

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1311 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code', for short) by the revision petitioner/ husband of the 2nd respondent herein is directed against the orders, dated 18.01.2017, of the learned Judge, Family Court, Warangal, passed in M.C.No.20 of 2015.

2. I have heard the submissions of *Sri Venugopal Julakanti*, learned counsel appearing for the petitioner, and of *Dr.V.Yagneswar*, learned counsel appearing for the respondents 2 and 3. The parties shall hereinafter be referred to as the petitioners and the respondent as they are arrayed in the maintenance case for convenience and clarity.

3. To begin with, it is necessary to refer to the pleadings of the parties.

4. The case of the petitioners, in brief, is as follows: "The 1st petitioner is the legally wedded wife of the respondent. Their marriage was performed on 22.10.2009 at Shri Dureshwara Swamy Temple, Warangal, as per the rituals prevailing in their community. The 1st petitioner joined the respondent at Police Quarters, Amberpet, Hyderabad, which is his place of residence. The marriage was consummated and they both lived happily for a period of one year. Thereafter, for the reasons best known to him, the respondent started neglecting the 1st petitioner. The father of the 1st petitioner died in the year 2004. There is no other male member in the family of the 1st petitioner. She is having mother and two sisters. The respondent started harassing the 1st petitioner, her mother and also her sisters. Since the 1st petitioner is exclusively dependent upon the respondent, she believed him and started

doing all sorts of activities in the house, as per his Will and wish. However, the 1st petitioner never neglected him nor caused hurt to his feelings in any manner at any point of time ever since her marriage with the respondent. He is no other than the son of the elder brother of the mother of the 1st petitioner. As such, the 1st petitioner was having much love and affection towards him and leading a happy marital life with him. Taking advantage that there is no male support to the family, the respondent, at the instance of his mother & brother, used to harass the 1st petitioner physically and mentally, without any reasons much less valid reasons. He started demanding additional dowry stating that no dowry was given at the time of marriage. The torture and ill-treatment meted out to the 1st petitioner increased day by day. However, keeping in view the prestige of the families, the 1st petitioner tolerated the same without either lodging a police report or approaching the caste elders. Taking undue advantage of the silence on the part of the 1st petitioner, the respondent and members of his family increased the harassment and ill-treatment by beating and abusing the 1st petitioner. They used to threaten her not to reveal their acts to the police or caste elders. The 1st petitioner kept quiet, with a ray of hope that the respondent and his family members would change their attitude and treat her well. The mother of the 1st petitioner presented a Two Wheeler worth Rs.64,000/- and six tolas of gold to the respondent in the year 2010 in order to stop him from harassing and ill-treating the 1st petitioner and with a hope that he will look after her well in future. But, eight months thereafter, the respondent and his family members again started torturing and harassing the 1st petitioner for additional dowry. They used to beat her mercilessly on her private parts and used to demand her to advise her mother to register a open house plot in an extent of 200 square yards situated at Nakkalapalli Road near Thoudi Factory, Rangashaipeet Shivar, Warangal, in the name of the respondent. While so, the 1st petitioner gave birth to a male child, i.e., the 2nd

petitioner, on 09.03.2012. His naming ceremony took place at the house of her mother. Thereafter, on the direction of the respondent, the petitioner, along with her son, joined the society of the respondent at Hyderabad. After the death of his father in the year 2011, the respondent further increased harassment and torture; and, the respondent and his family members used to harass the 1st petitioner for not bringing dowry. The 1st petitioner, therefore, thought of committing suicide; but, kept quiet thinking about her son's life. The respondent was transferred to Amberpet Police Station. Hence, he shifted his residence to Amberpet police headquarters. While staying at that place, he further increased the torture and harassment and used to beat the 1st petitioner on her private parts by removing all her clothes and by making her to stay naked the whole night. He used to thus harass her physically and mentally in a drunken condition by stating that he can do anything to her and no one will come forward to her rescue as there are no male members in her family. In the month of February 2014, the respondent, who was in a drunken condition, with the active support of his mother and brother, after removing all her clothes, beat her with shoes indiscriminately on her abdomen, back and other private parts in order to kill her; due to which the 1st petitioner omitted blood. Having received information, the mother of the 1st petitioner came over to Hyderabad and admitted the 1st petitioner in Max Care Hospital, Warangal. She received treatment in the said hospital for a period of three days. Thereafter, she again joined the respondent and the respondent continued the harassment and torture and even tried to kill her. He even tried to kill her mother and sisters a number of occasions. The respondent came to the parental house of the 1st petitioner at Shambinipet of Warangal and openly declared that at any point of time, he will kill the mother and sisters of the 1st petitioner, if they fail to register the open house plot of 200 square yards in his favour. Being unable to bear the ill treatment and torture, on 26.02.2015, at

