

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.1324 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 12-08-2015 in M.C.No.24 of 2013 on the file of the Junior Civil Judge at Kodad.

2. 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.

3. The contention of the learned counsel for the respondent (petitioner herein-husband) is two fold viz., (1) the petitioner developed illicit intimacy with one Daniel and left the matrimonial home of the respondent and (2) the trial Court has not considered the salary of the respondent and granted maintenance of Rs.8,000/- per month.

4. Per contra, learned counsel for the petitioner (respondent herein-wife) submitted that the respondent developed illicit intimacy with one Butchamma and therefore, she left the matrimonial home of the respondent. He further submitted that the respondent is drawing Rs.36,000/- per month as an employee of Singareni Collieries. He further submitted that there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court.

5. The facts, leading to filing of the present revision are as follows: The marriage of the petitioner with the respondent was performed 35 years back as per Hindu Rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead happy marital life. Out of their lawful wedlock, the petitioner and the

respondent were blessed with two daughters. The marriages of the two daughters of the petitioner and the respondent were performed. The petitioner has been residing at her parents' house due to disputes with the respondent. The petitioner filed the above M.C. against the respondent under Section 125 Cr.P.C. claiming maintenance at Rs.15,000/- per month from the respondent.

6. The respondent filed counter alleging that the petitioner developed illicit intimacy with one Daniel and therefore, she is not entitled to claim maintenance under Section 125 Cr.P.C.

7. During the course of trial, on behalf of the petitioner, P.Ws. 1 to 3 were examined and no documents were marked. On behalf of the respondent, R.W.1 was examined and no documents were marked.

8. After considering both oral and documentary evidence available on record, the trial Court granted maintenance at the rate of Rs.8,000/- per month. Hence, this revision by the respondent-husband.

9. Now the points that arise for consideration in this revision are: (1) whether the petitioner is entitled for maintenance and (2) whether there is any illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court?

10. **POINT No.1:** As seen from the testimony of the witnesses, out of lawful wedlock, the petitioner and the respondent were blessed with two daughters. The petitioner and the respondent are claiming that they alone performed the marriages of two daughters. The fact remains, at the time of marriage of two daughters, both were present. As per the testimony of P.W.1, the respondent developed illicit

intimacy with one Butchamma. As per the testimony of R.W.1, the petitioner developed illicit intimacy with one Daniel. It is not uncommon to make allegations and counter allegations in matrimonial cases in order to gain sympathy of the Court. Taking into consideration the future prospects of daughters and grand children of the petitioner and the respondent, this court is not inclined to express any opinion on these allegations.

11. A perusal of the testimony of P.Ws.1 to 3 clearly reveals that in spite of number of panchayats, the respondent did not mend his attitude. The fact remains, the petitioner has been residing at her parents' house. In view of allegations made by the respondent, the petitioner is justified in residing at her parents' house. The material placed before this Court clinchingly establishes that the respondent intentionally and willfully neglected to provide maintenance to the petitioner. The trial Court rightly arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioner. I am fully agreeing with the finding of the trial Court.

12. The next point to be considered is whether the maintenance granted by the trial Court is on higher side or not. As seen from the testimony of P.Ws. 1 to 3 and R.W.1, the respondent has been working in Singareni Collieries and drawing monthly salary of Rs.36,000/-. As seen from the testimony of R.W.1, he is not attending the duty regularly; therefore, he is not getting salary of Rs.36,000/- per month. Absolutely, there is no material on record to establish that the respondent has not been attending to duty regularly. If really the respondent did not attend the duty regularly, nothing prevented him to place before the trial Court the relevant records. In the absence of any documentary

evidence, it may not be possible for this Court to arrive at a conclusion that the respondent has not been attending the duty regularly. There is no whisper in the testimony of P.W.1 that the petitioner is having any source of income. There is a social and moral obligation on the part of the respondent to look after the welfare of the petitioner, who is his wife. Even as per the finding of the trial Court, the respondent has been drawing Rs.20,000/- per month. It is not uncommon to suffer with ailments in the old age. The respondent being an employee of Singareni Collieries is entitled for medical reimbursement, whereas the petitioner may not get any reimbursement in view of disputes between herself and her husband. The trial Court taking into consideration the financial status of both parties, granted maintenance at the rate of Rs.8,000/- per month to the petitioner, which is not on higher side because an amount of Rs.8,000/- per month is hardly sufficient for sustenance of an individual in view of prevailing price index. I am fully agreeing with the findings of the trial Court.

13. **Point No.2**: In view of the findings on point No.1, I find that there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court by exercising revisional jurisdiction under Section 397 Cr.P.C. Therefore, the revision lacks merits and bona fides.

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

T.SUNIL CHOWDARY, J

DATED: 05-12-2016.

Hsd