

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1381 of 2012

ORDER:

This criminal revision case is filed by the petitioner under Section 397 and 401 Cr.P.C. challenging the judgment dated 04.05.2012 in Crl.R.C.No.34 of 2011 on the file of the Court of Sessions Judge, Guntur, Guntur District, wherein whereby modified the order dated 21.03.2011 by granting a maintenance of Rs.4,000/-p.m. to the first petitioner/wife and enhancing the maintenance amount from Rs.2,000/- p.m. to Rs.3,000/- p.m. to petitioners No.2 and 3.

The parties will be herein after referred to as they are arrayed before the trial Court to avoid confusion.

The contention of the learned counsel for the petitioners is two fold:

1. The findings of the Courts below that the respondent intentionally and willfully neglected to provide maintenance to the petitioners is not supported by any material much less legally admissible material. Hence, the findings of the Courts below are perverse and liable to be set aside, and
2. The finding of the revisional Court that the first petitioner is having no source of income is contrary to the material available on record.

The facts leading to filing of the criminal revision case are as follows:

The marriage of the first petitioner was performed with the respondent on 08.06.1995 at Inkollu village of Prakasam District as per Hindu rites and caste customs. Immediately after the marriage, the first petitioner joined with the respondent at Guntur to lead marital life. Out of lawful wedlock, the first petitioner and the respondent were blessed with one son, i.e. petitioner No.2 and one daughter, i.e. petitioner

No.3. It is the case of the petitioners that the respondent subjected them to cruelty. The respondent himself intentionally and willfully deserted the petitioners. The respondent filed H.M.O.P.No.201 of 2003 for dissolution of marriage between him and the first petitioner on the file of the Court of Principal Senior Civil Judge, Guntur and the same was dismissed on 26.06.2007. The respondent is having landed property at Idupulapadu village and get annual income of Rs.8 to 10 lakhs. The respondent has been working as a cotton buyer in Madhuri Cotton Ginning Mill, Nagupalem of Prakasam District and getting an amount of Rs.3,000/- per month. The petitioner No.2 is studying 9th class, petitioner No.3 is studying 7th class in Bhashyam High School, Guntur. Hence, the petitioners filed a petition seeking maintenance of Rs.20,000/- per month to all the petitioners. Respondent filed counter admitting the relationship between the parties *inter alia* contending that the first petitioner herself left the matrimonial home of the respondent, therefore, she is not entitled to claim maintenance under Section 125 Cr.P.C. The parents of the first petitioner are having Ac.4.00 cents of agricultural land. Hence, the petition may be dismissed.

During the course of trial, on behalf of the petitioners, the first petitioner herself was examined as P.W.1 and marked Exs.P1 to P14. To demolish the case of the petitioners, the respondent himself examined as R.W.1, R.Ws.2 and 3 were examined to substantiate the stand taken by the respondent. Basing on the oral evidence and other material available on record, the trial Court granted an amount of Rs.2,000/- per month each to petitioners 2 and 3 and no amount of maintenance was granted to the first petitioner. Feeling aggrieved by the orders of the trial Court, the petitioners preferred criminal revision petition No.34 of 2011 on the file of the Court of Sessions Judge, Guntur, and the same was allowed in part on 04.05.2012 granting maintenance of Rs.4,000/- to the first petitioner and enhancing the maintenance awarded to the petitioners 2 and 3 from Rs.2,000/- to

Rs.3,000/-. Questioning the said orders, the respondent filed the present revision petition.

Now, the points that arise for consideration are

1. Whether the first petitioner is entitled to claim maintenance from the respondent or not.
2. Whether there is any illegality or irregularity in the orders passed by the revisional Court which warrants interference of this Court.

As both points are interlinked to each other, I am inclined to address both points together in order to avoid re-capitulation of facts.

Before advertng to the findings of the Courts below, it is apposite to refer to the admitted facts.

