

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2549 of 2013

ORDER:

1 This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 10.09.2013 passed in CrI.M.P.No.57 of 2013 in M.C.No.21 of 2007 passed by the learned Judge, Family Court, Nizamabad.

2 The contention of the learned counsel for the petitioner is two fold: 1) The Court below failed to consider that the second respondent produced incorrect salary certificate of the petitioner before the Revisional Court, and 2) The findings recorded by the trial Court are not sustainable either on facts or in law.

3 *Per contra*, the second respondent – Party in person submitted that the amount granted in the M.C is on lower side. She further submitted that the petitioner has not paid the arrears of maintenance so far.

4 The facts leading to filing of the present Criminal Revision Case, briefly, are as follows:

5 The marriage of the second respondent was performed with the petitioner in the year 1991. For one reason or the other, the petitioner and the second respondent have not been residing under the same roof.

6 The second respondent filed M.C.No.21 of 2007 on the file of the Court of the Judicial Magistrate of I Class, Nizamabad under Section 125 Cr.P.C. seeking maintenance from the petitioner at the rate of Rs.20,000/- p.m. After affording a reasonable opportunity to both parties, the trial Court dismissed the M.C.No.21 of 2007. Feeling aggrieved by the orders passed by the trial Court in M.C.No.21 of 2007 dated 10.06.2008, the second respondent preferred Criminal Revision Petition No.47 of 2008 on the file of the I Additional District & Sessions Judge, Nizamabad. The learned I Additional District & Sessions Judge, after affording reasonable opportunity to both parties, allowed the Revision Petition on 15.10.2009 by granting maintenance of Rs.8,000/- p.m. to the second respondent.

7 Feeling aggrieved by the order dated 15.10.2009 passed by the Revisional Court, the petitioner filed CrI.P.No.2934 of 2010 before this Court and the same was dismissed by order dated 11.10.2012 with a liberty to the petitioner to move an application before the concerned Magistrate Court for modifying the orders passed under Section 125 Cr.P.C.

8 Thereupon, the petitioner filed CrI.M.P.No.57 of 2013 for modification of the orders passed in the M.C. The second

respondent filed CrI.M.P.No.53 of 2013 seeking enhancement of the maintenance. The trial Court after affording reasonable opportunity to both parties, dismissed the said petition. For one reason or the other, the second respondent did not challenge the orders passed in CrI.M.P.No.53 of 2013.

9 The only question that falls for consideration in this Criminal Revision Case is “Whether the order passed by the trial Court is legally sustainable or not”?

10 There is no dispute between the parties with regard to the *inter se* relationship. The petitioner has been working as bank employee. The learned counsel for the petitioner submitted that at the time of filing of the petition before the trial Court the petitioner was drawing gross salary of Rs.22,300/- p.m. He further contended that the second respondent produced the salary certificate before the Revisional Court as if the petitioner was drawing a monthly salary of Rs.52,000/-. He further contended that that Rs.52,000/- reflects three months salary of the petitioner, but not one month salary. This Court has not upheld the contention of the petitioner in CrI.P.No.2934 of 2010. Therefore, the petitioner is precluded to raise that contention for the first time before this Court. Even assuming but not conceding that the salary of the petitioner was Rs.22,300/- in

the year 2007, the amount of maintenance granted by the trial Court to the second respondent is only Rs.8,000/-. An amount of Rs.8,000/- may hardly be sufficient for sustenance of an individual.

11 The petitioner filed the petition before the trial Court under Section 127 (2) Cr.P.C. In order to appreciate the contention of the learned counsel for the petitioner it is not out of place to extract Section 127 (2) Cr.P.C, which reads as under:

127. Alteration in allowance.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

12 A perusal of the above provision of law clearly demonstrates that the Court which granted maintenance can modify, vary or cancel the maintenance basing on the decision of a competent civil court. It is not the case of the petitioner that he filed the petition under Section 127(2) Cr.P.C. in pursuance of the judgment of a competent civil Court. The petitioner filed the petition under Section 127 (2) Cr.P.C. to modify the quantum of maintenance granted by the trial Court. Having regard to the facts and circumstances of the case, I am of the considered view that Section 127 (2) Cr.P.C. is not applicable to the facts of the case on hand.

13 The second respondent, being the wife of a bank employee, is legitimately entitled to expect a decent life. Viewed from any angle, granting maintenance of Rs.8,000/- p.m. is not on higher side. The trial Court dismissed the petition taking into consideration the prevailing socio economic condition as well as the sources of income of both parties.

14 For the foregoing discussion, I see no merits in this Criminal Revision Case and the same is accordingly dismissed as devoid of merit. As a sequel, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

Date: 30th November, 2016

Kvsn

T.Sunil Chowdary, J