

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.758 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order, dated 03.02.2017 in CrI.R.P.No.42 of 2016 passed by the Principal District and Sessions Judge, Srikakulam allowing the revision in part setting aside the maintenance awarded in favour of wife while confirming the maintenance awarded to the second respondent/petitioner-minor child herein @Rs.2,000/- per month.

2. The revision petitioner is the wife of the first respondent herein and she filed a petition under Section 125 Cr.P.C. for grant of maintenance @ Rs.8,000/- per month alleging that her marriage with first respondent was performed on 02.09.1999 and thereafter the marriage was consummated. At the time of marriage, her parents paid Rs.1,00,000/- as dowry and presented two tolas of gold ornaments besides gold pusthelathadu. She lead conjugal life with the first respondent and later shifted his family to Gottipalli village by taking rented house. The first respondent developed illicit contact with one lady and forcibly took away the gold pusthelathadu of the petitioner and sold it. Though the dispute was referred to elders, no purpose was served. But, due to unbearable harassment of the first respondent, she lodged a complaint with Kotabommali police on 04.09.2007 and the first respondent executed memorandum of understanding on 12.12.2007. With the aid of woman with whom he developed illicit contact, he gave warnings stating that he will implicate all the family members in the cases and due to unbearable harassment of the first respondent, the petitioner and her son-2nd respondent left the matrimonial home and on one day, the first

respondent took away her son from the school without intimating the school authorities. The petitioner and second respondent have no means to maintain themselves and she is living with her parents; whereas the first respondent is carrying on business earning Rs.20,000/- per month besides Rs.10,000/- from money lending business. Therefore, the petitioner prayed to award Rs.8,000/- per month as maintenance to the petitioner and second respondent.

3. The first respondent filed counter admitting the relationship between the parties while contending that the allegation that the first respondent kidnapped the second respondent from the school is false and that the first respondent further contended that the petitioner herself deserted the first respondent and living separately with her parents for the last five years and he expressed his readiness and willingness to restore matrimonial tie. He also contended that he is working as coolie, getting Rs.2,000/- per month and that the petitioner own and possess 80 cents of cashew tope and doing money lending business, getting Rs.15,000/- per month and whereas the first respondent has no capacity to pay separate maintenance to the petitioner and prayed for dismissal of the revision.

4. During enquiry, PW-1 was examined and no documents were marked on behalf of the petitioner and RW-1 was examined and Exs:R-1 to R-22 were marked on behalf of the first respondent. The trial Court ordered maintenance @ Rs.3,000/- per month to the petitioner and Rs.2,000/- per month to the second respondent.

5. Aggrieved by the order, the first respondent preferred a revision before the District Court, whereby the Principal District and Sessions Judge allowed the revision partly by order, dt.03.02.2017 in CrI.R.P.No.42 of 2016, set aside the order passed by the trial Court rejecting the claim of the petitioner while granting maintenance to the second respondent @

Rs.2,000/- per month. The reason for setting aside the maintenance awarded to the petitioner is that she is living separately, she herself deserted and a divorce decree was obtained in MOP No.59 of 2010 on the ground of desertion and that both petitioners and first respondent (husband) are coolies.

6. The present revision is filed raising several contentions contending that the order passed by the appellate Court i.e. Sessions Judge in revision petition refusing to grant maintenance, setting aside the order passed by the learned Judicial Magistrate of First Class, Narasannapeta as erroneous and though, she is divorced wife, she is entitled to claim maintenance, but the appellate Court committed an error in dismissing the revision petition.

7. During hearing, both the counsel reiterated the grounds urged before the Courts below.

8. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in *STATE OF WEST BENGAL v. TULSIDAS*¹. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the

¹ (1964) 1 Cr.L.J. 443 (SC)

purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in *PRAHLAD v. EMPORER*². Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

9. Thus, the powers of the High Court are limited, but such power cannot be exercised. This Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in *S.P.S. JAYAM & CO. v. NEHRUSADAN*³.

10. In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly

² 48, CrL.LJ 173, 174 (Pat)

³ 1977 CrL.L.J. 1101

perverse or patently erroneous in view of the law declared by the Apex Court in BANSILAL v. LAXMAN⁴.

11. In the present case on hand, the trial Court accepted that the first respondent refused and neglected to maintain the petitioner and awarded maintenance of Rs.3,000/- per month. But, in revision petition, the appellate Court concluded that a decree of divorce is granted on the ground of desertion and when the petitioner herself living separately without any reasonable cause, she is not entitled to claim maintenance and thereby rejected maintenance to the petitioner.

12. As seen from the allegations made in the petition, the first respondent developed illicit contact with one lady and addicted to vices and thereafter gave warnings to the petitioner. But, nothing was disclosed about the name of woman with whom the first respondent developed illicit contact etc. and in the absence of any evidence that he developed illicit contact with any other woman, and deserting the petitioner by the first respondent, it is difficult to conclude that there is any justifiable cause for her separate living and apart from that grant of divorce in MOP No.59 of 2010 by the Addl.Senior Civil Judge, Srikakulam under Section 13(1)(1a) and (1b) of Hindu Marriage Act which is marked as Ex.R-20 and divorce decree was granted in favour of the first respondent only on the ground of cruelty and desertion. The petitioner being the wife who is living separately without any reasonable or justifiable cause is not entitled to claim maintenance for herself. Therefore, rejection of maintenance to the petitioner by the appellate court setting aside the order passed by the trial Court is based on the material on record and this Court cannot interfere with the order passed by the appellate Court in view of limited scope under Section 397 and 401 Cr.P.C. Hence, I find no ground to interfere with the order passed by the Revisional Court in

⁴ (1986) 3 SCC 445

criminal revision petition and consequently, the revision is liable to be dismissed.

13. In the result, the criminal revision case is dismissed. Miscellaneous petitions, if any, pending in this case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:09-08-2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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