The marriage of the first petitioner was performed with the respondent on 08.06.1995 at Inkollu village of Prakasam District as per Hindu rites and caste customs. Immediately after the marriage, the first petitioner joined with the respondent at Guntur to lead happy marital life. Out of their lawful wedlock, the first petitioner and respondent were blessed with one son, i.e. petitioner No.2 and one daughter i.e. petitioner No.3. Due to family disputes, the petitioners have been staying at Pedakakani village of Guntur District. The respondent filed H.M.O.P.No.201 of 2003 on the file of the Court of Senior Civil Judge, Guntur, under Section 13(1) of the Hindu Marriage Act seeking dissolution of his marriage with the first petitioner. Basing on the material available, the trial Court dismissed the H.M.O.P.No.201 of 2003 on 26.06.2007. The respondent also filed H.M.O.P.No.328 of 2007 against the petitioners for restitution of conjugal rights on the file of the Court of I Additional Senior Civil Judge, Guntur, and the same was allowed. The petitioners have filed M.C.No.1 of 2010 and the same was allowed in part by the trial Court on 21.03.2011 granting maintenance of Rs.2,000/- to petitioners No.2 and 3 from the date of

order. As per the findings of the trial Court, the respondent willfully and intentionally neglected to provide maintenance to the petitioners. The respondent did not choose to file a criminal revision petition challenging the finding of the trial Court. Hence, the finding recorded by the trial Court became final. Even as per the findings of the revisional Court, the respondent intentionally and willfully neglected to provide maintenance. The revisional Court has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the findings recorded by the Courts below. Having regard to the facts and circumstances of the case, I am of the considered view that the respondent willfully and intentionally neglected to provide maintenance to the petitioners.

The trial Court has not granted maintenance to the first petitioner on the sole ground that she is an educated lady. The respondent did not choose to file any document to prove the educational qualification of the first petitioner. It is not the case of the respondent that the first petitioner is doing some job. In such circumstances, the trial Court is not justified by drawing a presumption that being an educated lady there is every chance for the petitioner to earn something. The finding recorded by the trial Court is not sustainable on facts. Simply because the first petitioner is an educated lady by itself is not a sufficient ground to dismiss her petition filed under Section 125 Cr.P.C.

In order to resolve this issue, this Court is placing reliance on the decision in **MAJOR ASHOK KUMAR SINGH v. VI ADDITIONAL SESSIONS JUDGE, VARANASI AND OTHERS**^[1] wherein Para 12 reads as follows:

“Sri Y.Yogesh Agarwal, however, faintly also contended that since respondent No.3 was an educated lady, it cannot be said that she has no means to support herself because an educated lady can always get employment and can support herself. This contention

has also no merits. It is not disputed that respondent No.3 is not employed anywhere and has no other means to maintain herself, merely for the fact that a woman is educated, she cannot be deprived of her right to get maintenance under Section 125 of the Code of Criminal Procedure.”

Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the first petitioner is entitled to claim maintenance from the respondent. On the other hand, the revisional Court has given a specific finding that there is no source of income to the first petitioner to maintain herself. It may not be possible for the first petitioner to educate her children without any source of income. The revisional Court by taking into consideration the socio economic conditions of both parties granted an amount of Rs.4,000/- to the first petitioner towards maintenance and enhanced the maintenance amount from Rs.2,000/- to Rs.3,000/- per month each to petitioners 2 and 3. There are no grounds much less valid grounds to interfere with the orders passed by the Courts below. This Court can interfere with the orders of the revisional Court if there is any illegality or irregularity. There is no illegality or irregularity in the orders of the revisional Court to set aside the same. This Criminal Revision Case lacks merits and hence the same is liable to be dismissed.

Accordingly, Criminal Revision Case is dismissed at the stage of admission. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

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T.SUNIL CHOWDARY, J.

June 27, 2016
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[\[1\]](#) 1991 CrL.L.J. Page 2357