Hyderabad, the 1st petitioner consumed Harpic Toilet Acid by mixing with phenyle; and, on information to the police; she was immediately shifted in 108 Ambulance to Omini Hospital, Dilshuknagar, Hyderabad. She was later shifted to Kamineni Hospitals, L.B.Nagar, Hyderabad, for treatment. She received treatment from 26.02.2015 and was discharged on 28.02.2015. Her mother brought her to her house at Shambunipet, Warangal. She stayed with her mother till she recovered. After she regained her health, she lodged a complaint before the Women Police Station, Urban. A case in Crime No.38 of 2015 was registered for the offences punishable under Sections 498-A and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act. Ever since 28.02.2015, the respondent never cared to look after the welfare of the petitioners 1 and 2 and failed to provide minimum basic needs for their survival and made them to starve. The petitioners took shelter at the residence of the mother of the 1st petitioner and the petitioners are dependent upon the mercy of the mother of the 1st petitioner. The mother of the 1st petitioner is also very poor. The respondent is legally bound to maintain the petitioners. The 2nd petitioner is going to school. The respondent, who is working as a Police Constable, is drawing a monthly salary of Rs.50,000/- and odd. He is having movable and immovable properties in his name and is having sufficient income. The petitioners have no income or sources of income. Hence, the case is filed claiming maintenance @ Rs.15,000/- to the 1st petitioner and Rs.10,000/- to the 2nd petitioner and costs.”

4.1 The 2nd respondent having filed a detailed counter denying each allegation in the petition of the 1st petitioner *inter alia* contended in the counter as follows: “The 1st petitioner always maintained good relationship with this respondent till her mother was recruited as a conductor in APSRTC. Since then, there was drastic change in her attitude and the attitude of her family members. The respondent used to assist the family of the 1st petitioner

as they had no male assistance and as the health condition of the mother of the 1st petitioner was very bad in the year 2008. Frustrated over the condition of her mother, the 1st petitioner made a phone call to the respondent and intimated about house arrest. On 29.03.2015, at about 1900 hours, the 1st petitioner informed him on telephone that she is about to commit suicide. This respondent convinced her. Later, with the help of her sister, she escaped from her house and came to Hyderabad. There was a rumor that the respondent and the 1st petitioner eloped. Later, due to deliberations, she consented for the marriage after waiting for a period of six months for the consent of her mother. The marriage of the respondent with the 1st petitioner was performed on 22.10.2009. On the request of both the sisters, the respondent used to pay Rs.5,000/- per month to the family of the 1st petitioner and he shouldered the responsibility of the younger sister of the 1st petitioner and brought her to Hyderabad and gave financial assistance to her for pursuing education to the dislike of the mother of the 1st petitioner. While so, in the year 2010, the 1st petitioner became pregnant. But, she got aborted the pregnancy on her own. On 12.12.2011, the father of the respondent passed away. The 1st petitioner left the house demanding for separation. He separated from his family and used to visit his mother and look after her welfare once in a while. In the month of February, 2012, while he was on duty in Special Branch, the 1st petitioner left the conjugal society of the respondent without his consent. When contacted, she told him that she went for the purpose of delivery. Then, the respondent went to the parental house of the 1st petitioner and handed over his Bhadratha Card and an amount of Rs.10,000/- for delivery expenses to the mother of the 1st petitioner. Later, on 09.03.2012, the 1st petitioner gave birth to the 2nd petitioner at Hyderabad. As the child was born with illness, the doctors referred the kid to KIDS Care, Subedari, Hanamkonda. Subsequently, the kid was shifted to Rainbow Hospital, Banjara Hills, Hyderabad. The mother

of the 1st petitioner is the root cause for the differences between the spouses. Hence, the respondent asked her not to interfere in the family matters; but, she continued to do so. Later, at the instance of her parents, the 1st petitioner foisted a case under the provisions of Dowry Prohibition Act. The respondent used to provide monitory assistance to the family of the 1st petitioner. Since the 1st petitioner got separated from the family of the respondent, she hardly used to stay with the respondent. As such, the question of harassing her by the respondent and his family members does not arise. The said allegations are concocted. When the 1st petitioner took treatment for Thyroid problem, the respondent paid Rs.10,000/- towards medical and transport expenses. This respondent purchased an open plot admeasuring 236 square yards. Therefore, the question of harassing and demanding for conveying the open plot in his favour does not arise. The 1st petitioner is working as a Team Leader in 'Just dial centre' and she used to neglect the 2nd petitioner, who is her son without taking proper care of him. She openly declared that she is not interested in continuing the marital life with this respondent. All attempts of this respondent to get her back proved futile. The present petition is filed by suppressing the material facts and creating a cause of action. The 1st petitioner is getting a salary of Rs.30,000/- per month and odd. She has got sufficient income and means to maintain herself. She is not entitled to any maintenance. The maintenance claimed is high and excessive. The petition may be dismissed."

5. At the time of enquiry, the 1st petitioner and her supporting witnesses were examined as PWs 1 to 3 and exhibits A1 to A5 were marked on the side of the petitioners. The respondent deposed as RW1 and exhibited B1 to B10 on his side. On merits and by the order impugned, the trial Court partly allowed the petition and directed the respondent to pay a sum of Rs.4,000/- to the 1st petitioner and a sum of Rs.2,000/- to the 2nd petitioner towards their monthly

maintenance, from the date of the petition. The respondent was further directed to pay a sum of Rs.5,000/- towards litigation expenses. Aggrieved thereby, the respondent/ husband is before this Court.

