

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1959 of 2017

ORDER:

This revision is filed under Sections 397 and 401 of Criminal Procedure Code questioning legality and propriety of order, dated 15.05.2017 passed by Judge, III Additional Family Court, Ranga Reddy District at Malkajgiri, in M.C.No.236 of 2012 awarding maintenance @ Rs.5,000/- per month to respondent No.2 before this Court.

Respondent No.2 filed M.C.No.236 of 2012 under Section 125 Cr.P.C. claiming maintenance at Rs.50,000/- per month alleging that she is the legally wedded wife of petitioner; that petitioner refused and neglected to maintain her and that he is earning substantial amount but failed to take care of her providing maintenance etc.

Petitioner denied his responsibility to maintain respondent No.2 on various grounds.

As seen from the material on record, respondent No.2 and petitioner before this Court filed O.P.Nos.1009 of 2011 and 864 of 2013 for dissolution of marriage by granting decree of divorce

under Section 13(1)(ia) of the Hindu Marriage Act (for short 'the Act') and for restitution of conjugal rights, respectively. All the three petitions were tried together. The Court below allowed O.P.No.1009 of 2011 filed by respondent No.2 under Section 13(1)(ia) of the Act, while dismissing O.P.No.864 of 2013 filed by petitioner under Section 9 of the Act and allowed M.C.No.236 of 2012, granting maintenance @ Rs.5,000/- per month to respondent No.2 before this Court. The Court below recorded a finding that petitioner is not entitled to claim restitution of conjugal rights, as O.P.No.1009 of 2011 filed by respondent No.2 for dissolution of marriage is allowed, but the reasons assigned by the Court below for allowing those petitions are different. While deciding point No.3 in the common order, the Court below except recording a finding that petitioner has no means to maintain respondent No.2, did not even record a finding as to refusal and neglect of petitioner to maintain respondent No.2. It is not the case of petitioner that he has no means to maintain respondent No.2. Petitioner has not placed any evidence to show that respondent No.2 is having sufficient means to maintain herself. For granting maintenance, it is the duty of respondent No.2 to prove that she was neglected or refused to maintain by her husband and that she has no means to maintain herself while petitioner husband possessed sufficient means to maintain her.

The Court below having considered the evidence in the two other petitions filed under Sections 13(1)(ia) and 9 of the Act, did not record any finding as to the means of petitioner and also entitlement of respondent No.2 to claim maintenance and passed a cryptic order awarding Rs.5,000/- per month to respondent No.2 before this Court which is contrary to principle laid down by the Apex Court in **Deb Narayan Halder v. Smt. Anushree Halder**¹ wherein it had an occasion to decide the legality of order passed by High Court against an order passed by trial Court and held in paragraph 11 as follows:

“Learned counsel for the appellant submitted before us, and with justification, that the judgment and order of the High Court does not disclose application of mind to the evidence on record, or to the findings recorded by the trial Court, which were sought to be set aside by the impugned judgment and order. The finding of the High Court is as vague as it can be and it is not possible to cull out the reasons which persuaded the learned Judge to set aside the findings recorded by the trial Court. We have earlier quoted the relevant part of the judgment which justifies the criticism of the learned counsel. It is well settled that the Appellate or Revisional Court while setting aside the finding recorded by the Court below must notice those findings, and if the Appellate or Revisional Court comes to the conclusion that the findings recorded by the trial Court are untenable, record its reasons for coming to the said conclusion. Where the findings are findings of fact it must discuss the evidence on record which justify the reversal of the findings recorded by the Court below. This is particularly so when findings recorded by the trial Court are sought to be set aside by an Appellate or Revisional Court. One cannot take exception to a judgment merely on the ground of its brevity, but if the judgment appears to be cryptic and conclusions are reached without even referring to the evidence on record or noticing the findings of the trial

¹ 2003 CRI.L.J. 4470

Court, the party aggrieved is entitled to ask for setting aside of such a judgment. In normal course we would have remanded the matter to the High Court for a fresh consideration of the evidence on record, but having regard to the nature of the dispute, we do not consider it necessary to prolong the proceeding any further, particularly when the evidence has been placed before us, and with the assistance of counsel appearing for the parties we have gone through the evidence on record. We, therefore, proceed to consider the evidence on record and dispose of the matter finally.” (emphasis supplied)

Learned counsel for respondent No.2 contended that the powers of High Court under Section 397 Cr.P.C. are supervisory in nature and this Court cannot interfere with the fact finding recorded by the trial Court while fairly conceding that it can go into the legality and propriety of order impugned. Learned counsel placed reliance on **Associated Cement Co. Ltd. v. Keshvanand**².

There is no dispute regarding the law declared in both the aforestated judgments. It is clear from Sections 397 and 401 Cr.P.C. that the Court can exercise power of revision only when it finds manifest or apparent error in the order passed by the Court below.

In point No.1 of common order, the Court below did not record any finding with regard to refusal and negligence of respondent No.2 by petitioner which is a *sine qua non* to award

² (1998)1 Supreme Court Cases 687

maintenance. In the absence of same, order under challenge cannot be sustained in law by applying the decision of the Apex Court in paragraph 11 of **Deb Narayan Halder** (1 supra). Therefore, order under challenge is illegal and same is liable to be dismissed while directing the Court below to record a proper finding and dispose of matter independently.

In the result, Criminal Revision Case is allowed setting aside order, dated 15.05.2017 in M.C.No.236 of 2012 passed by Judge, III Additional Family Court, Ranga Reddy District at Malkajgiri, and remanding the matter to the Court below with a direction to record specific findings as required under Section 125 Cr.P.C. to grant maintenance after affording reasonable opportunity to the parties before the Court.

Consequently, pending Miscellaneous Petitions, if any, shall stand disposed of.

M.SATYANARAYANA MURTHY, J

28th AUGUST, 2017.

kvni