

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.691 of 2013

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 400 Cr.P.C. challenging the order dated 25.02.2013 passed in M.C.No.74/2011 on the file of Additional Metropolitan Sessions Judge for the Trial District Court, JHCBBC-cum-Additional Family court-cum-XXIII Additional Chief Judge, Hyderabad wherein and whereby the petition filed by the petitioners under Section 125 Cr.P.C was partly allowed awarding maintenance of Rs.1,000/- to the first petitioner and Rs.1,500/- each to the petitioner Nos.2 and 3.

2 For the sake of convenience, parties to the present petition will hereinafter be referred to as they are arrayed before the trial Court.

3 The contention of the learned counsel for the respondent (petitioner herein) is that the trial Court failed to consider that the respondent has sufficient means to provide maintenance to the petitioners (respondents herein). He further submitted that the respondents themselves left the matrimonial home of the petitioner and hence they are not entitled to file petition under Section 125 Cr.P.C and seek maintenance from the petitioner herein.

4 *Per contra*, the learned counsel for the petitioners (respondent herein) submitted that it is the duty of the respondent to provide maintenance to the petitioners regardless of his income. He further submitted that the findings of the Court below are supported by oral and documentary evidence available on record.

5 Now the points that arise for determination in this Petition are:

“1. Whether the petitioners are entitled to claim Maintenance from the respondent?

2. Whether there is any illegality or irregularity in the order passed by the trial Court warranting interference of this Court?”

6 Both the points are intertwined with each other and hence I am inclined to address both the points simultaneously in order to avoid recapitulation of evidence.

7 The factual matrix that led to the filing of the present Criminal Revision Case is as follows:

8 The marriage of the first petitioner was performed with the respondent in the year 2005 as per Muslim rites and caste customs. Out of their lawful wedlock, the first petitioner and the respondent were blessed with two children i.e. the petitioners Nos.2 and 3 herein. It is further alleged that the respondent intentionally and wilfully neglected to provide maintenance to the petitioners. The petitioners have no source of income whatsoever to maintain themselves. It is further alleged that the respondent is earning Rs.40,000/- p.m.

9 In the said petition, the respondent filed counter admitting the relationship *inter alia* contending that the petitioners left the matrimonial home of the respondent without any justifiable reason and hence they are not entitled for maintenance. Hence the petition may be dismissed.

10 Before the trial Court, to substantiate the case, on behalf of the petitioners the first petitioner examined herself as P.W.1 and got marked Exs.P.1 to P.3. On behalf of the respondent, the respondent examined herself as R.W.1. To prove the income of the respondent, one Mohd Shoukat Ahmed was examined as R.W.2 and Exs.R.1 to R.3 were marked.

11 The trial Court, basing on the oral and documentary evidence and the other material available on record, came to the conclusion that the respondent wilfully and intentionally neglected to provide maintenance to the petitioners and accordingly allowed the petition, granting maintenance of Rs.1,000/- p.m. to the first petitioner and Rs.1,500/- each to the petitioners Nos.2 and 3 from the date of the passing of the order. Feeling aggrieved by the order dated 25.02.2013 of the trial Court, the respondent filed the present Revision Case.

12 As per the testimony of P.W.1, the respondent harassed her and beat her. As per the testimony of R.W.1, the petitioners themselves left the company of the respondent without any justifiable reason. Nothing

elicited in the cross examination of P.W.1 to disbelieve her testimony. It is not uncommon to make allegations and counter allegations in matrimonial cases to gain sympathy of the Court. The material available on record clinchingly establishes that the petitioners left the house of the respondent due to the harassment meted out by him. As seen from the testimony of P.W.1, basing on a complaint lodged by her, police registered case Cr.no.107 of 2011 against the respondent and his family members for the offences punishable under Sections 498-A of IPC and Sections 4 and 6 of Dowry Prohibition Act. This itself prima facie reveals the conduct of the respondent. Except the self serving testimony of R.W.1, there is no other convincing evidence to prove that on 19.2.2011 the first petitioner left the house of the respondent by taking Rs.1.00 lakh cash, passport of the respondent and other gold ornaments. If really the first petitioner left the house of the respondent with all the above things, what prevented the respondent to lodge a complaint to the police? The material available on record clearly reveals that the respondent neglected to provide maintenance to the petitioner. The finding recorded by the trial Court on this aspect is supported by oral and documentary evidence.

13 Except the self serving testimony of P.W.1, there is no other convincing evidence available on record to show that the respondent was earning Rs.40,000/- p.m. The testimony of R.W.2 is no way helpful to establish that the respondent is not having sufficient means. A perusal of Exhibits P.1 to P.3 clearly reveals that the petitioner has been paying school fees to the petitioner Nos.2 and 3. As per Exhibit R.3 salary certificate, the respondent was getting Rs.4,500/- p.m. The fact remains that the respondent has sufficient means to provide maintenance to the petitioners.

14 In ***Chander Parkash Bodh Raj v Shila Rani Chander Parkash*** wherein the Delhi High Court has opined thus:

7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is

unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

15 In ***Jasbir Kaur Sehgal v District Judge, Dehradun***^[2] the apex court held as follows:

“8. ... The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

16 In ***Chaturbhuji v Sita Bai***^[3], the apex court rules thus:

“6. ... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this court in ***Capt. Ramesh Chander Kaushal v Veena Kaushal***^[4], falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in ***Savitaben Somabhai Bhatiya v State of Gujarat***^[5].”

17 The same principle was reinstated in ***Shamima Farooqui v Shah Khan***^[6]. This being the position in law, it is the obligation of the husband maintain his wife and children. The maintenance should be awarded as per the status of the parties and financial capacity of the husband.

18 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, there is social obligation on the part of the respondent to provide maintenance to the petitioners who are his wife and children. The trial Court awarded maintenance of Rs.1,000 p.m. to the first petitioner and Rs.1,500/- each to the petitioner Nos.2 and

from the date of passing of the order. It may not be possible for the fil
petitioner to look after the welfare of the petitioner Nos.2 and 3 with th
meager amount of Rs.3,000/-. The amount of Rs.4,000/- p.m. is harc
sufficient even for sustenance of petitioners in these days.

19 Viewed from any angle, I am unable to accede to the contention of th
learned counsel for the respondent that the amount of maintainanc
awarded by the trial Court is on higher side. There is no illegality
irregularity in the orders passed by the trial Court warranting interference
this Court. The points are answered accordingly.

20 For the foregoing discussion, this Criminal Revision Case is devoid
merit and is accordingly dismissed. As a sequel, miscellaneous petitions
any pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY

Date: 09.03.2016

Kvsn

[\[1\]](#) 1968 SCC OnLine Del 52

[\[2\]](#) (1997) 7 SCC 7

[\[3\]](#) (2008) 2 SCC 316

[\[4\]](#) (1978) 4 SCC 70

[\[5\]](#) (2005) 3 SCC 636

[\[6\]](#) (2015) 5 SCC 705