

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.2737 OF 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 06-08-2015 in Crl.Revision Petition No.32 of 2014 on the file of the Principal District and Sessions Judge, Srikakulam, whereunder and whereby the order, dated 31-05-2015 in M.C.No.7 of 2013 on the file of the Judl. Magistrate of I Class, Amadalavalasa, was modified.

2. Heard Sri K.Murali Krishna, learned counsel for the petitioner and Sri V.Sudhakar Reddy, learned counsel for the respondents.

3. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed before the trial Court in the above M.C.

4. Learned counsel for the respondent (petitioner herein-husband) strenuously submitted that the revisional Court without taking into consideration the family background of the respondent enhanced the maintenance amount from Rs.1,000/- to Rs.8,000/- per month to the 1st petitioner and Rs.500/- to Rs.4,000/- per month to the 2nd petitioner. He further submitted that the findings recorded by the revisional Court are not based upon material available on record, much less, legally admissible material.

5. Per contra, learned counsel for the petitioners (respondents herein) submitted that the trial Court without considering the salary of the respondent granted meager amount of Rs.1,000/- per month to the 1st petitioner and Rs.500/- per month to the 2nd petitioner. He further

submitted that the revisional Court after taking into consideration the salary of the respondent enhanced the maintenance amount from Rs.1,000/- to Rs.8,000/- per month to the 1st petitioner and Rs.500/- to Rs.4,000/- per month to the 2nd petitioner. He further submitted that there is no illegality or irregularity in the order passed by the revisional Court and therefore, the revision is not maintainable in law.

6. The facts, leading to filing of the present revision are as follows: The marriage of the 1st petitioner with the respondent was performed on 22-03-2006 as per Hindu Rites and caste customs. Immediately after the marriage, the 1st petitioner joined the respondent to lead happy marital life. Out of their lawful wedlock, the 1st petitioner and the respondent were blessed with a son i.e., 2nd petitioner. Due to differences and disputes between the 1st petitioner and the respondent, the 1st petitioner has been residing at her parents house. The 1st petitioner filed the above M.C. against the respondent under Section 125 Cr.P.C. seeking maintenance at the rate of Rs.10,000/- per month to the 1st petitioner and Rs.5,000/- per month to the 2nd petitioner.

7. The respondent remained ex-parte before the trial Court.

8. During the course of trial, the 1st petitioner herself was examined as P.W.1 and got marked Ex.A1. No evidence either oral or documentary was adduced on behalf of the respondent.

9. After considering both oral and documentary evidence available on record, the trial Court granted

maintenance at the rate of Rs.1,000/- per month to the 1st petitioner and Rs.500/- per month to the 2nd petitioner.

10. Aggrieved by the said order, the petitioners filed the above Crl. Revision Petition and the revisional Court allowed the Crl. Revision Petition by enhancing the maintenance amount from Rs.1,000/- per month to Rs.8,000/- per month to the 1st petitioner and from Rs.500/- per month to Rs.4,000/- per month to the 2nd petitioner. Challenging the same, the respondent filed this revision.

11. Now the point that arises for consideration in this revision is whether the revisional Court has committed any illegality or irregularity in enhancing the amount, which warrants interference of this Court?

12. There is no dispute with regard to the *inter se* relationship between the parties. Duty is cast on the petitioner to prove that the respondent intentionally and willfully neglected to provide maintenance to her. It is the case of the petitioners that the respondent intentionally and willfully neglected to provide maintenance to them. A perusal of the record reveals that the petitioners have clinchingly established that the respondent intentionally and willfully neglected to provide maintenance to them. For the reasons best known to the respondent, he did not choose to contest the matter in the trial Court. If really, the 1st petitioner herself deserted the respondent without any justifiable cause or reasons, nothing prevented the respondent to file a counter. Even without filing the counter, the respondent is entitled to cross-examine P.W.1 to elicit that she herself deserted him thereby to dislodge the case of the petitioners. Nothing is produced before the trial Court to establish that the 1st petitioner deserted the respondent. Having regard to

the facts and circumstances of the case, I am fully agreeing with the findings recorded by the Courts below that the respondent intentionally and willfully neglected to provide maintenance to the petitioners.

13. It is needless to say that while granting maintenance, the Court has to take into consideration the socio-economic conditions as well as source of income of the respondent (husband). Absolutely, there is no material on record to show that the petitioners have source of income to maintain themselves. There is social and moral obligation on the part of the respondent to provide reasonable amount towards maintenance of the petitioners, who are none other than his wife and son. The 2nd petitioner is aged about 4 years by the date of filing of above M.C. It is not in dispute that the respondent has been working as House-keeping in Indian Army. As per Ex.P1-salary certificate, the respondent was drawing a gross salary of Rs.38,229/- and net salary of Rs.20,171/-. During the pendency of the revision, the petitioners filed salary certificate of the respondent. As per salary certificate, net salary of the respondent is Rs.33,340/- per month. The material placed before the Court clinchingly establishes that the respondent is having sufficient source of income to provide maintenance to the petitioners. The trial Court has not taken into consideration the salary of the respondent while allowing the petition, whereas the revisional Court has taken into consideration the salary particulars of the respondent and enhanced the maintenance amount.

14. Learned counsel for the respondent submitted that the amount of maintenance granted by the revisional Court is on higher side. He further submitted that the respondent has to look after the welfare of his parents, as he

being the only son to them. Nothing is placed before the trial Court or before the revisional Court to establish that the respondent is the only son to his parents. In the absence of convincing evidence, it is not safe to place reliance on the submissions made by the learned counsel for the respondent. Further, in the absence of pleadings and oral and documentary evidence, much weight cannot be attached to the submission made by the learned counsel for the respondent. 1st petitioner being the wife and 2nd petitioner being the son of the respondent, are legitimately entitled for a decent life like wife and son of an Army employee. The Court has to take into consideration the prevailing price index while granting maintenance. The 1st petitioner may face much difficulty to bring up the 2nd petitioner without any source of income. It appears, the revisional Court has taken into consideration the future prospects of the 2nd petitioner and granted Rs.8,000/- per month to the 1st petitioner and Rs.4,000/- per month to the 2nd petitioner.

15. Viewed from any angle, I am unable to accede to the contentions of the learned counsel for the respondent that the amount of maintenance granted by the revisional Court is on higher side. There is no illegality or irregularity or impropriety in the order passed by the revisional Court, which warrants interference of this Court by exercising the revisional jurisdiction under Section 397 Cr.P.C. Therefore, the revision lacks merits and bona fides.

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

T.SUNIL CHOWDARY, J

DATED: 21-11-2016.

Hsd

