

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2496 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., challenging the order, dated 16.10.2012, in F.C.M.C.No.14 of 2011 on the file of Judge, Family Court-cum-I Additional District Judge (Fast Track Court) Srikakulam.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the F.C.M.C. before the trial Court.

3. The facts leading to filing of petition are as follows:

The marriage of the 1st petitioner was performed with the respondent on 25.06.2005 as per Hindu Rites and Caste Customs. Immediately, after the marriage, the 1st petitioner joined the respondent to lead marital life. Out of their lawful wedlock, they were blessed with a daughter-2nd petitioner. The respondent developed all sorts of habits and neglected to provide maintenance to the petitioners. As the respondent had been subjecting 1st petitioner to cruelty, she left the company of the respondent and residing at her parents' house along with 2nd petitioner. The petitioners 1 and 2 filed the F.C.M.C. under Section 125 Cr.P.C. claiming maintenance of Rs.8,000/- per month to the 1st petitioner and Rs.6,000/- per month to the 2nd petitioner.

4. The respondent filed counter denying all the allegations made in the petition, *inter alia* contending that the 1st petitioner herself left the matrimonial home of the respondent and therefore,

she is not entitled to claim maintenance from him. The respondent further contended that as he has to look after the welfare of his mother, brothers and sister, he is not in a position to pay maintenance the petitioners.

5. During the course of trial, on behalf of petitioners, P.W.1 was examined and Exs.A.1 to A.6 were marked. On behalf of respondent, R.W.1 was examined and Exs.B.1 to B.6 were marked.

6. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioners and granted an amount of Rs.3,000/- per month to the 1st petitioner and Rs.2,000/- per month to the 2nd petitioner. Challenging the same, the present revision case is filed.

7. Learned counsel for the respondent submitted that the trial Court failed to consider that the 1st petitioner herself left the matrimonial home of the respondent, therefore, she is not entitled to claim maintenance under Section 125 Cr.P.C. He further submitted that the trial Court without taking into consideration the salary of the respondent, granted maintenance of Rs.3,000/- per month to the 1st petitioner and Rs.2,000/- per month to 2nd petitioner, which is on higher side. He further submitted that the finding recorded by the Court below is not based on legally admissible evidence and hence, it is a fit case to allow the revision.

8. Per contra, learned counsel for the petitioners submitted that the respondent herein necked out the petitioners from the matrimonial home, therefore, the 1st petitioner lodged a complaint to the police, which clearly indicates that the respondent neglected the petitioners to provide maintenance. She further submitted that even as per salary certificate-Ex.A.1, the respondent was drawing gross salary of Rs.17,305/- per month, therefore, the amount of maintenance granted by the trial Court is not on higher side. She further submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

9. Now the points that arise for consideration are:

1. Whether the quantum of maintenance granted by the trial Court is on higher side 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?

10. Point Nos.1 and 2 are interlinked with each other; hence, I am inclined to address both points simultaneously to avoid recapitulation of facts and evidence.

11. **POINT Nos.1 and 2:**

It is not in dispute that the marriage of the 1st petitioner was performed with the respondent as per Hindu rites and caste customs on 25.06.2005. Out of their lawful wedlock, they were blessed with a daughter i.e., the 2nd petitioner. Whatever be the reason, the 1st petitioner left the house of the respondent and has been residing at her parents' house along with her daughter-2nd petitioner.

12. It is the contention of the respondent that the 1st petitioner left matrimonial home, without any justifiable cause, therefore, the burden of proof lies on the petitioners to establish that they are entitled to claim maintenance from the respondent. As seen from the testimony of P.W.1, the respondent subjected the 1st petitioner to cruelty for additional dowry. A perusal of the record reveals that the 1st petitioner lodged a complaint before the concerned Station House Officer, who in turn registered a case in Crime No.15 of 2010 for the offence punishable under Section 498-A IPC and the police after completion of investigation, laid charge sheet against the respondent. There is no material on record with regard to the final result of the case.

13. The contention of the 1st petitioner is that the respondent subjected her to cruelty is *prima facie* believable. The 1st petitioner is justified in leaving the matrimonial home of the respondent in view of the attitude of the respondent. The trial Court basing on the oral and documentary evidence, arrived at a conclusion that the respondent neglected to provide maintenance to the petitioners. The findings recorded by the trial Court are based on oral and documentary evidence. I am fully agreeing with the findings recorded by the trial court.

14. Having regard to the facts and circumstances of the case, I am of the considered view that the respondent intentionally and willfully neglected to provide maintenance to the petitioners.

15. As per the testimony of P.W.1, the respondent drawing gross salary of Rs.17,305/- per month. Ex.A.1 is the salary certificate. As seen from the testimony of R.W.1, he is paying loans to bank. A

perusal of Exs.B.2 and B.3 makes it clear that the respondent obtained housing loan from the bank. Both the 1st petitioner and the respondent filed medical certificates to prove that they are spending some amount towards medicines. A perusal of Ex.A.1- salary certificate, reveals that the respondent is drawing gross salary of Rs.17,305/- per month. In the cross-examination of P.W.1, nothing was elicited to establish that she is having source of income to maintain herself and the 2nd petitioner. It is the duty of the respondent to look after the welfare of the petitioners. The trial Court after considering the financial status of both the parties, granted maintenance of Rs.3,000/- per month to the 1st petitioner and Rs.2,000/- per month to the 2nd petitioner. By the time of filing of the petition, the 2nd petitioner was aged about 3½ years, now she is aged about 7½ years. Taking into consideration the financial status of the 1st petitioner and the respondent, I am of the considered view that granting of maintenance of Rs.3,000/- per month to the 1st petitioner and Rs.2,000/- month to the 2nd petitioner is not on higher side. The trial court rightly considered the status of both the parties and granted reasonable amount towards maintenance to the petitioners.

16. The trial Court has assigned reasons much less cogent and valid reasons to its findings. There is no illegality or irregularity in the order of the trial court, which warrants interference of this Court by exercising the revisional jurisdiction under Section 397 Cr.P.C. Hence, point Nos.1 and 2 are answered accordingly.

17. In the result, the Criminal Revision Case is dismissed.
Miscellaneous petitions, if any, pending in this revision case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 07.12.2016
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THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY



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