

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.3063 of 2016

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C., challenging the order dated 05.8.2014 in Criminal Revision Petition No.100 of 2012 on the file of the Judge, Family Court, Kurnool, wherein and whereby the maintenance amount granted by the Court of Judicial Magistrate of First Class, Nandikotkur in M.C. No.10 of 2008, vide order dated 29.11.2011, was enhanced from Rs.1,500/- to Rs.3,000/- per month.

2. The contention of learned counsel for the petitioner is two fold: (i) the petitioner was under suspension for a long time; therefore enhancement of maintenance to Rs.3,000/- per month is on higher side; and (ii) the petitioner has to maintain his second wife and children and as such he is not in a position to pay maintenance to the first respondent. ***Per contra***, learned counsel for the first respondent submitted that the petitioner was reinstated into service and getting full salary.

3. The petitioner is the respondent and the first respondent is petitioner in the M.C. The parties are hereinafter referred to as they were arrayed in the M.C., to avoid confusion.

4. The facts leading to filing of the present revision case are as follows: The marriage of the petitioner was performed with the respondent on 05.5.1996 at Nandikotkur as per Mohammedan rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. During the period of wedlock, they were not blessed with children. The

respondent married another lady on 03.11.2016. The respondent was blessed with three children through his second wife. The petitioner lodged a complaint against the respondent with the Police, who in turn registered a case in Crime No.18 of 2008 for the offences under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. After completion of investigation, the Investigating Officer laid charge sheet against the respondent for the above referred offences. The respondent faced the trial in C.C. No.222 of 2008 on the file of the Judicial First Class Magistrate, Nandikotkur. After fullfledged trial, the respondent was found not guilty for the offences under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act and accordingly he was acquitted. The respondent, while working as Teacher in Siddiqui Aided School, Nandyal, was placed under suspension with effect from 13.3.2008 to 28.12.2014. The respondent was reinstated into service. At the time of filing of the M.C., the respondent was drawing monthly salary of Rs.9,600/- per month.

5. The petitioner filed the M.C. against the respondent claiming maintenance of Rs.3,000/- per month. During the course of trial, on behalf of the petitioner, she was examined as P.W.1. On behalf of the respondent, he was examined as R.W.1. No documentary evidence was marked on behalf of either side. After having thoughtful consideration to the evidence on record, the trial court allowed the M.C., in part granting maintenance of Rs.1,500/- per month. The respondent did not file revision challenging the orders passed in M.C. No.10 of 2008. The petitioner filed Criminal Revision Petition No.100 of 2012 on the file of the Judge, Family Court, Kurnool seeking enhancement of maintenance to

Rs.4,000/- per month. For one reason or the other, the respondent also did not contest the Criminal Revision Petition. The revisional court, after re-considering the material available on record, allowed the revision in part enhancing the maintenance from Rs.1,500/- to Rs.3,000/- per month. Aggrieved by the order under revision, the respondent filed present criminal revision case.

6. This criminal revision case was filed with delay of 495 days. Yesterday, i.e., on 30.11.2016, CrI.RC.MP. No.1321 of 2016 was allowed condoning the delay.

7. It is an admitted fact that the petitioner is the wife of the respondent. It is not in dispute that the respondent joined as a Teacher in Siddiqui Aided School, Nunepalli, Nandyal. At present, the respondent is working as Secondary Grade-II Teacher (Urdu) in Siddiqui Elementary School, Kondapet, Banaganapalle.

8. It is a settled principle of law that the burden of proof lies on the person, who seeks maintenance, to establish that the respondent willfully and intentionally neglected to provide maintenance. The burden is also on the petitioner to prove that she has no means to maintain herself and the respondent has sufficient means to provide maintenance.

9. In M.C. No.10 of 2008, the trial court arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioner. The trial court also held that the petitioner has no source of income whereas the respondent has source of income to provide maintenance to the petitioner. For one reason or the other, the respondent did not choose to challenge the

orders passed in M.C. No.10 of 2008. Thus, the findings recorded by the trial Court in M.C. No.10 of 2008 became final. The respondent also did not contest Criminal Revision Petition No.100 of 2012. The respondent having failed to challenge the order in M.C.No.10 of 2008 is not entitled to urge before this court that he has no source of income. The fact remains that the respondent has been working as a Secondary Grade Teacher in an aided school. By the time of filing of M.C. No.10 of 2008, his salary was more than Rs.9,600/-. Now the salary might have increased by three or four times, in view of subsequent pay revisions in 2008 and 2013. Simply because the respondent married another woman and blessed with children, that itself is not a valid ground to avoid payment of maintenance to the petitioner. Absolutely there is no material on record to establish that the petitioner has any source of income. The amount of Rs.3,000/- per month is hardly sufficient for sustenance of an individual in view of the present price index. Viewed from any angle, I am unable to accept the contention of learned counsel for the respondent that enhancement of maintenance to Rs.3,000/- per month is on higher side. There is no illegality or irregularity in the order passed by the revisional court, which warrants interference of this court. The criminal revision case lacks merits and bona fides.

10. Accordingly, the criminal revision case is dismissed. Miscellaneous petitions, if any pending in this criminal revision case shall stand closed.

T.SUNIL CHOWDARY, J

December 01, 2016.
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