

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.1085 of 2007

ORDER:

Heard the learned counsel appearing for the petitioner/wife and the learned counsel appearing for the 1st respondent/husband.

The case of the petitioner is that the 1st respondent is her husband and their marriage took place on 11.06.2003 as per their caste custom and at the time of marriage the parents of the petitioner gave Rs.25,000/- to the 1st respondent towards dowry, and they were blessed with a female child. Since the date of marriage the in-laws of the petitioner including her husband subjecting her to cruelty for additional dowry and finally on 02.07.2006 necked her out from the matrimonial home. As there is no income to maintain herself and her daughter, the petitioner filed M.C.No.29/2006 on the file of the I Additional Junior Civil Judge, Bhimavaram seeking monthly maintenance @Rs.3,000/- each per month. The 1st respondent/husband is working as compounder in a hospital and in leisure times he is practicing as RMP doctor and he was earning Rs.11,000/- per month and he is in a position to pay maintenance to the petitioner and her daughter.

The 1st respondent filed counter in M.C. denying the contents of the petition. He stated that the petitioner/wife voluntarily left his company without any reason and despite several requests, did not join him and hence the petitioner/wife is not entitled to maintenance. He denied his income as alleged in the petition, and stated that he is doing tailoring work and earning Rs.2,000/- per month.

Both sides let oral evidence before the trial Court. Having considered the material on record, by order dated 07.12.2006, the trial Court granted monthly maintenance @Rs.1,000/- to the petitioner/wife and @Rs.500/- to the daughter from the date of filing of the petition.

Aggrieved by the same, the 1st respondent/husband filed Criminal Revision Petition No.51/2007 on the file of the III Additional District Judge

(Fast Track Court), Bhimavaram. The learned District Judge on re-appreciation of evidence on record, while observing that though the husband is ready and willing to take back the wife, the wife did not join him and she utterly failed to show justifiable reason and convincing ground for deserting the husband, vide orders dated 21.06.2007, set aside the award of maintenance granted to the petitioner/wife while maintaining the award of maintenance in so far as the daughter is concerned. Questioning the said order, the wife filed the present revision case.

The point for consideration is whether there are any grounds warranting interference with the impugned order.

The admitted case is that the petitioner is the wife of the 1st respondent/Srinivasa Rao. It is also a fact that they were married on 11.06.2003 and it was a love marriage and they were blessed with a daughter, who is the 2nd respondent. Troubles started between the couple and ultimately the petitioner/wife started living with her parents. The petitioner/wife filed M.C.No.29 of 2006 claiming maintenance of Rs.3,000/- per month to her and Rs.3,000/- per month to her daughter. She examined herself as PW.1. The husband examined himself as R.W.1 and also examined R.W.2. The learned Junior Civil Judge, Bhimavaram by his order dated 07.12.2006 allowed the Maintenance Case directing that the husband should pay a sum of Rs.1,000/- per month to the wife and another sum of Rs.500/- per month to the daughter towards maintenance from the date of filing of the petition viz., 25-07-2006.

The husband preferred Crl.R.P.No.51 of 2007 on the file of the III-Additional District Judge (FTC), Bhimavaram. By Order dated 21-06-2007, the learned District Judge has partly allowed the revision whereby the maintenance awarded to the daughter @ Rs.500/- per month was confirmed and the maintenance of Rs.1,000/- per month awarded to the wife was rejected.

The contention of the petitioner/wife is that the learned District Judge in exercise of the revisional powers has interfered with the well

considered and reasoned orders of the Junior Civil Judge who has taken into consideration the evidence on record and having observed the demeanour of the witnesses, granted the maintenance. It is further submitted that the grounds on which maintenance is refused to the wife are not relevant and the learned District Judge grossly erred in rejecting the maintenance to the wife. Therefore, the impugned order of the District Judge is liable to be set aside.

On the other hand, the respondent/husband submits that since the petitioner/wife failed to prove her case that she is entitled to claim maintenance, the District Judge has rightly rejected the maintenance to her and hence there are no merits in the revision and the same is liable to be dismissed.

Section 125 Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of the parties, which is in the nature of a civil proceeding, though are governed by the provisions of Cr.P.C. and the order made under Section 125 Cr.P.C., is tentative and is subject to final determination of the rights in a civil Court.

While considering the grant of maintenance, what has to be kept in mind is that the order granting maintenance should not make the wife to live in luxury or make her living separately profitable thereby impairing future reconciliation. At the same time, the grant should not be such which would force the wife to live in penury. Possession of property by a wife is not at all the criterion for disallowing the maintenance to a wife. Even the fact that the husband may be an insolvent or has absolutely no means of income may not be a valid ground for disallowing the maintenance to a deserving wife so long as the husband is an able-bodied person and is capable of earning for his own livelihood and also support his wife. Even if the wife is earning, that do not, in any way, bar her from claiming maintenance, but, however, the income which she is deriving should be taken into consideration while fixing the quantum. In

order to be entitled to the maintenance, what is required is that it must be shown that the husband though having sufficient means neglects or refuses to maintain the wife. The grounds on which maintenance can be refused to a wife are clearly enumerated in sub-Section (4) of Section 125 Cr.P.C., which say that no wife shall be entitled to receive maintenance from her husband if she is living in adultery or if without any sufficient reason, she refuses to live with her husband or if they are living separately by mutual consent.

In the instant case, the maintenance that is refused to the wife is that she is living separately without any sufficient reason. There are no allegations of adultery or there being any separation by mutual consent. Therefore, what is required to be seen is as to whether the petitioner/wife is refusing to live with her husband without any sufficient reason. What is sufficient reason has to be determined on the basis of the facts of a particular case.

