

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL REVISION CASE No.2494 of 2017****ORDER:**

This Criminal Revision, under Sections 397 and 401 Cr.P.C. is filed questioning the propriety, legality and regularity of the Order dt.12.08.2017 in M.C.No.311 of 2014 passed by IX Additional District Judge-cum-Additional Family Judge, Vijayawada, awarding maintenance at Rs.15,000/- per month as against the claim of Rs.20,000/- per month.

For the sake of convenience, the parties hereinafter will be referred as arrayed in M.C.No.311 of 2014 on the file of Additional Family Court, Vijayawada.

The petitioner/wife filed a petition under Section 125 Cr.P.C. claiming maintenance of Rs.20,000/- per month from the date of desertion i.e., from 17.03.2014, alleging that the marriage of petitioner with respondent was performed on 23.01.2014, as per Christian rites and customs, the marriage was consummated and they lived happily for some time at the house of respondent in Gunadala. Few months after the marriage, the respondent, his father, mother, brother and sister-in-law started to harass the petitioner for one reason or the other and treated her as a servant maid, while demanding the petitioner to bring additional amount as dowry from her parents and the respondent also expressed his unwillingness to lead marital life with her for the reason known to him. She tried to mend his ways and views, but he paid deaf ear. After she became pregnant, the respondent and his family members forced her to get aborted and threatened her that they will kill her as they killed first wife of the respondent. Due to inhuman activities of the respondent

and his family members, the petitioner got aborted. As usual, on 07.03.2014 the respondent and his family members beat her indiscriminately and necked her out from the matrimonial home. Finally, on 18.08.2014 she gave complaint to Machavaram Police station, which was registered as a case in Cr.No.592 of 2014.

The petitioner is the house wife having no other source of income to maintain herself and suffering from starvation. The respondent is an employee earning Rs.75,000/- per month as on the date of filing the petition having other source of income and claimed Rs.20,000/- per month towards maintenance as the respondent refused and neglected to maintain herself while subjecting her to cruelty.

The respondent/husband filed Counter admitting relationship between the petitioner and respondents as wife and husband while denying the material allegations made in the petition. He admitted that the petitioner is the second wife of the respondent. Within 15 days of the marriage, the petitioner/wife demanded the respondent to discharge her gold loan of Rs.4,00,000/- with the Central Bank, Benz Circle Branch, Vijayawada, he agreed to discharge the debt in due course, but the petitioner did not accept for the same and demanded him to discharge the debt immediately, otherwise, she would not cooperate to lead marital life with him and since then she behaved adamantly and harassed him both physically and mentally.

It is also contended that as the petitioner became pregnant, the respondent and his parents were made very happy, but the petitioner started to abuse the respondent that he is aged 50 years and suffering from ailments and questioned as to who will take care of the petitioner and her child if the respondent died and she also demanded the

respondent to register his property in her name, immediately. Thus, the petitioner married the respondent for the sake of money.

On 07.03.2014 the petitioner as usual abused the respondent and demanded him to register the property in the name of her parents, when he expressed his inability, she deserted the respondent and went to her parents house. He noticed that while leaving the house, she had taken away cash of Rs.25,000/-, LIC cheque for Rs.15,000/-, Aadhar and ration card of respondent. Subsequently, the respondent made mediation on 17.03.2014, but she refused to join him. On 26.03.2014 she lodged a complaint with Machavaram Police Station. During the course of counselling, she was admonished and advised her to join the respondent, she did not agree for the same. As per the demand of her counsel, he paid Rs.50,000/- to the petitioner and even then she did not join the respondent. The respondent made efforts for reunion through elders on 20.04.2014 and 02.07.2014 to restore family life, but in vain. The petitioner got aborted her pregnancy on 07.04.2014 in Chandamma Hospital, without informing to the respondent, but she threatened him to foist a false case. Therefore, the respondent subjected to severe threat and made him to suffer both physical and mental agony, she lodged a complaint on 18.08.2014. Finally, it is contended that the petitioner is working as part time employee in RTA office on contract basis and earning Rs.10,000/- per month in addition to earning Rs.15,000/- by running tailoring shop and leading luxurious life with the said income. Whereas, the respondent is only getting Rs.10,000/- per month and the amount is not sufficient since he is required to look after his old aged mother spending Rs.4,000/- per month towards her medical expenses. The respondent is suffering from blood pressure, sugar and he constrained to go for medical treatment and his salary is not

sufficient to meet his livelihood. The petitioner herself deserted the respondent and living as per her wish and therefore, she is not entitled to seek maintenance and prayed to dismiss the petition.

During enquiry, on behalf of petitioner, she herself examined as Pw.1 and Exs. P.1 to P.17 were marked. On behalf of respondent, K. Irmiya and P. Vijayakumar were examined as RWs. 1 and 2 and Exs. R.1 to R.3 were marked.

Upon hearing both the counsel, the trial Court having come to the conclusion that the respondent refused and neglected to maintain the petitioner and considering his income from salary, awarded maintenance of Rs.15,000/- as against the claim of RS.20,000/-.

