

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1724 of 2009

ORDER:

This criminal revision case is filed by the petitioner under Section 397 and 401 Cr.P.C. challenging the orders dated 14.07.2009 in M.P.No.310 of 2007 in M.C.No.22 of 1989 on the file of the Court of Additional Metropolitan Sessions Judge for the trial of JHCBBC – cum – Additional Family Court – cum – XXIII Additional Chief Judge, Hyderabad.

The contention of the learned counsel for the respondent (petitioner herein) is two fold:

1. The trial Court without taking into consideration the financial status of the petitioner enhanced the maintenance from Rs.300/- per month to Rs.2,200/- per month.
2. He further submitted that the trial Court failed to consider that the respondent is having first wife and children.
3. He further submitted that the petitioner retired from service on attaining the age of superannuation hence it is a fit case to interfere with the orders passed by the trial Court.

Per contra, learned counsel for the petitioner submitted that the petitioner is the only legally wedded wife of the respondent. He further submitted that the respondent is not having another wife and children. He further submitted that the trial Court granted maintenance basing on the source of income of the respondent therefore it is not a fit case to interfere.

The parties will be herein after referred to as they are arrayed before the trial Court.

The facts leading to file the present revision are briefly as follows:

The petitioner filed M.C.No.22 of 1989 on the file of the Court of Metropolitan Sessions Judge cum Family Court, Nampally, seeking maintenance from the respondent and the same was allowed on 12.07.1993 by granting maintenance of Rs.300/- per month. The petitioner filed M.P.No.310 of 2007 in M.C.No.22 of 1989 seeking enhancement of maintenance amount from Rs.300/- to Rs.4,000/- per month. The trial Court after considering the material available on record allowed the petition enhancing the maintenance amount from Rs.300/- to Rs.2,200/- per month. Hence, the present revision.

Now, the point that arises for consideration is:

Whether the trial Court is justified in enhancing the maintenance amount or not?

The predominant contention of the learned counsel for the respondent is that the respondent is having first wife and children and that fact was not considered by the Court below. For one reason or other, both parties have not filed the certified copy or zerox copy of orders passed in M.C.No.22 of 1989. In the absence of petition and counter, it may not be possible for this Court to know whether the respondent has taken the specific plea that he was having wife and children by the time of filing of M.C.No.22 of 1989. If really the respondent is having first wife and children, what prevented him to enter into the witness box before the trial Court to substantiate the same. The respondent

did not choose to file single scrap of paper in M.P.No.310 of 2007 to establish that the petitioner is the second wife and he is having first wife and children. As rightly pointed out by the learned counsel for the petitioner, the respondent has taken the plea for the first time before this Court. Whether the respondent is having first wife and children is purely a disputed question of fact, which cannot be decided in the revision without any material. Therefore, I am unable to accede to the contention of the learned counsel for the respondent that the trial Court has not considered the fact that the respondent is having first wife and children.

Both counsels with one voice submitted that the respondent has been working as casual employee in Hindustan Aeronauticals Limited, Hyderabad. A perusal of the record reveals that by the time of passing the impugned order, the petitioner is drawing a salary of Rs.6,162/- as a casual labour. Learned counsel for the respondent submitted that the respondent has retired from service on attaining the age of superannuation. As per the finding of the trial Court, the respondent is having 3 ½ acres of dry land in Marepalli village of Medak District. The contention of the learned counsel for the respondent is that the respondent is not getting any income from agricultural land. The respondent did not choose to examine the revenue officials to establish that he is not getting any income from agricultural land. The fact remains that the respondent is having 3 ½ acres of agricultural land. It is not the case of the respondent that the petitioner is having landed property or any other source of income to maintain herself. Absolutely there is no material to establish that the petitioner is having any source of income to maintain herself.

In such circumstances, the petitioner has no other

alternative except to depend on the income of her husband, i.e. respondent. While passing the orders in maintenance cases, the Court has to take into consideration the financial status of the parties to the proceedings. The petitioner is aged about 46 years in the year 1989. The petitioner is now aged about 63 years. At the age of 63 years, it may not be possible for the petitioner to earn any amount. There is a moral and social obligation on the part of the respondent to provide maintenance to the petitioner. The impugned order was passed in the year 2009. The Court has to take into consideration the prevailing price index while granting maintenance. The amount of Rs.2,200/- is hardly sufficient for sustenance of any individual.

Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that the trial Court enhanced the maintenance amount from Rs.,300/- to Rs.2,200/- per month on assumptions and presumptions. There is no illegality or irregularity in the orders of the trial Court, which warrants interference of this Court while exercising the jurisdiction under Sections 397 and 401 Cr.P.C. Hence, there are no grounds much less valid grounds to interfere with the orders passed by the Court below and this revision case lack merits and the same is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

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T.SUNIL CHOWDARY, J.

July 4, 2016
Rns

