

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.846 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 09.02.2016 passed in M.C.No.1 of 2013 on the file of the Judge, Family Court-cum-III Additional District and Sessions Court, Srikakulam.

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 petitioner was performed with the respondent on 22.04.2007 at Rajahmundry, as per Mohammedan Rites and Caste Customs at S.B.I. Staff Colony, Srikakulam. Immediately after the marriage, the petitioner joined the respondent to lead marital life. The respondent gave divorce to his first wife, before marrying the petitioner. It is the case of the petitioner that the respondent subjected the petitioner to cruelty for additional dowry. Basing on the complaint lodged by the petitioner, on 08.8.2010, the Station House Officer, I Town Police Station, Visakhapatnam, registered a case in Crime No.161 of 2010 for the offence punishable under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961. By the intervention of the elders, both parties have settled the matter. Thereafter also, the respondent subjected the petitioner to cruelty for additional dowry. Basing on the subsequent complaint lodged

by the petitioner, on 02.8.2012, Crime No.130 of 2012 was registered against the respondent. The petitioner filed a petition under Section 125 Cr.P.C. seeking maintenance of Rs.30,000/- per month from the respondent. The respondent filed a counter denying all the averments made in the petition including the source of income.

4. During the course of trial, to establish the case of the petitioner, the petitioner examined herself as PW.1 and no documents were marked on her behalf. To demolish the case of the petitioner, the respondent examined himself as RW.1 and Exs.R.1 to R.9 were marked on his behalf.

5. 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 petitioner and allowed the petition in part by granting maintenance of Rs.6,000/- per month to the petitioner from the date of the petition even though she claimed Rs.30,000/- per month.

6. The contention of the learned counsel for the respondent (husband) is two fold: (1) the finding of the trial Court that the respondent intentionally and willfully neglected to provide maintenance to the petitioner is not sustainable either on facts or in law; and (2) the finding of the trial Court that the respondent is getting pension of Rs.15,000/- per month is not sustainable.

7. *Per contra*, the learned counsel for the petitioner (wife) submitted that the trial Court passed the order basing on the oral

and documentary evidence; therefore, it is not a fit case to interfere with the same.

8. Now the points that arise for consideration are:

(1) Whether the trial Court has committed any illegality or irregularity to set aside the same?

(2) Whether the trial Court is justified in granting maintenance of Rs.6,000/- per month to the petitioner or not?

POINT No.1:

9. There is no dispute that the petitioner is the legally wedded wife of the respondent. It is also not in dispute that the respondent gave divorce to his first wife and thereafter, married the petitioner. The petitioner and the respondent lived together for some time. As seen from the testimony of PW.1, basing on her complaint, the Station House Officer, I Town Police Station, Visakhapatnam, registered a case in Crime No.161 of 2010 against the respondent for the offence punishable under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. As seen from the testimony of the witnesses, at the intervention of the elders, the matter was settled. A perusal of the record reveals that that the petitioner joined the respondent to lead marital life. Due to one reason or other, the respondent again subjected her to cruelty for additional dowry. The material placed before the Court clinchingly establishes that bad weather prevailed in the family life of the petitioner and the respondent, which forced the petitioner to separate from the respondent and file Crime No.130 of 2012. A perusal of the record clearly reveals that the petitioner has been

residing at her parents house. The material placed before the Court clinchingly establishes that the respondent intentionally and willfully neglected to provide maintenance to the petitioner. The finding of the trial Court that the respondent intentionally and willfully neglected to provide maintenance to the petitioner is supported by material available on record much less legally admissible material. Hence, I am agreeing with the finding recorded by the trial Court on this point. Accordingly, point No.1 is answered.

POINT No.2:

10. It is the case of the respondent that the petitioner has been working as a Lecturer. There is no mention in his counter in which College the petitioner has been working as a Lecturer. If really the petitioner has been working as a Lecturer in any College, what prevented the respondent to adduce the evidence in support of his stand. The possibility of taking such pleas in order to avoid the payment of maintenance to the petitioner cannot be ruled out completely. The contention of the learned counsel for the respondent that the petitioner has been working as a Lecturer is not supported by any material much less legally admissible material. Therefore, I am unable to accede to the contention of the learned counsel for the respondent that the petitioner has been working as a Lecturer. It is not in dispute that the respondent is a retired employee. It is also not in dispute that the respondent is getting pension. As per the testimony of RW.1, he is getting pension of Rs.8,000/- only per month. If really the respondent is getting pension of Rs.8,000/- only per month, what prevented him

to produce the concerned record. For the reasons best known, the respondent did not choose to produce the documentary evidence to prove that he is getting pension of Rs.8,000/- per month. The respondent is a retired Air Force employee. Both parties have not adduced any evidence before the trial Court with regard to the pension amount of the respondent. In the absence of documentary evidence, some guess work is inevitable to determine the income of the respondent. Therefore, the trial Court arrived at a conclusion that under any circumstances, the respondent may earn not less than Rs.15,000/- per month. The trial Court also considered Ex.R.8 – certified copy of gift deed. As per the recitals of Ex.R.8, the respondent is having landed property. No doubt, the Court has to take into consideration the financial status of both parties while granting maintenance. It is the case of the petitioner that the respondent is doing business after retirement. Of course, no documentary evidence was adduced to that effect by the petitioner. The fact remains that the respondent is having source of income. Absolutely there is no material on record to establish that the petitioner is having source of income. There is a social and moral obligation on the part of the respondent to provide reasonable amount towards maintenance to the petitioner.

11. Taking into consideration the financial status and other attending circumstances, I am of the considered view that granting maintenance of Rs.6,000/- per month to the petitioner is not on higher side. On the other hand, an amount of Rs.6,000/- per month is hardly sufficient for sustenance of an individual in view of prevailing price index. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

Hence, there are no merits and *bona fides* in this revision.
Accordingly, point No.2 is answered.

12. In the result, the Criminal Revision Case is dismissed.
Consequently, Miscellaneous Petitions, if any, pending in this
Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 22.11.2016
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