

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.690 OF 2010

ORDER:

This revision is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 08-01-2010 in M.C.No.22 of 2009 on the file of the Additional District Judge, Family Court-cum-Additional District Court, West Godavari, Eluru.

2. The parties hereinafter will be referred to as they were arrayed before the trial Court in order to avoid confusion.

3. The contention of the learned counsel for the petitioner (wife) is two fold viz., (1) the trial Court without considering the recitals of Exs.X1 to X5 granted meager amount of Rs.2,500/- to the petitioner and (2) the trial Court failed to consider the oral testimony of P.W.1 and granted an amount of Rs.2,500/- towards maintenance on assumptions and presumptions.

4. Per contra, learned counsel for the respondent (husband) submitted that the respondent performed the marriages of his two sons and one daughter. He further submitted that the trial Court failed to consider that the petitioner is having a house and getting an annual income of Rs.60,000/-. Therefore, she is not entitled to claim maintenance from the respondent.

5. The facts, leading to filing of the present revision are briefly, as follows:

The marriage of the petitioner with the respondent was performed on 24-06-1983 as per Hindu Rites and Caste Customs. Out of their wedlock, the petitioner and the respondent were blessed with two sons and one daughter. Due to one reason or the other, disputes arose between the petitioner and the respondent. The respondent filed O.P.No.83 of 2004 on the file of the Senior Civil Judge, Eluru for dissolution of marriage between himself and the petitioner and the same was dismissed. The petitioner has been residing separately since 2004. The respondent has been working as a driver in Animal Husbandry Department and getting monthly salary of Rs.15,000/-.

6. The respondent filed counter admitting the *inter se*

relationship *inter alia* contending that the petitioner herself voluntarily left the matrimonial home of the respondent, therefore, she is not entitled to claim maintenance. It is further alleged that the petitioner is having own house and other source of income, hence, she is not entitled to claim maintenance.

7. During the course of trial, on behalf of the petitioner, P.Ws. 1 to 6 were examined and Exs.P1 to P3 and X1 to X5 were marked. On behalf of the respondent, R.Ws. 1 to 3 were examined and Exs.R1 to R8 were marked.

8. Basing on oral and documentary evidence and other material available on record, the trial Court arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioner and allowed the M.C. in part by granting maintenance at Rs.2,500/- per month. Aggrieved by the order of the trial Court, the petitioner preferred the present revision.

9. Now, the point that arises for consideration in this revision is whether there are any justifiable grounds for enhancement of the maintenance amount?

10. Finding of the trial Court that the respondent intentionally and willfully neglected to provide maintenance to the petitioner has become final in view of non filing of revision by the respondent. It is an admitted fact that the respondent has been working as a driver in Animal Husbandry Department and getting gross salary of Rs.20,000/-. A perusal of the record clearly reveals that the respondent stood as guarantor for the money borrowed by the brother of the petitioner. After full-fledged trial, the concerned Court decreed the suit against the respondent and others. A perusal of the record further reveals that E.P.No.393 of 2008 was filed against the respondent on the file of the Principal Junior Civil Judge Court, Machilipatnam. A perusal of the record further reveals that the petitioner borrowed an amount of Rs.55,000/- from Kapil Chit Funds and failed to repay the same. Then Kapil Chit Funds filed a suit against the respondent and the same was decreed for an amount of Rs.55,000/-. The fact remains the respondent has been discharging the debt amount borrowed by the petitioner and the brother of the petitioner. It is an admitted fact that the respondent performed the marriages of his two sons and one daughter from and

out of his salary income. It is not the case of the petitioner that the respondent is having landed property. It is also not the case of the petitioner that she also contributed some amount for the marriage of their children.

11. The material available on record clinchingly establishes that the petitioner is having house bearing Door No.27-23-4, Ameenapeta, Yetigattu Colony, Ward No.2, Eluru. As per the recitals of Ex.R2-House hold card, annual income of the petitioner is Rs.60,000/-. It is a known fact that no one will mention the correct income in the house hold card. However, the fact remains, the petitioner is having source of income. On the other hand, the respondent has to look after the welfare of his married sons and daughter. Apart from it, the respondent has to discharge the debt amounts also. It appears that the trial Court by taking into consideration all these aspects, granted maintenance at the rate of Rs.2,500/- per month to the petitioner. An amount of Rs.2,500/- is hardly sufficient for subsistence of an individual in view of prevailing price index. It is a known fact that the parents have to spend some amount at the time of family functions. In the instant case, the respondent has to spend some amount at the time of family functions in the near future. Taking into consideration the facts and circumstances of the case, I am of the considered view that granting an amount of Rs.4,000/- per month to the petitioner towards maintenance may be just and reasonable. Therefore, the petitioner is granted maintenance at the rate of Rs.4,000/- per month.

12. Accordingly, the Criminal Revision Case is allowed in part. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 13-07-2016.

Hsd