

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No. 1457 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') is filed by the petitioner/ husband against the orders, dated 01.03.2017, of the learned Judge, Family Court, at L.B. Nagar, Ranga Reddy District, passed in CrI.M.P.no.195 of 2015 in MC.No.129 of 2008.

2. I have heard the submissions of *Sri D.A.Premchand*, learned counsel appearing for the petitioner/ husband, and of *Sri S.Ramesh Gupta*, learned counsel appearing for the respondents 1 and 2. I have also heard the submissions of the learned Public Prosecutor representing the 3rd respondent/ State of Telangana. I have perused the material record. The parties shall hereinafter be referred to as the petitioner/ husband and the 1st respondent/ wife, as arrayed in this revision case, for convenience and clarity.

3. At the outset, it is to be noted that the aforesaid miscellaneous petition was filed under Section 127 of the Code by the petitioner, who is the husband of the 1st respondent and father of the 2nd respondent, requesting to reduce the maintenance amount to Rs.1,000/- from Rs.5,000/-, which was awarded to the 1st respondent/ wife, by order dated 28.09.2010, in M.C.No.129 of 2008. The said petition was dismissed, on merits and by the order impugned in this revision. Hence, the petitioner/ husband is before this Court.

4. The case of the petitioner/ husband and the submissions made on his behalf, in brief, is this:

By order, dated 28.09.2010, passed in M.C.No.129 of 2008, the learned Judge, Family Court, Ranga Reddy District, L.B.Nagar, awarded maintenance @ Rs.5,000/- per month to the 1st respondent herein from the date of the petition

in the maintenance case. The said order has become final. The petitioner retired from service, on 31.10.2011. He has not received any retirement benefits. He is also not receiving any pension. The 2nd respondent-daughter became a major. She is a practicing doctor. She is working in a private hospital. His eldest Son completed Ph.D., after his M.Tech; another Son of the petitioner completed B.Tech. They are employed. The 1st respondent is staying with her children and therefore, she is not entitled to claim any maintenance from this petitioner. The petitioner is receiving a meagre pension of Rs.6,000/- to Rs.7,000/- per month. He is not in a position to pay maintenance awarded @ Rs.5,000/- per month to the 1st respondent. Hence, the said amount may be reduced to Rs.1,000/- per month. The Court below ignored the admitted facts that the petitioner retired from service and that he did not receive any retirement benefits and that he is only getting a meagre pension of about Rs.7,000/- and odd per month, and erroneously dismissed the petition of the petitioner/ husband seeking reduction of maintenance. The trial Court ignored the further facts that the Sons of the petitioner and the 1st respondent have completed their education and are gainfully employed and that the 1st respondent is residing with them and that therefore, she is no longer a dependant on the petitioner and hence, she is not entitled to claim any maintenance from the petitioner. Since the petitioner retired from service, on 31.10.2011, and as he is now receiving only meagre pension, he is not in a position to pay monthly maintenance @ Rs.5,000/- awarded in the maintenance case to the 1st respondent. The Court below ought to have seen that there is change in the financial position and economic condition of the petitioner and that at present his financial position is miserable. The Court below ought to have seen that during the period of service, he provided very good and decent life with reasonable comforts to the 1st respondent and his children and that he also provided best education to his children and that as on

today, the children are well settled and they are supporting the 1st respondent while leading decent lives.

5. Per contra, the case of the 1st respondent-wife and the submissions made on her behalf, in brief, are as follows:

The material averments in the petition are false. The petitioner was never regular in payment of monthly maintenance. The 1st respondent is not able to sustain herself on account of non-payment of monthly maintenance regularly by the petitioner. Even during the period the petitioner was in service, he was not regularly paying monthly maintenance to this respondent. Even though the children completed their education and are living on their own, yet, the petitioner is bound to pay maintenance to his wife, the 1st respondent herein. The contentions of the petitioner that on his retirement from service, he is getting a meagre pension and that his financial condition is miserable and hence, the maintenance payable to the 1st respondent/ wife has to be reduced to Rs.1,000/- from Rs.5,000/- would only show his attitude towards the 1st respondent, who is his legally wedded wife. The Family Court is justified in dismissing the petition of the petitioner. The well-reasoned order of the Family Court does not warrant any interference.

6. During the course of enquiry before the Family Court, the petitioner was examined as PW1. He did not exhibit any documents. The 1st respondent did not adduce any oral and documentary evidence.

7. Now, the points for determination are:

- (i) Whether the petitioner made out valid and sufficient grounds for reducing the maintenance awarded to the 1st respondent-wife from Rs.5,000/- to Rs.1,000/- per month?
- (ii) Whether the order impugned is unsustainable under facts and in law and in the circumstances stated by the petitioner?
- (iii) To what relief?

8. POINTS:

8.1 The relationship between the parties is not in dispute. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. The petitioner and the 1st respondent are living separately is also not in dispute. In the present revision, there is no need to deal with the principal issues involved in the maintenance case and record any findings as to who amongst the spouses was responsible for the rift or estrangement, as the maintenance case was disposed of on merits. In the considered view of this Court, there is no reason to deny award of maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for her sustenance. The law is well settled that the maintenance awarded shall be adequate for sustenance, food, clothing and shelter besides essential incidental expenses. While awarding maintenance, the social status, economic and living conditions of the family will have to be taken into consideration; and, the maintenance awarded to the wife must be sufficient to enable her to live in a reasonable comfort.

