

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1434 of 2017

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed questioning the propriety and legality of the order passed in CrI.R.P.No.132 of 2015 in M.C.No.3 of 2015, dated 14-09-2016, by the IX Additional Sessions Judge, West Godavari at Kovvur, reversing the finding of the trial Court to the extent of granting maintenance to the 1st respondent.

The parties to revision will hereafter be referred as arrayed in the revision case.

The respondents 1 to 3 filed a petition under Section 125 of Cr.P.C., before the I Additional Junior Civil Judge, Kovvur in M.C.No.3 of 2015 alleging that the 1st respondent is the legally wedded wife and respondents 2 and 3 are the children born during wedlock to the petitioner herein.

The marriage between the petitioner and the 1st respondent was performed on 29-03-2000 and at the time of marriage, parents of the 1st respondent paid Rs.50,000/- as dowry besides presentation of 10 sovs of Gold to the petitioner herein and 14 sovgns of Gold to the 1st respondent. The parents of the 1st respondent also gave one acre of land to

the 1st respondent herein and executed a document in her favour as demanded by the petitioner and his relatives. They lived happily for eight (8) years and thereafter the petitioner herein and his parents subjected the 1st respondent to harassment, directed her to sell her land to pay money to the petitioner, for which she refused and thereupon they constantly subjected her to both physical and mental cruelty. She also sold the land for Rs.6,00,000/- and out of the said amount she deposited Rs.3,00,000/- in her name in Bank of India, Dommeru and the petitioner herein has taken the remaining Rs.3,00,000/-, spent the same for his vices. Thereafter the petitioner insisted the 1st respondent to withdraw Rs.1,00,000/- to meet expenses for his vices, for which she did not agree. Thereupon, she was necked out from the house. The matter was reported to the police in the year 2008. However, it was settled before the Lok Adalath and Award was passed accordingly. Even after the settlement the petitioner bore grudge against the 1st respondent and continued the same harassment demanding additional dowry and picked up quarrel for no reason and necked out the respondents 1 to 3 from the house. Since then they are residing with her parents.

It is specifically contended that the respondents 1 to 3 have no means and independent source of income to maintain themselves, whereas the petitioner won Ac.5-00 of

land at Penakanametta village and is earning Rs.4,00,000/- per annum from his agricultural land and also carrying on money lending business earning Rs.10,000/- per month. Though the petitioner possessed sufficient means to maintain the respondents, he refused to maintain the respondents 1 to 3. Therefore, the respondents have claimed maintenance @Rs.5,000/- per month to each of the respondents to meet their expenses including food, shelter, clothing and education of children.

The petitioner filed counter admitting relationship with respondents 1 to 3, settlement of Criminal Case before the Lok Adalath due to intervention of elders, joining of 1st respondent with him and later she refused to join the company of the petitioner. Thus, the 1st respondent deserted the petitioner without any reasonable cause. Therefore, she is disentitled to claim maintenance and prayed for dismissal of the petition while contending that he did not own and possess any property and he is only an agricultural coolie.

During the course of enquiry before the I Additional Junior Civil Judge, Kovvur, the 1st respondent was examined as PW-1 and one Satyanarayana was examined as PW-2 and also got marked Exs.P-1 and P-2. The petitioner was examined as RW-1 and marked Exs.R-1 to R-3.

Upon hearing argument of both counsel the Magistrate awarded maintenance @ Rs.2,500/- per month to the respondents 2 and 3, while declining to award any maintenance to the 1st respondent on the ground that she herself left the company of the petitioner without any reasonable cause and that there is any amount of inconsistency in the allegations made in the petition and complaint.

Aggrieved by the order of trial Court, the respondents 1 to 3 preferred revision in CrI.R.P.No.132 of 2015 before the IX Additional Sessions Judge, West Godavari at Kovvur. The appellate Court allowed the claim of the 1st respondent and awarded maintenance of Rs.3,500/- per month to the 1st respondent from the date of filing of petition i.e., 03-03-2014 while declining to enhance the maintenance awarded to the respondents 2 and 3.