Aggrieved by the Order dt.12.08.2017, the present revision is filed on various grounds, more particularly, about the income of the petitioner as an employee in RTA Office and income of the respondent while reiterating the other contentions raised before the trial Court and in the Counter affidavit. Finally, it is contended that the trial Court did not consider the evidence in proper perspective and committed an error in awarding maintenance.

The learned counsel for the petitioner only contended that the petitioner was getting take home pay of Rs.58,925/- and the amount awarded as maintenance by the trial Court @ Rs.15,000/- is excessive and requested this Court to set aside the Order reducing the maintenance to minimum extent. Except the above contention, no other ground is raised during the course of argument.

Considering the facts and circumstances of the case, the question that arise for consideration is:

“ Whether the maintenance awarded by the trial Court at Rs.15,000/- per month from the date of application is in accordance with law ?”

POINT: The Core contention of the respondent/petitioner herein is that he is earning Rs.58,925/- and the Salary Certificate vide Ex.P.7 issued by Southern Power Distribution Company of Andhra Pradesh Limited which disclosed that the petitioner is working in Southern Power_Distribution Company of Andhra Pradesh Limited and his net salary is Rs.1,00,910/- per month, but his contention is that his take home pay is only Rs.58,925/-. As seen from the details of deductions, the respondent/ petitioner herein contacted a bank loan and re-paying the instalments @ Rs.18,840/- and contributing Rs.10,000 towards GPF every month. The other deductions are statutory deductions, but GPF Contribution and Bank Loan are only savings in the salary and if Rs.28,840/- is added to the Take Home Pay of Rs.58,925/-, it would come to more than Rs.87,000/- and odd, but the trial Court awarded only Rs.15,000/- per month as maintenance.

In *Dr. Kulbhushan Kumar v. Raj Kumari and another*¹, and in *Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy*², the Apex Court held that 1/4th salary of the husband can be awarded as maintenance to a wife, who is refused and neglected by the husband. But, the judgment relates to grant of interim maintenance during pendency of the proceedings under Hindu Marriage Act under Section 24 of Hindu Marriage Act. The same analogy can be applied to the maintenance case, even though it is final disposal, the maintenance awarded by the trial Court @ Rs.15,000/- per month to the petitioner is too low.

¹ 1970 3 SCC 129

² 2017 (5) Scale 5

An identical question came up before the Apex Court as to the calculations of maintenance payable under Section 125 Cr.P.C. in *Shamima Farooqui vs Shahid Khan*³. In para No.14 of the Judgment, the Apex Court discussed as to how the calculation of maintenance amount in the proceedings under Section 125 Cr.p.C. and held as follows:

“In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind [Section 125 CrPC](#) is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one.”

Keeping in view the principle laid down in the above judgment, the basic consideration for calculation of the maintenance is status of the husband and the standard of life she lead while staying with her husband. Here, the respondent/petitioner herein was a Line Inspector earning more than Rs.1,00,000/- and she led marital life with him for some time till she was necked out from the house. She is still expecting to lead the same standard of life which she led while she was staying with her husband. Therefore, granting maintenance at Rs.15,000/- to the petitioner is nothing but permitting her to lead same standard of life which she led while staying with her husband and it is not a premium to the petitioner. Therefore, I find the quantum of maintenance awarded by the trial Court is just and reasonable, taking into consideration, the present price index and standard of living, hike in price of various essential commodities, the standard of living of petitioner which she led while she was staying

³ AIR 2015 SC 2025

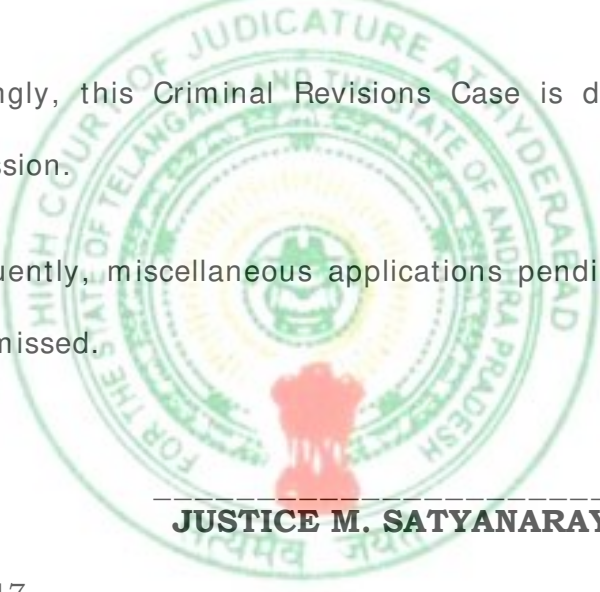
with respondent/petitioner herein. Hence, I find that no ground to revise the maintenance to any extent.

The counsel for the petitioner did not raise any other grounds and therefore, I am confining myself to the grounds urged during hearing without touching any other aspects including the grounds raised in the revision.

In view of my foregoing discussion, I find that the maintenance awarded by the trial Court is just and reasonable and it cannot be set aside or reversed and consequently, the Criminal Revision Case is liable to be dismissed.

Accordingly, this Criminal Revisions Case is dismissed at the stage of admission.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.



JUSTICE M. SATYANARAYANA MURTHY

Date:11.10.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.2494 of 2017
Dt. 11-10-2017

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