8.2 After full-fledged trial and on merits, the Family Court awarded monthly maintenance @ Rs.5,000/- to the 1st respondent, vide orders of this Court, dated 28.09.2010, in M.C.No.129 of 2008. The said order has become final. The grounds on which the petitioner seeks reduction of maintenance from Rs.5,000/- to Rs.1,000/- are as under: 'He retired from service, on 31.10.2011. He did not receive any retirement benefits. He is getting a meagre pension of Rs.7,000/- and odd. The children, particularly the Sons, who are well educated, are now employed. The 1st respondent is residing with them. In view of the said admitted facts and his present miserable condition, the maintenance awarded to the 1st respondent has to be reduced.' Resisting the claim of the petitioner, the wife contends that she has no income or sources of income and that even while he was in service the petitioner has not

paid the maintenance regularly and that she is unable to sustain herself as the petitioner is not regularly paying maintenance to her. It is to be noted that the Family Court found that though the petitioner had retired from service, his contentions cannot be accepted and that he failed to prove that the 1st respondent is staying with her children. The Family Court further observed in its orders that the 1st respondent obtained an order of attachment against the pensionary benefits of the petitioner.

8.3 Be it noted that though it is the contention of the petitioner that the maintenance awarded to the 1st respondent by the Court below is high and excessive, except reiterating his pleaded case, nothing else was done by him to substantiate his case. He did not plead and prove that the 1st respondent is having income of her own or other sources of income. He did not bring to the notice of the Court any changed circumstances warranting the reduction of maintenance awarded to the 1st respondent. Considering the facts and circumstances and also the financial capacity of the petitioner, the basic needs of the 1st respondent/ wife and the present day cost of living, the Court below awarded maintenance @ Rs.5,000/- per month to the 1st respondent. As already noted, maintenance awarded shall be adequate for sustenance, food, clothing and shelter and for meeting essential incidental expenses and while awarding maintenance, the social status, economic and living conditions of the family will have to be taken into consideration; and, the maintenance awarded to the wife must be sufficient to enable her to live in reasonable comfort and with dignity.

8.4 Coming to the contention of the petitioner that he had retired from service and, therefore, he is not presently receiving monthly salary as in the past and that he is only receiving a meagre monthly pension of Rs.7,000/- and

odd, it is apt to refer to the legal position obtaining. In *Shamima Farooqui vs. Shahid Khan*¹, the Supreme Court held as follows:

“....It can never be forgotten that the inherent and fundamental principle behind Section 125 Code of Criminal Procedure 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. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 Code of Criminal Procedure, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order Under Section 125 Code of Criminal Procedure can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance Under Section 125 Code of Criminal Procedure, unless disqualified, is an absolute right. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge Dehradun and Ors.* [(1997) 7 SCC 7] has held as follows:

The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The

¹ 2015 (2) ALD (Ori.) 549 (SC)

amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.

Grant of maintenance to wife has been perceived as a measure of social justice by this Court.

In *Chaturbhuj v. Sta Bai* [(2008) 2 SCC 316], it has been ruled that 'Section 125 Code of Criminal Procedure is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636]. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in *Chander Prakash Bodhraj v. Shila Rani Chander Prakash*: [AIR 1968 Delhi 174] wherein it has been opined thus:

An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is

deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.”

In the cited case, the High Court has reduced the amount of maintenance from Rs.4,000/- to Rs.2,000/-. Adverting to the said and other facts it was held as follows: “As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no revisional Court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50% It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order.”

8.5 From the legal position which is succinctly stated in the above decision, it is noticeable that the maintenance awarded cannot be reduced only because the husband had retired from service. On a consideration of the matter in a comprehensive manner, this Court does not find any grounds much less valid grounds to consider the request of the petitioner.

8.6 Having regard to the facts and the legal position obtaining, this Court finds that there is no justification in the request of the petitioner/ husband to reduce the maintenance awarded to the 1st respondent/ wife and that in the

facts and circumstances of the case, the Family Court was justified in refusing to consider the request of the petitioner/husband and in dismissing his petition. Points are accordingly answered in favour of the 1st respondent/ wife and against the petitioner/ husband.

9. Viewed thus, this Court finds that this revision is devoid of merit and is liable to be dismissed.

10. In the result, the Criminal Revision Case is dismissed confirming the order, dated 01.03.2017, of the learned Judge, Family Court, Ranga Reddy District. The petitioner herein shall pay the arrears of maintenance, if any, within two months from the date of the receipt of a copy of this order in two equal monthly instalments and shall regularly pay monthly maintenance awarded by the Family Court to the 1st respondent.

Pending miscellaneous petitions, if any, in this Criminal Revision Case shall stand closed.

13.07.2017
RAR

M. SEETHARAMA MURTI, J