Aggrieved by the order passed by the Sessions Judge in CrI.R.P.No.132 of 2015, dated 14-09-2016 the present revision is filed on various grounds mainly on the ground that the 1st respondent herself left the company of the petitioner without any just and reasonable cause, thereby she is disentitled to claim maintenance. But the revision Court did not consider the specific contention and committed an error in awarding maintenance to the 1st respondent.

During hearing, learned counsel for the petitioner Sri G. Vijay Kumar, while reiterating the same contention would draw the attention of this Court to certain paragraphs in the judgment of trial Court, where the trial Court recorded the questions put to the witness PW1 regarding the reasons for separate living. Based on such answers given by her he recorded a finding that she is not willing to join the petitioner and thereby she is disentitled to claim maintenance in view of Clause 4 of Section 125 of Cr.P.C., and negated maintenance by placing reliance on the judgment reported in ***Deb Narayan Halder v. Anushree Halder***¹. On the strength of the principles laid down in the above judgment and in view of Section 125 (4) of Cr.P.C., grant of maintenance to the 1st respondent by the revisional Court is erroneous and prayed to set aside the same.

Per contra, learned counsel for the respondents 1 to 3 argued in support of the finding recorded by the revisional Court awarding maintenance of Rs.3,500/- per month to the 1st respondent and requested this Court to dismiss the revision case in view of the limited scope of powers of this Court under Sections 397 and 401 of Cr.P.C.

Considering rival contentions and the material available on record, the sole point that arises for consideration is:

¹ 2003 (2) ALD (CrI.) 765 (SC)

Whether the 1st respondent left the company of the petitioner herein without any reasonable cause, if so, whether she is entitled to claim maintenance and at what rate.

POINT: No doubt, the powers of this Court under Sections 397 and 401 of Cr.P.C., are limited and this Court cannot interfere with the findings recorded by the Court below in a routine course, except, where the findings are manifestly perverse or apparently incorrect. Therefore, it is for the petitioner to show that there is manifest perversity or apparent error in the findings recorded by the Court below to conclude that she is disentitled to claim maintenance.

The 1st respondent herself was examined as PW-1 before the Court below. She testified that the petitioner herein subjected her to cruelty for her failure to meet the illegal demand for payment of additional dowry and she lodged a complaint with police, which was settled before Lok Adalath and a copy of the award is brought on record and marked as Ex.R-3 in Crime No.01 of 2014 in evidence of RW-1 – petitioner. The fact of settling the matter before Lok Adalath is not in controversy but whether the terms of compromise were implemented or not is the question.

According to the 1st respondent she was subjected to harassment and in terms of compromise she joined with the

petitioner. However, he continued the same harassment and she was necked out from the house. Therefore, she is living separately with her parents since the date of her sending out along with her children.

When the 1st respondent was subjected to cruelty she lodged a complaint. Though it was settled and she joined with the petitioner, subsequently again he continued same cruelty. There is any amount of justification in her contention that she is living separately on account of such harassment. The Apex Court in **Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and another**² held that if the wife is tortured by her husband for demand of dowry or the wife has a reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demands of dowry from her husband's parents or relations, such an apprehension also would be manifestly a reasonable justification for the wife's refusal to live with her husband.

Thus, in view of the judgment referred supra, if there is reasonable apprehension in the mind of the 1st respondent due to persistent torture she received in the hands of the husband and his relatives it is a ground to live separately. Here, undoubtedly, a crime was registered vide Ex.D-3 and it

² AIR 1981 SC 1972

was settled before Lok Adalath. But, even after her joining with the petitioner he continued same harassment and conduct of the petitioner would create a reasonable apprehension in the mind of the 1st respondent herein that she would be harmed in the hands of husband and his relatives. In such case, her refusal to join with the petitioner despite the questions put to her by the trial Court recorded in paragraph No.16 of the order is just cause for her separate living and rejection of maintenance on the ground that she is not willing to join with the petitioner by the trial Court putting certain questions and recording answers thereby is not sufficient. The trial Court did not record any specific ground to come to such conclusion and whether such conduct of the petitioner would create any reasonable apprehension that she would be harmed in the hands of the petitioner and his relatives. In absence of any such finding by the Magistrate, reversal of judgment by the revisional Court cannot be faulted.

