

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRIMINAL PETITION No.12503 OF 2010

ORDER:

Appeared none on behalf of the petitioner/party-in-person on 08.09.2016. Accordingly, the present petition was directed to be listed next week under the caption of dismissal. Thereafter, on 29.11.2016, when the matter has come up for hearing, appeared none on behalf of the petitioner and this Court made it clear that if none appeared on behalf of the petitioner on the next date of hearing, the matter will be disposed of in his absence. Hence, the matter is taken up for disposal today.

Vide the present petition, the petitioner/party-in-person seeks a direction thereby to quash the imprudent and inappropriate ex parte order dated 04.06.2009 passed in CrI.MP No.967 of 2009 in Criminal Revision Petition No.40 of 2009 on the file of Principal District & Sessions Judge, Eluru. Further seeks direction thereby to quash the impugned order dated 03.09.2010 passed in CrI.R.P.No.40 of 2009 on the file of II Additional District & Sessions Judge, Eluru.

The brief facts of the case are that the first respondent herein being the wife of the petitioner preferred Maintenance Case No.43 of 2004 before the II Additional Judicial Magistrate of First Class, Tanuku, under Section 125 of Cr.P.C claiming a monthly award of maintenance at Rs.10,000/- from the petitioner. But the same was dismissed vide order dated 15.10.2008 by the Principal Junior Civil Judge, Tanuku. Being aggrieved by the same, the first respondent filed CrI.R.P.No.40 of 2009 before the II Additional

District & Sessions Judge, West Godavari District, on the grounds that :

(i) the trial Court misconceived the facts and evidence and decided in highly technical manner on the issues of reason for petitioner's separate living and weighing the attitude of the respondent;

(ii) the trial Court erred in concluding the acts of adultery on the petitioner, which is contrary to law and evidence.

The marriage and separate living of the petitioner and the first respondent has not disputed before the court below. Therefore, the issues for consideration before the court below were that:

- i) neglected or refusal to maintain or sufficient reason for the petitioner to live separately;
- ii) the proof of adulterous living by the first respondent;
- iii) the inability of the petitioner to maintain herself; the ability of the respondent to maintain the petitioner.

Since the marriage is admitted, there is no claim of divorce by the petitioner. Thus subsistence of marriage of first respondent and the petitioner can safely be believed by the Court below. The first respondent was out of matrimonial home from 1993. The stand of first respondent is that the petitioner was of suspicious nature and used to believe that he will add some sedatives and poison in the food. Thus there is harassment and she was set out of the matrimonial home by the petitioner.

The petitioner also admitted about his belief regarding the first respondent's belief that the first respondent had certain strong superficial beliefs about adding sedatives. In addition to the above, the statement of the petitioner is strengthening the first respondent's stand of suspicious nature of the petitioner.

Having food is a daily course. The suspicion of the petitioner would certainly have been a dispute in routine. In absence of truth, the suspicion will definitely cause mental agony and may have effect more than physical torture. By the claimed version of the first respondent and the admitted version of the petitioner, the trial Court concluded that there is suffering to the first respondent due to the suspicious nature of the petitioner.

The defence taken before the court below by the petitioner was that the first respondent is living in adultery. This defence was taken in the counter. The petitioner had filed interlocutory application for a direction to the first respondent to undergo medical tests to prove that she has not involved in any sexual intercourse during deserted 12 years period and also for examining dermatitis and virginities. In addition, even in his examination as RW.1, the petitioner has not taken any name with whom the second respondent is living in adultery. Till stage of his examination of RW2, the petitioner only raised his apprehension and sexual desires of the first respondent but has not taken or named any particular adulterous relation of the first respondent.

It is pertinent to mention here that the petitioner examined three witnesses to prove the adulterous incidents of the first respondent. However, the trial court recorded that the defence is

certainly an improvement as it was not averred at any stage before presenting the witness, the trial court failed to consider the said aspect.

With regard to testimonies of the petitioner, witnesses RW.2 to RW.4, RW.2 and RW.3 have deposed about one incident each with one Bhemanna who is close relative of the first respondent. R.4 deposed about one incident with one Arya. Neither of the witnesses made any statement with regard to adulterous life of the first respondent. The effort of their statements seems to give some statements so as to infer the adulterous act. The incidents of sitting on cot or opening doors after 10 minutes or somebody coming out of the house cannot be grounds to conclude the adulterous life of the first respondent. Especially when the other person is a close relative and the incidents are only one or two.

However, it is pertinent to mention here that as per statutory provision under Section 125(3) Cr.P.C., the words '*living in adultery*' means an outright adulterous conduct and the wife shall live in a quasi permanent union with a man with whom she is committing adultery.

The petitioner made an effort to prove his line of suspicion. But he failed to do so. Accordingly, the learned trial Court concluded that the evidence let in by the petitioner to prove adulterous conduct is not sustainable.

The petitioner has failed to establish maintaining of the first respondent by filing any material or evidence before the Court below. However, the stand taken by the petitioner is that he is

retired employee of Air India and he is practicing advocate at Hyderabad. He is expected to get pension and also earning out of his practice as such he is accordingly assessed at Rs.50,000/- per month. Thus it is believed by the court below that the petitioner is having sufficient means to maintain and it is proved that the first respondent is unable to maintain herself and accordingly she is entitled for the maintenance.

In view of the above discussion, I find no infirmity with the order dated 03.09.2010 in CrI.R.P.No.40 of 2009. Consequently, the order dated 04.06.2009 has been considered by the revisional Court and accordingly allowed the petition filed by the first respondent.

On seeing the grounds mentioned in the present petition, I do not find any discrepancy and irregularity committed by the courts below.

Accordingly, I find no merit in the instant petition and the same is accordingly dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date : 14-12-2016

Gvl