

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.804 of 2008

ORDER:

Impugning the dismissal of the maintenance claim under Section 125 Cr.P.C. at Rs.5,000/- per month from date of petition in M.C.No.123 of 204 before the learned Judge, Family Court, Visakhapatnam, vide impugned order dated 13.03.2008, the wife maintained the revision showing the State as 1st respondent and her husband as 2nd respondent. The 2nd respondent even served failed to attend.

Heard learned counsel for the petitioner/wife and taken as heard the 2nd respondent and perused the material on record.

The relationship between the parties outcome of marriage dated 06.05.2001 at Visakhapatnam in TTD Kalyana Mandapam not in dispute. He is an employee and she is a house wife are not in dispute. What she claim of he is earning Rs.10,000/- per month disputed by him by showing Ex.R1 his gross salary for the month of December 2004 was Rs.6,561/-.

Her contention is he neglected and refused to maintain and she is unable to maintain herself, leave about the other averments of the dowry harassment to meet additional demands and she was beaten and sent out. She and her mother as PWs.1 and 2 deposed in same line and he came to the witness box as RW.1 and in support of his version of she herself left his company voluntarily and he is ready to take her back if she is willing to come and he is getting net salary of Rs.2,613/- per month and

his brother and sister are also depending upon him and having she voluntarily left, she is not entitled to maintenance.

It is the appreciation of said evidence of PWs.1 and 2 and RW.1 with reference to Exs.P1 to P3 and Ex.R1 respectively of which Ex.P1 is her police complaint to SHO, Pendurthi dated 09.03.2004 and wedding photo and wedding card. Ex.R1 is pay slip referred supra. Admittedly police did not take any action on Ex.P1 report by registering any crime against husband MC respondent. It is confronted to her saying her husband filed O.P.No.227 of 2004 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. There is no evidence to show that it was allowed, but for on contest. The learned Family court Judge by impugned order dated 13.03.2008 taken judicial notice of the factum of the said restitution of conjugal rights was allowed on the date of pronouncing the impugned order dismissing the maintenance claim. In fact had there been any order and if it is exhibited and confronted to her by opportunity to explain the order, it can be used in evidence not otherwise. Further once it is she and her mother deposed saying she was sent out by beating and she is fear of her life and not willing to join that is justification and it cannot be said she voluntarily left his company without any just cause & she is disentitled to the claim. Thereby the conclusion by the learned Judge is unsustainable for the pragmatic approach required with referring to the evidence let in from the facts exhibited and based on record.

Having regard to the above, dismissal order of the maintenance claim is unsustainable and the same is set aside and by considering that his gross salary is Rs.6,561/-, an amount of Rs.1,500/- per month is granted from the date of maintenance case filed and the revision is allowed with a direction to the 2nd respondent to pay all arrears within six equal monthly installments in addition to the regular maintenance of every month by 5th day of the month, failing which liberty is given to her to enforce.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 20.03.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

