

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.892 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 22-11-2011 in M.C.No.49 of 2011 on the file of the Judge, Family Court, Secunderabad.

2. The parties hereinafter will be referred to as they were arrayed before the trial Court in order to avoid confusion.

3. The contention of the learned counsel for the petitioner is two fold viz., (1) the trial Court discarded the testimony of P.W.1 on erroneous grounds and (2) the respondent is a businessman by profession and the same was not considered by the trial Court and granted meager amount of monthly maintenance of Rs.8,000/- to the 1st petitioner and Rs.5,000/- to the 2nd petitioner.

4. The facts, leading to filing of the present revision are briefly, as follows:

The marriage of the 1st petitioner was officiated with the respondent as per Christian Rites and Caste Customs at Wesley Church Secunderabad. Immediately after the marriage, the 1st petitioner joined the respondent to lead marital life. Out of their lawful wedlock, the 1st petitioner and the respondent were blessed with one daughter i.e., 2nd petitioner. The 1st petitioner and the respondent lived together for sometime in U.S. The respondent is earning Rs.3,50,000/- per month.

5. In spite of service of notice, the respondent did not choose to appear before the trial Court. Therefore, the trial Court set the respondent *ex-parte*.

6. To substantiate the case, the 1st petitioner herself was examined as P.W.1 and marked Ex.A1-wedding photo. No evidence either oral or documentary was adduced on behalf of the respondent.

7. Basing on oral and documentary evidence and other material available on record, the trial Court arrived at a conclusion

that the respondent neglected to provide maintenance to the petitioners and allowed the M.C. by granting maintenance at Rs.8,000/- per month to the 1st petitioner and Rs.5,000/-per month to the 2nd petitioner. Aggrieved by the order of the trial Court, the petitioners preferred the present revision.

8. Notice sent to the respondent returned with an endorsement 'addressee left'. There is no dispute with regard to *inter se* relationship between the parties. The oral testimony of P.W.1 clinchingly establishes that the respondent intentionally and willfully neglected to provide maintenance to the petitioners. Finding of the trial Court that the respondent neglected to provide maintenance to the petitioners is fully supported by the oral testimony of P.W.1. I am fully agreeing with the finding of the trial Court. It is needless to say that while granting maintenance, the Court has to take into consideration the financial status of the parties. It is not uncommon to exaggerate the income of the husband (respondent) by the wife in order to claim more maintenance amount. The burden lies on the petitioner to establish that the respondent used to earn Rs.3,50,000/- per month. Except the oral testimony of P.W.1, there is no convincing evidence to establish the income of the respondent. If really, the respondent earns Rs.3,50,000/- per month, nothing prevented the petitioner to produce documentary evidence or to examine any other person. For the reasons best known to the petitioner, she did not produce even a single scrap of paper to prove the income of the respondent. In the absence of any documentary evidence, some guess work is inevitable to determine the quantum of maintenance. The trial Court basing on the material available on record, granted monthly maintenance at the rate of Rs.8,000/- to the 1st petitioner and Rs.5,000/- to the 2nd petitioner. During the pendency of revision also, the petitioner did not take any steps to produce any documentary evidence to substantiate her case. In the absence of any documentary evidence, it is not safe to place reliance on the oral testimony of P.W.1, who is an interested witness. No doubt, there is a social and moral obligation on the part of the respondent to look after the welfare and wellbeing of the petitioners. Taking into consideration the facts and circumstances of the case, I am of the considered view that the trial Court rightly allowed the M.C. by granting monthly maintenance at the rate of Rs.8,000/- to the 1st

petitioner and Rs.5,000/- to the 2nd petitioner. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

9. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 14-07-2016.

Hsd