

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No. 1082 OF 2012

ORDER:

This Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C. challenging the order dated 12.06.2012 in M.C.No.89 of 2010 on the file of the Judge, Family Court, Ranga Reddy District at L.B.Nagar, Hyderabad.

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

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

The marriage of the petitioner was performed with the respondent as per Hindu Rites and Caste Custom. Out of lawful wedlock, the petitioner and the respondent were blessed with a son. The respondent subjected the petitioner to cruelty for additional dowry. The respondent filed O.P.No.54 of 2006 on the file of Senior Civil Judge at Jangaon for dissolution of marriage with the petitioner. The respondent filed O.P.No. 13 of 2001 on the file of Senior Civil Judge at Janagaon for restitution of conjugal rights. The petitioner has been residing at her parents since 1998. The petitioner filed a petition under Section 125 Cr.P.C claiming maintenance and the same was allowed in part by granting maintenance at Rs. 2,000/- per month to the petitioner. The case of the respondent is that the petitioner herself intentionally left the matrimonial home without any justifiable cause, therefore, she is not entitled to claim maintenance from him.

4. To substantiate the case, the first petitioner examined herself as PW.1 and examined PWs 2 & 3 and got marked Exs.P-1 to P-7. To demolish the case of the petitioner, the respondent examined himself as RW.1 and examined RW-2 and got marked Exs. R1 to R8.

5. Basing on the oral, documentary evidence and other material available on record, the trial Court allowed the petition in part by granting maintenance of Rs.2,000/- per month to the petitioner. Feeling aggrieved by the order of the trial Court, the respondent (husband) preferred the present revision.

6. The contention of the learned counsel for the respondent (petitioner herein) is two fold: (1) the trial Court ought not to have granted maintenance to the petitioner as the petitioner left the matrimonial house of the respondent without any justifiable grounds; and (2) the quantum of maintenance granted to the petitioner is on higher side.

7. Now the points that arise for consideration are (1) whether the petitioner is entitled to claim maintenance from the respondent or not and (2) whether there is any illegality or irregularity in the order of the trial Court which warrants interference of this Court.

8. As both points are interrelated with each other, hence I am inclined to address both the points simultaneously.

9. There is no dispute between the parties with regard to their relationship. It is an admitted fact that the marriage of the petitioner was performed with the respondent as per Hindu Rites and Caste Custom. Out of lawful wedlock, the petitioner and the respondent were blessed with a son. The respondent filed O.P.No. 12 of 2001 against the petitioner for restitution of conjugal rights and the same was allowed. The respondent also filed O.P.No. 54 of 2006 for dissolution of marriage between him and the petitioner and the same was allowed. It is the case of the petitioner that the respondent intentionally and willfully neglected to provide maintenance to the petitioner. The petitioner has taken a specific stand in the petition that the respondent necked her out of matrimonial home on 12.12.1998. The respondent did not specifically deny this fact in the counter. No suggestion was

put to PW-1 (petitioner) that the respondent did not neck her out of the home on 12.12.1998. Basing on the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the respondent himself necked out the petitioner on 12.12.1998 from the matrimonial home. In such circumstances, the petitioner has no other alternative except to reside at her parents' house. The fact remains the petitioner is residing at her parents house from 12.12.1998 due to the adamant behavior of the respondent. If really the respondent did not neck her out of the matrimonial home, he might have denied the same by taking specific plea in the counter. The findings recorded by the trial Court are supported by oral and documentary evidence. This Court has no other option except to endorse the findings recorded by the trial Court. Having regard to the facts and circumstances of the case, I am of the view that the respondent intentionally and willfully neglected to provide maintenance to the petitioner, therefore, she is entitled to file a petition under Section 125 Cr.P.C seeking maintenance.

10. The next question that falls for consideration is whether the petitioner is having any source of income to maintain herself. PWs.2 and 3, who are independent witnesses, supported the version of the petitioner. The respondent has taken a specific plea in the counter that the petitioner is having Ac. 2.08 guntas of land in S.No. 27/A/2 at Lingala Ghanpur Mandal. As per the oral testimony of RW-1 the petitioner is having landed property. The respondent did not examine anybody to establish that the petitioner is having Ac. 2.08 guntas. The respondent did not produce the copies of revenue records, adangals or record of rights before the trial Court for the reasons best known to the respondent. He did not choose to file even a single scrap of paper to prove that the petitioner is having Ac. 2.08 guntas of land. In the absence of documentary evidence much weight cannot be given to the oral evidence of RW-1. The findings of the trail Court that the respondent failed to prove the source of income of the petitioner is

supported by material available on record.

11. As per the contention of the petitioner the respondent is having landed property and running fair price shop in his village. In the cross-examination, RW-1 in unequivocal terms deposed that he is having landed property and has been running fair price shop. He further deposed due to lack of funds he was constrained to avail loan of Rs. 1,75,000/- by mortgaging his agricultural lands to Central Bank of India. To prove the income of the respondent, the petitioner mainly relied on Exs. P2 to P7 adangals and pahanies. As per the recitals of Ex. P2 to P7, the respondent is having Ac. 9.35 cents of land. It is also an admitted fact that the petitioner has been running the fair price shop in his Village. While disposing of the petitions of this nature, the Court has to take into consideration the ground relied on by both the parties as well as the financial condition of both the parties. The very object of Section 125 Cr.P.C is to wipe out the tears of the destitute wife. There is moral and legal obligation on the part of the husband to provide maintenance to his wife regardless of his income. As observed earlier, in this case the respondent is having Ac. 9.35 cents of land and running a fair price shop. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that the respondent is not having any source of income. On the other hand, the material placed before the Court clinchingly establishes the source of income of the respondent. The trial Court while taking into consideration the recitals of Exs. P-2 to P-7 and the oral evidence of RW-1 granted maintenance of Rs. 2,000/- to the petitioner. The fact remains since 1998 onwards petitioner has been residing at her parents house without any support from the respondent. Granting of an amount of Rs. 2,000/- is hardly sufficient for sustenance of one individual in view of prevailing price index.

12. Taking into consideration the facts and circumstances of the case, I am unable to accept the contention of the respondent that

granting of Rs. 2,000/- per month as maintenance to the petitioner is on higher side. The trial Court has considered the oral and documentary evidence in right perspective and arrived at the conclusion that the petitioner is entitled to claim maintenance from the respondent and allowed the petition in part. Viewed from any angle, awarding of maintenance of Rs.2,000/- per month to the petitioner is not on higher side. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court by exercising jurisdiction under Section 397 read with 401 of Cr.P.C.

13. In the result, the Criminal Revision Case is dismissed at the stage of admission.

14. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 05.07.2016

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