

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No. 1253 OF 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code' for brevity) is filed by the petitioner/unsuccessful respondent/husband assailing the order, dated 06.10.2016, of the learned Judge, Family Court-cum-VII Additional District and Sessions Judge, West Godavari District, Eluru, passed in M.C.No.12 of 2015.

2. I have heard the submissions of Sri Durga Prasad Kotamraju, learned counsel for the petitioner/husband, and of Sri A.K.Kishore Reddy, learned counsel appearing for the respondents 1 and 2. I have perused material record.

2.1 The parties in this revision shall hereinafter be referred to as the petitioner-husband and the respondents 1 and 2 as arrayed in this revision case.

3. The facts, which are required to be stated as a preface to this order, in brief, are as follows:

The respondents 1 and 2 herein, who are the wife and child of the petitioner, filed M.C.No.12 of 2015 under Section 125 of the Code claiming monthly maintenance @ Rs.20,000/- each. The same was resisted by the petitioner-husband by filing a counter. At trial, PWs 1 to 3 were examined and exhibits P1 to P5 were marked on the side of the respondents 1 and 2 herein. However, some of the witnesses (PWs) were not cross-examined and no evidence, either oral or documentary, was adduced on the side of

the petitioner/husband. By the order impugned in this revision, the trial Court awarded maintenance @ Rs.10,000/- and Rs.5,000/- per month respectively to the petitioners therein i.e., respondents 1 and 2 herein. Aggrieved thereof, the husband filed this revision case.

4. At the hearing, the learned counsel for the petitioner, while stating the defence of the husband, which was stated in the counter filed before the trial Court, would further submit as follows:

Only because of communication gap between the counsel and the petitioner/husband, he could not participate in the trial completely. Hence, his counsel could not cross examine some of the PWs. Further, for the same reason, he also could not adduce any evidence on his side, though he has got tenable defence. Thus, the order impugned came to be passed in the absence of evidence on the side of the petitioner-husband. Therefore, he seeks an opportunity to be given to have the case decided on merits. Hence, the order impugned may be set aside in the interest of justice and the case may be remitted to the trial Court for disposal afresh on merits and in accordance with the procedure established by law. The petitioner/husband is prepared to abide by any reasonable conditions that may be imposed by this Court while allowing the revision and setting aside the order impugned and remitting the matter to the trial Court for disposal afresh from the stage of cross examination of PWs, who were not yet cross examined by the counsel for the petitioner-husband.

5. The learned counsel for the respondents 1 and 2 would submit as follows: "The relationship between the parties is admitted. The arrears, as on today, are Rs.4,50,000/-. No part of the maintenance is paid by the

petitioner/husband till date to the respondents 1 and 2. The petitioner/husband intentionally failed to participate in the proceedings of the case as he has no tenable defence in the case. Therefore, the revision case is liable to be dismissed.” He, alternatively, submits that if this Court is inclined to allow the revision and grant an opportunity to the petitioner/husband to have the case decided on merits, appropriate conditions may be imposed to safeguard the interests of the respondents 1 and 2.

6. Having regard to the facts and submissions, this Court is satisfied that the revision case can be disposed of with appropriate conditions.

7. Accordingly, the Criminal Revision Case is allowed and the order, dated 06.10.2016, passed by the learned Judge, Family Court-cum-VII Additional District & Sessions Judge, West Godavari District, Eluru, in M.C.No.12 of 2015 is set aside. Accordingly the above said MC shall stand restored to the file of the said trial Court subject to the following conditions:

- I. The petitioner/husband shall deposit, within six weeks from the date of receipt of a copy of this order, a sum of Rs.2,00,000/- (Rupees two lakhs only) to the credit of the aforestated M.C.
- II. On failure of the petitioner/husband to comply with the above condition, the revision case shall stand dismissed and the order impugned in this revision case shall stand revived.
- III. The petitioner shall continue to pay Rs.8,000/- in all to the respondents 1 and 2 herein every month regularly and without fail during the pendency of the Maintenance Case, that is, on its restoration as per the instant orders.

Needless to state that on making the deposit of the amount as first mentioned supra, the trial Court shall take up the maintenance case that stands restored, from the stage of cross-examination of PW2 and dispose of the same on merits and in strict accordance with the procedure established by law. It is made clear that as and when the amount is deposited by the petitioner, the respondents 1 and 2 are at liberty to withdraw the same by following the procedure prescribed by law.

Pending miscellaneous petitions, if any, shall stand closed.

June 21, 2017
LMV



JUSTICE M.SEETHARAMA MURTI