

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1663 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the common order dated 18.07.2012 in M.C.No.65 of 2008 on the file of the Family Court-cum-IV Additional District and Sessions Judge at Vijayawada.

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 case are briefly as follows:

The marriage of the first petitioner was performed with the respondent on 27.05.2005 at Gannavaram, as per Hindu Rites and Caste Custom. Immediately after the marriage, the first petitioner joined the respondent to lead happy marital life. Out of lawful wedlock, the first petitioner and the respondent were blessed with a daughter i.e., second petitioner. Basing on the complaint lodged by the first petitioner, the Station House Officer, Gannavaram Police Station registered a case in Crime No.234 of 2007 against the respondent and his family members for the offences punishable under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The case of the petitioners is that the respondent is earning Rs.20,000/- per month by running a kirana shop. Hence, the petitioners filed a petition claiming maintenance of Rs.3,000/- per month each to the petitioners. The respondent filed counter admitting the *inter se* relationship *inter alia* contending that the petitioners themselves left the matrimonial home of the respondent. Therefore, they are not entitled to claim maintenance. The respondent filed O.P.No.95 of 2008 on the file of the Family Court-cum-IV Additional District and Sessions Judge at Vijayawada under Section 13(1)(ia) of the Hindu

Marriage Act, 1955 to dissolve the marriage between himself and the first petitioner and the same was dismissed on 18.07.2012. The trial Court clubbed O.P.No.95 of 2008 and M.C.No.65 of 2008 and recorded evidence in O.P.No.95 of 2008.

4. During the course of trial, the respondent examined himself as PW.1. PWs.2 and 3 were examined to prove that the first petitioner herself subjected the respondent to cruelty. The first petitioner herself examined as RW.1. The mother and maternal uncle of the first petitioner were examined as RWs.2 and 3 respectively and no documents were marked.

5. Basing on the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioners and allowed the petition by granting maintenance of Rs.2,000/- per month to the first petitioner and Rs.1,000/- per month to the second petitioner.

6. The contention of the learned counsel for the respondent (husband) is three fold: (1) the petitioners themselves left the matrimonial home of the respondent; therefore, they are not entitled to claim maintenance; (2) the trial court granted maintenance of Rs.2,000/- per month to the first petitioner and Rs.1,000/- per month to the second petitioner without taking into consideration the financial condition of the respondent; and (3) the order passed by the trial Court is not sustainable either on facts or in law.

7. Now the points that arise for consideration are:

1. Whether the petitioners are entitled to claim maintenance from the respondent or not?

2. Whether there is any illegality or irregularity in the order of the trial Court, which warrants interference of this Court or not?

8. Point Nos.1 and 2 are interlinked with each other; hence, I am inclined to address both points simultaneously to avoid repetition.

9. As per the testimony of PW.1 (husband), the petitioners left the matrimonial house without any justifiable cause. The oral testimony of PWs.2 and 3 is no way helpful to the respondent to establish the above said fact. Basing on the complaint lodged by the first petitioner, the Station House Officer, Gannavaram Police Station registered a case in Crime No.234 of 2007 against the respondent and his family members for the offences punishable under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. This itself justifies the petitioners to leave the house of the respondent. The finding recorded by the trial Court that the respondent intentionally and willfully neglected to provide maintenance to the petitioners is supported by evidence much less legally admissible evidence. There are no grounds much less valid grounds to interfere with the finding recorded by the trial Court. Hence, I am fully agreeing with the finding recorded by the trial Court.

10. As per the testimony of RWs.1 to 3, the respondent used to earn Rs.20,000/- per month by running a kirana shop. They further deposed that the respondent used to get an amount of Rs.4,000/- towards rent. Except the oral testimony of RWs.1 to 3, there is no other convincing evidence to prove that the respondent is earning Rs.20,000/- per month and getting monthly rent of Rs.4,000/-. Even as per the testimony of PWs.2 and 3, the respondent has been running the kirana shop. There is no whisper in the testimony of PWs.2 and 3 that the first petitioner is having landed property or any other source of income to maintain herself. There is a social and moral obligation on the part of the respondent to provide maintenance to the petitioners regardless of his income. In the absence of positive evidence, some guess work is inevitable in order to ascertain the quantum of maintenance. The second petitioner is aged about one year by the time of filing the

petition in the year 2008. Now, the second petitioner is aged about 8 years. It may not be possible for the first petitioner to admit the second petitioner in any school without any source of income. The first petitioner has been residing at her parents' house. While deciding the petitions of this nature, the Court has to take into consideration the ground realities as well as the financial status of the parties to the proceedings. The trial Court, after taking into consideration the material available on record, granted the maintenance of Rs.2,000/- per month to the first petitioner and Rs.1,000/- per month to the second petitioner. The amount of Rs.3,000/- per month may hardly sufficient for sustenance of two individuals in view of prevailing price index. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that granting of an amount of Rs.3,000/- per month to the petitioners is on higher side. If there is any irregularity or illegality in the orders passed by the trial Court, this Court can interfere with the same by exercising the jurisdiction under Sections 397 and 401 of Cr.P.C. The trial Court has taken into consideration various aspects and granted reasonable amount of Rs.3,000/- per month towards maintenance to the petitioners. Viewed from any angle, it is not a fit case to interfere with the order of the trial Court. The criminal revision case lacks merits and *bona fides*. Point Nos.1 and 2 are answered accordingly.

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

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

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T.SUNIL CHOWDARY, J

Date: 04.07.2016

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