

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No. 900 of 2012

ORDER:

This Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C challenging the orders dated 20.04.2012 in C.R.P.No. 89 of 2010 on the file of III Additional District and Sessions Judge, Kakinada, wherein and whereby the learned Judge reversed the order dated 28.7.2010 in M.C.No. 146 of 2008 on the file of V Additional Judicial Magistrate of First Class, Kakinada by granting maintenance of Rs. 1,000/- to the petitioner therein.

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 on 17.11.2005 at Kakinada as per Hindu Rites and Caste Custom. At the time of marriage, the parents of the first petitioner gave cash of Rs.1,00,000/- and gold ornaments to the respondent towards dowry. Immediately after the marriage, the petitioner joined the respondent at Visakhapatnam to lead happy marital life. They lived together at Visakhapatnam up to 2007. Basing on the complaint lodged by the petitioner, the concerned SHO registered a Criminal case against respondent and his family members for the offence under Section 498-A IPC. The respondent filed a petition under Section 9 of the Hindu Marriage Act, on the file of the Family Court at Visakhapatnam for restitution of conjugal rights. The petitioner filed MC No. 146 of 2008 on the file of V Additional Judicial Magistrate of First Class, Kakinada and the same was dismissed. Feeling aggrieved by the orders of the trial Court, the petitioner preferred C.R.P.No. 89 of 2010 on the file of III Additional District and Sessions

Judge, Kakinada and the same was allowed in part by granting maintenance at Rs. 1,000/- to the petitioner.

4. To substantiate the case, the petitioner examined herself as PW.1 and examined PW-2 and no documents were marked. To demolish the case of the petitioner, the respondent examined himself as RW.1 and examined RWs 2 & 3 and got marked Exs.R1 & R2.

5. Heard Sri C. Sharan Reddy, learned counsel appearing for petitioner and the learned Public Prosecutor for the State of Andhra Pradesh for second respondent.

6. The contention of the learned counsel for the respondent (petitioner herein) is two fold: (1) the petitioner herself left the matrimonial home of the respondent, therefore, she is not entitled to claim maintenance from the petitioner in view of Section 125(4) Cr.P.C; and (2) the findings recorded by the Revisional Court are perverse, therefore, it is a fit case to allow the Revision.

7. Basing on the oral and documentary evidence and other material available on record, the trial Court dismissed the petition on the following two grounds: (1) petitioner herself deserted the respondent, therefore, she is not entitled to claim maintenance; and (2) the petitioner is an employee and having sufficient means to maintain herself. The Revisional Court gave a finding 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. The Revisional Court also made an observation that after passing of orders in M.C, the petitioner resigned to her job and allowed the petition in part by awarding maintenance of Rs.1,000/- per month to the petitioner. Feeling aggrieved by the order of the trial Court, the respondent (husband) preferred the present revision.

8. Now the crucial question that falls for consideration is whether the petitioner is entitled to claim maintenance from the respondent?

9. It is an admitted fact that the marriage of the petitioner was performed with the respondent on 17.11.2005 at Kakinada as per Hindu Rites and Caste Custom. They lived together happily at Visakhapatnam up to 2007. The fact remains that bad weather prevailed in the family life of the petitioner and the respondent in the year 2007. A perusal of the record reveals that the petitioner got some property from her maternal grand mother. The respondent did not allow the petitioner to see her grandmother, who met with an accident on 3.8.2007. The material placed on record establishes that she died within one week. The fact remains that the respondent did not allow the petitioner to go to her parents' house to see her grand mother who is almost on death bed. The petitioner went to her parents' house to attend final obsequies of her grand mother held on 25.8.2007. From 25.8.2007, the respondent did not take any steps to take back her. For the reasons best known to respondent, filed a petition under Section 9 of the Hindu Marriage Act, against the petitioner for restitution of conjugal rights. As observed earlier, the respondent and others are facing trial for the offences punishable under Section 498-A IPC. The case of the petitioner is that the respondent and her family members demanded additional dowry. The fact remains that the father of the petitioner had retired from service in the year 2006 and in such circumstances, the possibility of demanding money from the parents of the petitioner cannot be ruled out completely. The finding of the trial Court that the petitioner herself left the matrimonial home of the respondent is not supported by any material much less legally admissible material, whereas, the finding recorded by the Revisional Court on this aspect is fully supported by the oral evidence much less legally admissible evidence. There are no grounds much less valid grounds to set aside the findings recorded by the Revisional Court. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the respondent

that the petitioner left the matrimonial home of the respondent without any justifiable cause. The trial Court dismissed the petition on the sole ground that the petitioner is working as Junior ANR in Primary Health Centre, Panduru from 2.3.2009. A perusal of the record clearly reveals that the petitioner resigned to her job therefore, the Revisional Court granted

maintenance to her. Absolutely there is no material on record to prove that the petitioner is an earning member. There is moral and legal obligation on the part of the respondent to provide maintenance to the petitioner regardless of his income. As rightly pointed out by the learned counsel for the petitioner, the Court has to take into consideration the social and economic conditions of both the parties before awarding the maintenance. It appears that the Revisional Court granted an amount of Rs. 1,000/- to the petitioner keeping in mind the educational qualification of petitioner. An amount of Rs. 1,000/- is hardly sufficient for sustenance of an individual. Viewed from any angle, I am unable to accept the contention of the learned counsel for the respondent that granting an amount of Rs. 1,000/- to the petitioner towards maintenance is on higher side. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court.

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

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

Date: 05.07.2016
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T.SUNIL CHOWDARY, J