

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.207 OF 2017

ORDER:

The revision petitioner is respondent in M.C.No.100 of 2014 on the file of the Judge, Family Court, Warangal, filed against him by his wife and major unmarried daughter, a student, who are the revision respondents 1 and 2, as M.C. petitioners under Section 125 Cr.P.C. of Rs.25,000/- per month.

2. It is on contest the learned Judge, Family Court, by the impugned order dated 03.01.2017 in the M.C.No.100 of 2014, from the pleadings and evidence including of Pws.1 and 2 with reference to Exs.A1 to A4 and Rw1 with reference to Ex.R1 including judgment in O.P.No.91 of 1991, awarded Rs.4,000/- per month to wife and Rs.2,000/- per month to the daughter from date of petition with Rs.10,000/- towards legal expenses.

3. The contentions in the grounds of revision besides oral submissions of the learned counsel for the revision petitioner are that the impugned order of the lower court is contrary to law, weight of evidence, probabilities of the case, ill appreciation of evidence on record, without even any medical record or proof of her suffering from any paralysis to the right side or any heart problem, already there is a decree of divorce obtained by him in O.P.No.81 of 1991 on 16.07.1993 from the

III Senior Civil Judge Court, City Civil Court, Hyderabad and about 21 years after that she filed M.C.No.117 of 2014 without any basis and after divorce from first petitioner to the M.C., he married another woman and got children, whom also he has to take care out of his meager earnings and she is getting rental income of Rs.4,80,000/- from houses bearing Nos.1-35-159 and 1-35-160 of Police Line, Gun Bazar, Begumpet, Hyderabad and except for his salary of Rs.9,000/- per month, he has no income and on the other hand, she got sufficient means and thereby the maintenance awarded is liable to be set aside.

4. The counsel for respondents 1 and 2 supported the order of the lower court stating nothing to interfere, hence to dismiss the revision.

5. Heard and perused the material on record including the impugned order of the lower court.

6. The relationship between the parties not in dispute. Even a divorced wife is entitled to maintenance under Section 125 Cr.P.C. is not in dispute. There is no limitation for filing the maintenance claim is also not in dispute. The fact that she filed maintenance claim about 21 years after divorce obtained by him no way disentitles her thereby as she can claim maintenance when she is unable to maintain and it is not a case of asking her entitlement to maintenance for the past 21 years, but for at best from the date of petition to

award maintenance when the claim is made and even an unmarried daughter major non earning being a student also entitled to maintenance under Section 125 Cr.P.C. not in dispute and the law is also fairly settled in this regard. Further, it is not a case of any permanent alimony awarded to her under Section 25 of the Hindu Marriage Act, at the time of grant of divorce or subsequently to claim her any disentitlement so also to the major unmarried daughter unable to maintain by themselves.

7. Coming to the maintenance from date of petition, as held by the Apex Court in ***Bhuwan Mohan Singh Vs. Meena and others***¹ of it is the duty of the husband towards wife to provide proper maintenance and said duty continues, to lead a life similar to him with all dignity according to their social status and strata, regard being had to solemn pledge at the time of marriage and also in consonance with statutory law that governs the field to see that his wife does not become a destitute as it is the sacrosanct duty of the husband to provide maintenance once he can earn either by physical labour from able bodied or otherwise for there is no escape route unless there is an order from court of wife is not entitled to get maintenance on any legally permissible grounds. It was also justified granting maintenance from date of petition and the proceedings even taken nine years in attaining finality from date of petition.

¹ (2015) 6 SCC 353

8. No doubt from the evidence on record, it is their case that the daughter is unemployed, still studying and she has no source of income besides suffering from ill-health requires regular treatment and he is getting salary of Rs.25,000/- per month and also getting Rs.4,80,000/- from the two house bearing Nos. 1-35-159 and 1-35-160 of Police Line, Gun Bazar, Begumpet, Hyderabad, besides owning another house at Damaiguda Village of Keesara Mandal, Ranga Reddy District. She did not any medical report about her heart complaint or any paralysis, but for oral evidence. It is not even his case that his daughter is doing any job. There is nothing worth in the cross-examination of P.W.1 by the respondent as pointed out by the lower court and he did not file any scrap of paper to show what is the income he is getting from the house door Nos.1-35-159 and 1-35-160 and it is not even his case that those properties are not that of him by filing any encumbrance certificate or municipal assessment record though she categorically deposed about the premises with door numbers owning by him and getting income there from. Even to dispute income or ownership, as the case may be, even from his epsi dexit oral version though the burden is on him to show wife got sufficient means so also the daughter and there is no neglect or refusal as held in

Rajathi Vs. C.Ganeshan² and that is also discussed by the lower court in Para 12 of the judgment.

9. It is not even his case that he did not neglect for not even sending any amount for her or to the child i.e., to say even after obtaining divorce, he did not pay even a single pie, that tantamounts to neglect or refusal, irrespective of she did not participate in the divorce decree obtained by him *ex parte* and never challenged later. Even not to believe her explanation of she has no knowledge and she could not known even from enquiries on recent past came to know to reopen by setting aside the decree.

10. Coming to the quantum from the evidence showing he got rental income from the two premises referred supra of Gun Bazar, Begumpet and salary, even taken of his claim of Rs.9,000/- per month and not Rs.25,000/- per month, he did not file any paper though best evidence he could produce, that also no way requires interference, but for to reduce by Rs.4,000/- of wife to Rs.3,000/- by considering the factum of she got second wife and also children through second wife whom he has also to maintain.

11. Accordingly, in the result, the petition is allowed in part by reducing the maintenance of Rs.4,000/- per month to the divorced wife to Rs.3,000/- per month and by confirming Rs.2,000/- per month to the major unmarried daughter, in

² AIR 1999 SC 2374

other aspects, the order of the learned Judge, Family Court, in M.C.No.100 of 2014 is confirmed.

12. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

DT: .02.2017

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