In the instant case, the contention of the petitioner is that after having married in June, 2003, they lived happily for some time but thereafter the husband started subjecting her to cruel treatment on the instigation of his parents and elder brother demanding additional amounts. She alleges that mediations took place before the elders where after she joined the husband and after some days, the harassment again started and the husband and his people severely beat her and thrown her out from the house on 02-07-2006 and thereafter she along with the child had no option except to come over to her parents house and live there. She also says that subsequent efforts to reconcile the matter proved futile and since the husband is working as a Compounder and getting a salary of Rs.3,000/- per month and another Rs.3,000/- per month he is earning in the hospital, that he is also earning Rs.5,000/- per month by doing private medical practice and hence she may be awarded the maintenance.

In support of her case, she examined herself as PW.1 and stated on oath the above facts. It is also on record that the wife also filed a case under Section 498-A of IPC., against the husband. She admits that at the time of marriage, she was having Ac.0.20 cents of agricultural land. It is

further elicited from her that her parents' house is nearby but she refused the suggestion that she was frequently going to her parents' house.

It is no doubt true that even though she named Ramakrishna Babu, Yesu Babu and one Katari Narasimha Murthy, who are said to have acted as elders, none of them are examined.

On the other hand, the evidence of the husband is to the effect that since it was a love marriage, he has not taken any dowry, that two months after the marriage, he has established a separate family and that it is the wife herself who went away to her parents' house since he was not having any job. Even when the matter was placed before the elders, PW.1 refused to join him and even now he is prepared to live with the wife and maintain her.

Having perused both the Judgments, what I noticed is that the order of the learned Junior Civil Judge is well-considered and reasoned. The learned District Judge has interfered with the said Judgment on reasons which are not germane in a case of this nature. Some of the observations made by the learned District Judge which shows that the irrelevant aspects are taken into consideration in setting aside the order of the Junior Civil Judge are as under:-

“PW.1 stated that the respondent harassed her for further dowry but nowhere PW.1 stated how much dowry was given at the time of marriage or how much money is demanded as additional dowry. “

With regard to the claim of PW.1 that she was necked out of the matrimonial home, the learned District Judge observed that the wife miserably failed to prove this aspect by examining the neighbouring residents or the parents of the wife. With regard to the income of the husband, the District Judge observes that the wife has failed to produce any evidence to show that the husband is working in a hospital and also practicing medicine, earning Rs.11,000/- per month. This claim of PW.1 was disbelieved observing that the wife ought to have summoned the Office staff of the hospital or cause production of the records of the hospital to prove that the husband is earning salary of Rs.5,000/- per month and should have shown vouchers etc. The learned District Judge

further observed that since the house of the parents of the wife is nearby, the influence of the parents of PW.1 cannot be ruled out totally. With regard to the admitted fact that the wife is having Ac.0.20 cents of agricultural land, the learned District Judge observes that it clearly shows that the petitioner/wife has means to maintain herself with the income from the said land. The learned District Judge failed to bear in mind that merely possessing Ac.0-20 cents of agricultural land cannot be taken as fetching a regular income to a wife so as to maintain herself with her day to day expenses. The learned District Judge further observed that since the wife admitted that her parents' house is nearby, the wife was frequently going to her parents' house and is acting under their influence. The learned District Judge also observed that non-examination of the three elders named by the wife leads to an inference that her claim is incorrect. The learned District Judge further observed that since the petitioner failed to prove the income of her husband, it can be concluded that the allegation of the wife that he is earning Rs.11,000/- per month is baseless.

The learned District Judge made certain observations which are wholly out of context and are not based on evidence on record. The learned District Judge observed that the petitioner/wife and the respondent/husband are married at an early age due to their love affair and due to immaturity as well as under the influence of the parents, who stay very close to the wife, the wife appears to have deserted the husband due to her own fault and behaviour. The learned District Judge further observed that the circumstances shown by PW.1 fails to convince the Court that the husband harassed the wife for additional dowry and this observations is strengthened in view of the failure of the wife to state the amount given as dowry and not specifically saying as to how much the husband demanded additional dowry. This observation of the learned District Judge is contrary to the evidence on record. PW.1 in the petition has clearly stated that the husband and his people have demanded additional amount of Rs.50,000/- and that was not paid, they were subjecting her to harassment. The observations of the learned District

Judge that PW.1 refused to join the husband even though he is ready for restoration of company and is willing to live with PW.1 and she utterly failed to show justifiable reason and convincing ground for deserting her husband, when the wife alleges that she was subjected to harassment and cruel treatment and was physically necked out, to say that she has no justifiable grounds to live separately from the husband cannot be said to be without a just and sufficient cause. The husband, no doubt, has expressed his desire to live with the wife but he has not taken any steps in that direction. He has neither issued any notice to the wife calling upon her to join or initiated any legal proceedings for restitution of conjugal rights which would have shown his *bona fides* that he is longing for the consortium of the wife. The observations of the learned District Judge that the wife failed to establish that she is apprehending danger at the hands of her husband cannot be said to be a valid ground for refusing the maintenance.

The cumulative effect of the foregoing discussion is that the learned District Judge has misdirected himself in appreciating the point in controversy and has erroneously interfered with the order of the learned Junior Civil Judge granting maintenance of Rs.1,000/- per month to the wife while upholding the grant of maintenance to the daughter. In that view of the matter, the revision case is liable to be allowed.

In the result, the Criminal Revision Case is allowed. The order of the learned District Judge is set aside and the order of the learned Junior Civil Judge is restored.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

27th January, 2016

Dsr/smr