

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2305 of 2013

&

CRIMINAL PETITION NO.11997 OF 2013

COMMON ORDER:

Since the facts of the case, issues involved and the parties in both these matters are one and the same, these two matters are disposed of by this common order.

Crl.R.C.No.2305 of 2013 is filed by the petitioner/husband, under Sections 397 and 401 of Cr.P.C., assailing the common order, dated 01.08.2013, passed in Crl.P.Nos.15 of 2013 and 19 of 2013, by the II Additional Sessions Judge, Karimnagar at Jagtial, whereby, the monthly maintenance payable to the 1st respondent/wife was enhanced from Rs.1,000/- to Rs.2,000/- per month from the date of petition by allowing the revision filed by the wife; dismissing the revision filed by the husband/petitioner herein.

Crl.P.No.11997 of 2013 is filed by the petitioner/husband, under Section 482 of Cr.P.C., to quash the proceedings in M.C.No.12 of 2003 on the file of the Additional Judicial Magistrate of First Class, Jagtial, Karimnagar, by dismissing the Crl.P.No.19 of 2013 on the file of the Court below.

The bone of contest of the petitioner is two fold; (1) awarding maintenance to the respondent No.1 herein/wife from the date of petition is against the purport of Section 125(2) of Cr.P.C. and the Revisional Court did not record any reasons to reverse the order passed by the trial Court enhancing the maintenance from the date of petition; and (2) Enhancing monthly maintenance from Rs.1,000/- to

Rs.2,000/- is illegal in the absence of any other material produced before the Revisional Court and it is a clear irregularity.

On the other hand, Sri Sarang J. Afzulpurkar, learned counsel for the respondent No.1/wife, supported the common order, dated 01.08.2013, passed in CrI.P.No.15 of 2013 and 19 of 2013, by the II Additional Sessions Judge, Karimnagar at Jagtial, in all respects.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is Limited. Section 401 Cr.P.C 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 the other 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 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. Emporer*². 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

¹ (1964) 1 CrI.L.J.443 (SC)

² 48, CrI.L.J.173,174(pat)

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.”

The main dispute is with regard to date from which payment of maintenance. The petition was filed by the wife in the year 2003 before the Judicial Magistrate of First Class, Jagtial, which is registered as M.C.No.12 of 2003. After conducting enquiry, the said petition was dismissed on 21.02.2013 holding that a divorced Muslim woman is not entitled to get maintenance. Thereafter, the matter was carried to this Court by filing Crl.P.No.1574 of 2008, and this Court took a view that the 1st respondent herein/wife is entitled to claim maintenance and remitted the matter to the trial Court for passing appropriate orders. Then the trial Court, upon hearing both the counsel, passed the Order dated 21.02.2013, granting maintenance of Rs.1000/- to the 1st respondent herein/wife from the date of the said order. Aggrieved thereby, the 1st respondent/wife preferred a Revision before the Court below seeking enhancement of monthly maintenance and the petitioner/husband preferred another revision to set aside the order passed in the M.C. The Court below, while allowing the petition of the 1st respondent/wife, enhanced monthly maintenance from Rs.1,000/- to Rs.2,000/- per month and granted maintenance from the date of petition; and dismissed the petition filed by the petitioner/husband.

On account of shuttling of the matter between the Courts, there was abnormal delay in disposal of the petition and for all these 10 years, the 1st respondent/wife was subjected to starvation, as she has no means to maintain herself and the said fact was recorded by the Court below. The Revisional Court, while enhancing the monthly maintenance payable to the wife from Rs.1,000/- to Rs.2,000/-, recorded its reasons in paragraph No.8 of the Judgment.

The learned counsel for the petitioner/husband contended that because of one reason or the other the respondent No.1/wife herein shuttled for all these 10 years but not due to the fault of the petitioner. He further contended that the petitioner herein is a retired Attender in Bank and is getting only Rs.7,000/- per month as pension. He also contended that when there are changed circumstances after granting maintenance, the petitioner/husband can file a petition for alteration of maintenance under Section 127 of Cr.P.C.

The said contention cannot be accepted in the present Petition. Though liberty can be given to the husband for alteration of maintenance under Section 127 of Cr.P.C., but the wife cannot be debarred from claiming maintenance. Because of the mistake of the Courts, the parties should not be put to sufferance. Hence, the finding of the Revisional Court is in compliance of Section 125(2) of Cr.P.C. and the order passed by the revisional court does not call for any interference of this Court while exercising power either under Section 482 of Cr.P.C. or under Sections 397 and 401 of Cr.P.C.

Accordingly, CrI.R.C.No.2305 of 2013 and CrI.P.No.11997 of 2013 are dismissed.

As a sequel, miscellaneous petitions, if any, pending in both these cases, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 31-08-2017.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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