

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.2613 of 2017

JUDGMENT:

The present Criminal Revision Case is preferred questioning the award of monthly maintenance of Rs.2,000/- to the revision petitioner from the date of the order passed by the Judge, Family Court-cum-IV-Additional District and Sessions Judge, Adilabad, dated 24.05.2017 in Criminal Revision Petition No.17 of 2016 in M.C. No.10 of 2005 on the file of Judicial Magistrate of First Class, Boath, setting aside the order of the learned Magistrate in refusing to award monthly maintenance to the petitioner in the Maintenance Case.

2. Heard Sri L. Sandeep, learned counsel for the petitioner. The present Criminal Revision Case is disposed of at the admission stage itself.

3. Before the learned Magistrate, the petitioner-wife examined herself as P.W.1 and one more witness as P.W.2; whereas on behalf of the respondent, the revision petitioner himself examined as R.W.1 and one Naga Raju as R.W.2 and marked Ex.R1-copy of order in O.P. No.12/2005 dated 31.7.2006 on the file of Senior Civil Judge, Adilabad, and arrived at the conclusion that the petitioner was living in adultery with Mr. B. Shyam and, therefore, found that she is not entitled to maintenance and disbelieved the harassment and cruelty attributed to the husband-revision petitioner himself.

4. When the aforesaid order was challenged before the learned Judge, Family Court; the learned Judge, Family Court, finding from the evidence of R.Ws.1 and 2 that on one or two occasions the petitioner No.1 had illegal intimacy with one Belluri Shyam, relied on the ruling in **Pandurang Barku Nathe v. Leela Pandurang Nathe and another**¹ and extracting the expression contained in paragraph-8 therein observing that sporadic instances of sexual relationship between a person other than her husband would not fall within the ambit of the expression “living in adultery” would mean that it is only a wife “living in adultery” who is not entitled to maintenance under Section 125 (4) of Cr.P.C. and a wife who is occasionally guilty of committing adultery would not forfeit her claim for maintenance under the said Section and also observing that it was proved that the petitioner No.1 is the legally wedded wife of respondent and petitioner No.2 is their son and both were sent out from the company of the respondent and neglected by not paying any maintenance and thereby awarded monthly maintenance of Rs.2,000/- to the 1st petitioner, while maintaining the award of maintenance of Rs.600/- per month to the 2nd petitioner by the learned Magistrate.

5. The learned counsel for the petitioner in vehemence contends that in the presence of positive finding recorded by the learned Magistrate that the 2nd respondent herein is living in adultery, the learned lower Appellate Court ought not to have interfered with the said finding and, therefore, there has been patent error in the order

¹ 1997 Cri. L.J. 3976

passed by the learned lower Appellate Court, which requires to be set aside.

6. The learned counsel for the 2nd respondent-wife has also placed reliance in **Smt. Mehbubabi Nasir Shaikh v. Nasir Farid Shaikh and another**² and **Pandurang Barku Nathe** (1 supra), referred to in the above, which, of course, need not once again be referred to as the legal principle was extracted by the lower Appellate Judge.

7. When the finding recorded by the lower Appellate Court is to the effect that on one or two occasions there was instances of illegal intimacy with one Shyam, which was based on appreciation of evidence of R.Ws.1 and 2, that too positive admissions made by them according to the lower Appellate Court and placing reliance in **Pandurang Barku Nathe** (1 supra), certainly, the order under challenge is not liable to be set aside as it does not suffer from any legal infirmity.

8. There is no merit in the present Criminal Revision Case and it is, accordingly, dismissed upholding the order passed by the learned Appellate Court awarding maintenance to the petitioners.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA

Dt. 05.12.2017
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² 1977 CRI. L.J. 391