

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1131 of 2015

ORDER:

This revision is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning propriety and legality of the order dated 24.02.2015 passed in CrI.A.No.487 of 2013 by the Additional Metropolitan Sessions Judge, Ranga District at L.B.Nagar, Hyderabad whereby order dated 16.05.2013 passed in D.V.C.No.9 of 2009 by the VIII Metropolitan Magistrate, Cyberabad was confirmed.

In D.V.C.No.9 of 2009 the VIII Metropolitan Magistrate, Cyberabad has granted maintenance at Rs.6,000/- per month to the respondent No.1 – aggrieved person.

The only ground urged before this Court is that the respondent No.1 subjected the petitioner to cruelty and filed criminal case against him under Section 498-A of I.P.C. and divorce decree was also obtained by the petitioner herein in O.P.No.213 of 2009, but the respondent No.1 conveniently filed M.C.No.160 of 2011 under Section 125 of Cr.P.C. claiming maintenance and prosecuting parallel proceedings and other contention is that by the date of filing D.V.C.No.9 of 2009, she deserted the petitioner and respondent and divorce decree was also obtained, but the trial Court and appellate court did not consider this aspect in proper perspective and committed error in granting maintenance by exercising

jurisdiction under Section 20 (1) (d) of Protection of Women from Domestic Violence Act (for short “D.V.Act”)

Learned counsel for the petitioner further contended that granting maintenance at Rs.6,000/- per month is excessive and the petitioner is running photo studio and earning less than Rs.10,000/- per month and prayed to set aside the order passed by the Courts below.

This revision filed under Section 397 and 401 of Cr.P.C. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in “**State of West Bengal v. Tulsidas**”¹. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose

¹ (1964) 1 Cr.L.J. 443 (SC)

convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in “**Prahlad v. Emporer²**”. Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of

² 48, Crl.LJ 173, 174 (Pat)

facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in “**S.P.S. Jayam & CO. v. Nehrusadan**”³.

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in “**Bansilal v.Laxman**”⁴.

The first and foremost contention urged before this Court is that the petitioner and respondent No.1 living separately even prior to commencement of the Act and obtained divorce in O.P.No.213 of 2009 from the III Additional Senior Civil Judge, Kakinada, hence they are ceased to be husband and wife from the date of passing order in O.P.No.213 of 2009. However, this question is no more res integra in view of the judgments rendered by this Court in “**Sikakollu Chandra Mohan v. Sikakollu Saraswathi Devi**”⁵ “**Mohit Yadam v. State of Andhra Pradesh**”⁶. In both the decisions, this Court candidly held that the provisions of Act are applicable even if parties are separated prior to commencement of Act. Therefore, the contention of petitioner is without any substance.

³ 1977 CrL.L.J. 1101

⁴ (1986) 3 SCC 445

⁵ 2010 (2) ALD (Cri.) 391 (AP)

⁶ 2010 (1) ALD (Cri.) 1 (AP)

Therefore, merely because they are living separately and obtained divorce, maintenance cannot be declined to the respondent No.1 and on the ground of separation, the revision cannot be allowed setting aside the orders passed by the courts below.

The other contention is that quantum of maintenance granted by the Court below is excessive.

As the trial Court observed that the petitioner is running photo studio and earning sufficient income to maintain his wife, the burden is upon the petitioner to prove his income by producing necessary material, but no iota of evidence is brought on record to establish that he is earning less than Rs.10,000/- per month.

Therefore, the maintenance granted by the trial Court to the respondent No.1 at Rs.6,000/- per month is just and reasonable, which is hardly sufficient to meet her daily necessities such as food, clothing, shelter and medical aid etc. taking into consideration of present price index and cost of living. Therefore, the order passed by the trial Court and affirmed by the appellate Court is confirmed.

In the result, the criminal revision case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

11.08.2017
Ksp