Learned counsel for the petitioner raised a consistent plea that when the wife refused to live with the husband without any reasonable cause she disentitled to claim maintenance in view of Section 125 (4) of Cr.P.C.

Section 125 (4) of Cr.P.C., made it clear that no wife shall be entitled to receive an allowance from her husband

under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

The only ground raised before this Court is that the 1st respondent refused to live with her husband without any sufficient reason. But, she made out sufficient reasons that she was subjected to cruelty for her failure to meet the illegal demand for payment of additional dowry and apart from that this fact is substantiated by Ex.D-3, as such, it is difficult to hold that there is no sufficient reason for her refusal to live with the petitioner. Therefore, the judgment 1st cited with regard to refusal to live with the husband without any sufficient reason, disentitles her to claim maintenance is not applicable to the present facts of the case.

In a case reported in ***Shamima Farooqui v. shahid khan***³ the Hon'ble Apex Court highlighted the nature of proceedings under Section 125 of Cr.P.C. The facts of the case are almost identical to the present facts of the case but they belong to different religions. The Hon'ble Apex Court held that Section 125 of Cr.P.C., is also applicable to divorced Muslim Women. It is further held that an application for grant of maintenance has to be disposed of at the earliest. When an application for grant of maintenance is filed by the

³ (2015) 5 Supreme Court cases 705

wife the delay in disposal of the application, to say the least, is an unacceptable situation. It is, in fact, a distressing phenomenon. These litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs.

In view of the judgment of the Hon'ble Apex Court, the powers of this Court are limited and when the Court below recorded a finding about refusal and neglect to maintain wife by the husband and such fact finding in summary proceedings under Section 125 of Cr.P.C., this Court cannot interfere unless it is shown that the findings recorded by the Court below are apparently perverse or erroneous. Hence, the award of maintenance to the 1st respondent by the revisional Court is not an error. On the other hand, the trial Court recorded the finding without giving reasons about what circumstances lead her to live separately and whether those circumstances are sufficient cause to live separately from her husband and refused to join with him, therefore, reversal of the finding recorded by the trial Court by the revisional Court is justified in summary proceedings under Section 125 of Cr.P.C.

The revisional Court awarded maintenance of Rs.3,500/- per month to the 1st respondent while contending that the petitioner possessed Ac.4-00 of land and carrying on money lending business earning Rs.10,000/- per month besides the income of Rs.4,00,000/- per annum from the agricultural land. This fact was not substantiated by any material. However, the 1st respondent being a woman is expected to incur certain expenditure for food, cloth and shelter and medical expenses. Therefore, granting maintenance @Rs.3,500/- per month to the 1st respondent is just and reasonable, taking into consideration of the present cost of living, price index and hike in prices of essential commodities. Consequently, on the other hand, there is no illegality in the orders passed by the revisional Court warranting interference of this Court by exercising powers under Sections 397 and 401 of Cr.P.C. Accordingly, the order passed in CrI.R.P.No.132 of 2015, dated 14-09-2016, by the IX Additional Sessions Judge, West Godavari at Kovvur, reversing the finding of the trial Court is hereby confirmed.

Though the children of the 1st respondent also arrayed as respondents 2 and 3, learned counsel for the respondents fairly conceded that they are not challenging the maintenance awarded in favour of the children i.e., respondents 2 and 3. Therefore, I cannot disturb the findings recorded by the

Courts below with regard to the maintenance amount awarded to the respondents 2 and 3 herein.

In view of my forgoing discussion, I find that the revision is devoid of merits and deserves to be dismissed.

In the result, the Criminal Revision Case is dismissed.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

August 29, 2017

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JUSTICE M. SATYANARAYANA MURTHY



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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