6. I have given detailed and thoughtful consideration to the facts and submissions and I have perused the material record including the copies of the depositions.

7. The points for determination in the Criminal Revision Case are as under:

- 1) *Whether the petitioners made out valid and sufficient grounds for award of maintenance?*
- 2) *And, if so, whether the quantum of maintenance awarded to the petitioners is on the higher side and is liable to be reduced in the facts and circumstances urged by the respondent/ husband?*
- 3) *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 petitioners and the respondent are living separately is also not in dispute. The 2nd petitioner is admittedly under the care and custody of the 1st petitioner. Whatever may be the disputes between the spouses and the reasons for the said disputes, the respondent is legally obliged to maintain the 2nd petitioner, who is his Son. Further, in the considered view of this Court, there is no reason to deny award of maintenance to the wife unless it is sufficiently established by the husband 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. In case of children, maintenance shall be adequate also to meet the expenses on their education and extra

curricular academic and sports activities. 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 and children must be sufficient to enable them to live in reasonable comfort. The provision for maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of maintenance under the Code of Criminal Procedure is subject to final determination of their rights in a civil Court. The provision provides for speedy remedy for providing maintenance to the wife and eligible children. In a proceeding seeking maintenance, if it appears to the Court that either the wife has no independent income or sufficient income to support her and her children and meet the necessary expenses of the case, the Court may, on the application of the wife, order the husband to pay to the wife and children maintenance, as well as the expenses of the proceedings.

8.2 The wife contends that she is leading a miserable life and that she and her child are living at the mercy of her mother and that she has no income or sources of income. She affirmed her pleaded case in her evidence and withstood the test of cross examination. Further, PWs 2 and 3, her mother and sister, corroborated her version. Though it was sought to be contended on behalf of the respondent that no independent witness was examined, the said contention needs no countenance in a case of this nature. The learned counsel for the petitioners rightly submits that witnesses from outside the family will generally be unwilling to intervene and come to Court to give evidence in matters related to spouses. His further submission is that the harassment meted out within the four walls of a house would be known only to close relatives and that no outside witness, if any, would venture to come to Court and give evidence against the respondent since he is working in the police

department. Be that as it may. The respondent also asserted his pleaded defence in his evidence. In his cross examination it was suggested to him that he intimidated the 1st petitioner to withdraw all the cases and that on her refusal he kidnapped and confined the sister of the 1st petitioner at Hyderabad. He admitted that he was remanded to judicial custody in case in Crime No.306 of 2015 for the offences punishable under Sections 376 and 342 of the IPC and that a session's case is pending against him. Though he was suspended; he was reinstated into service is also not in dispute. Though the husband asserted that the wife is working as a Team Leader in 'Just Dial Centre' and is earning sufficient income, no evidence is adduced and the said contentions are not substantiated. Her case is that her husband is employed as a Police Constable and is earning a decent salary of about Rs.50,000/- . Though the husband pleaded that his take-home pay is Rs.35,000/- and that he has to look after the welfare of his mother, he did not produce any documentary evidence including his salary certificate though he is the best person having access to the said document. Therefore, an inference favourable to the petitioners can be drawn while determining the income and financial capacity of the petitioner. Apart from the fact that he is employed, he is also an able bodied person, is undisputed. On the above analysis, this Court finds that the petitioners made out valid and sufficient grounds for awarding maintenance.

8.3 Dealing with the quantum of maintenance it is to be noted that though it is the contention of the respondent that maintenance awarded by the Court below is high and excessive, he did not produce even before this Court, any material or documents related to his income from salary and other sources, if any. He did not file copies of his income tax returns, if any. Except reiterating his pleaded case nothing else was done to substantiate his pleaded case. Considering the facts and circumstances and the financial capacity of the respondent and also the basic needs of the petitioners/ wife & the child, and

the present day cost of living, the Court below awarded interim maintenance @ Rs.4,000/- per month to the 1st petitioner and Rs.2,000/- to the 2nd petitioner. As already noted, 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 and child must be sufficient to enable her and the children to live in reasonable comfort. On a careful examination of the facts and circumstances, this Court is satisfied that there is no merit in any one of the contentions of the respondent and that his contentions are unsubstantiated and that the impugned order awarding maintenance to the petitioners does not warrant interference. Viewed thus, this Court finds that this revision is devoid of merit and is liable to be dismissed. Points are accordingly answered in favour of the petitioners.

9. In the result, the Criminal Revision Case is dismissed confirming the order of the Court below. There shall be no order as to costs. The respondent, that is, the petitioner herein shall pay the arrears of maintenance within two months from the date of the receipt of a copy of this order in two equal monthly instalments and shall continue to pay the monthly maintenance as awarded by the Court below, without fail.

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

04.08.2017
RAR

M. SEETHARAMA MURTI, J

