working as teacher. Except the oral testimony of the respondent, there is no other evidence, much less cogent and convincing evidence to establish that as on the date of filing of the

petition, the petitioner was working as a teacher. The material available on record clearly reveals that the parents of the petitioner have no source of income or any other property. On the other hand, the oral testimony of R.W.1 clearly reveals that the father of the respondent is having landed property in Gollala Mamidada village of East Godavari District. As per the testimony of P.W.1, the respondent has been working as Government School Assistant and drawing a monthly salary of Rs.12,789/-. In the cross-examination the respondent admitted that he has been working as Government School Assistant and drawing a monthly salary of Rs.12,789/-. There is no material on record to establish that the petitioner is having any source of income or property to maintain herself.

16 The petitioner being the wife of the respondent who is a Government School Assistant, is legitimately entitled to lead a decent life. There is social and moral obligation on the part of the respondent to provide maintenance to the petitioner. The trial Court, taking into consideration the socio economic conditions of the respondent, has granted maintenance at the rate of Rs.4,000/- p.m. to the petitioner. Viewed from any angle, I am unable to accede to the contention of learned counsel for the respondent that the amount of maintenance granted by the trial Court is on higher side. An amount of Rs.4,000/- is hardly sufficient for sustenance of an individual in view of the prevailing price index. The trial Court has assigned cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the orders passed by the trial Court, which warrant interference of this Court in exercise of revisional jurisdiction under Section 397 Cr.P.C.

17 For the foregoing discussion, this Criminal Revision Case is devoid of merit and is accordingly dismissed. As a sequel, miscellaneous petitions if any pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 02.11.2016
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