

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.2262 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order, dated 13.04.2017 in FC MC No.42 of 2012 passed by the Judge, Family Court, Kurnool whereby granted Rs.12,000/- per month as maintenance in a petition filed under Section 125 Cr.P.C.

2. The first respondent herein filed petition under Section 125 Cr.P.C. r/w Section 7(2)(a) of the Family Courts Act claiming maintenance of Rs.20,000/- per month alleging that her marriage with the petitioner was performed on 24.08.1998 and later the marriage was consummated and the first respondent joined the matrimonial society of the petitioner at Bombay where he was working by then as Goods-train driver i.e. Loco Pilot and lead happy marital life for one year and shifted from place to place in connection with employment on transfer. As the first respondent not blessed with children, the petitioner used to ill-treat accusing her of being a barren lady and both of them underwent medical check up and found the first respondent suffering from asthenopermia, oligospermia, and poor liquefaction and that is the reason for not becoming pregnant. The petitioner herein used to avoid coming home for days together over trivial issues and left her alone at home and leaving her un-informed of his whereabouts. While the matter stood thus, on 09.07.2012 the petitioner left the house stating that he has training schedule at Kazipet and did not return till date. He did not even take care to disclose his address etc. Having no other alternative, on 16.08.2012 she addressed a letter to the Divisional Railway Manager, South Central Railway, Secunderabad under

whom the petitioner was working at that time and she was informed that the petitioner was on leave. Because of petitioner's callous, reckless, irresponsible and whimsical behaviour, the first respondent left the lurch. It is further contended that the first respondent has no independent source of income and she is facing much difficulty to meet the daily necessities like food, clothing and medicare and that she was deserted by the petitioner in a helpless distressed condition; whereas the petitioner is earning Rs.70,000/- per month and he refused and neglected to maintain the first respondent herein.

3. The first respondent got issued a legal notice dt.19.07.2012 calling upon the petitioner to join her, but the petitioner managed to return the notice with false postal endorsement. Therefore, she claimed maintenance of Rs.20,000/- per month.

4. The petitioner filed counter denying the allegations while admitting the marriage that took place on 24.09.1998 at CSI Christ Church, Kurnool and that their marriage was consummated but not blessed with any children. The first respondent is a civil engineering diploma holder, but on the first day of nuptials, he came to know that she is suffering from psoriasis, a permanent incurable skin disease and she is not getting required menstruation and incapable of becoming pregnant and also bear children. He also further contended that he came to know that she is suffering from insomnia and not completed even the diploma course in civil engineering and because of physical and mental ill-health, she developed inferiority complexion and became a sadist. She always used to say that he has to suffer and should behave like a henpecked husband else he and other members of his family will have to face dire consequences and he being a strong believer in sacredness of marriage and married life and also a kind hearted person and religious minded, he

decided to adjust himself with her. But, she herself deserted the petitioner without any reasonable cause and took away the gold ornaments etc. It is also further contended that he is getting only Rs.35,000/- per month and he has to take care of his old-aged mother, widowed sister and her son who are in distress condition and thereby the first respondent is disentitled to claim any maintenance and prayed for dismissal of the petition.

5. During enquiry, on behalf of the first respondent, PW-1 was examined and marked Exs.A-1 to A-8 and on behalf of the petitioner herein RW-1 was examined and marked Exs:B-1 to B-9.

6. Upon hearing the arguments of both sides, the Judge, Family Court awarded Rs12,000/- per month as maintenance to the first respondent.

7. Aggrieved by the impugned order, the present revision is filed under Sections 397 and 401 Cr.P.C. challenging the award of maintenance on the ground that when the first respondent herself deserted, she is disentitled to claim maintenance, apart from that the liabilities of the petitioner was also not taken into consideration by the Judge, Family Court and committed an error and he has to maintain his old aged mother, widowed sister and her son and prayed to set aside the order.

8. During hearing, the learned counsel for the petitioner would draw the attention of this Court while reiterating the contentions, admissions made in the cross examination about the income and observations of the Judge, Family Court, denied salary slip Ex.A-8, net and gross salary, liabilities etc. and on the strength of the same, he contended that the maintenance awarded by the Judge, Family Court is excessive and requested to reduce the same.

9. Per contra, the learned counsel for the first respondent supported the order passed by the Judge, Family Court in all respects.

10. The jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited. However, 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 of proper precaution 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 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 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:

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

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.

11. Thus, the powers of the High Court are limited, but such power cannot be exercised sparingly. 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 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.

12. 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.

13. It is an admitted fact that the marriage between the petitioner and the first respondent was performed and consummated, but not blessed with any children. Her contention was that the petitioner herein refused and neglected to maintain the first respondent herein without any just and reasonable cause. The Judge, Family Court also recorded a fact finding that the petitioner refused and neglected to maintain the first

³ 1977 Cr.L.J. 1101

⁴ (1986) 3 SCC 445

respondent who is his wife in distressed condition without any independent source of income for her livelihood, such fact finding cannot be disturbed exercising power under Section 397 and 401 Cr.P.C. unless such finding is manifestly perverse or apparent error. But, I find no such perversity or error in the fact finding recorded by the Judge, Family Court regarding the refusal and negligence on the part of the petitioner to maintain the first respondent herein and petitioner before the trial Court. Therefore, the finding recorded by the trial Court regarding refusal and neglect o maintain the first respondent herein is hereby confirmed.

14. With regard to quantum of maintenance, the petitioner is admittedly earning Rs.72,978/- per month as Assistant Driver/Loco Pilot. It is supported by Ex.A-8 salary slip for the month of July, 2016 and his net pay was Rs.29,459/-. Whereas, in the counter, he contended that he was getting Rs.35,000/- per month as net salary, as narrated in para 3 of the order of the Judge, Family Court with reference to counter. Even assuming for a moment, the petitioner is receiving Rs.35,000/- per month or Rs.29,459/- per month, the petitioner is under obligation to provide necessary maintenance and permitting the first respondent to lead same standard of life while living with her husband who is petitioner herein at matrimonial home. If gross salary of the petitioner as on that day was taken into consideration, granting of R.12,000/- per month as maintenance to lead same standard of life on par with the petitioner herein, it is insufficient. But, according to the admission, the petitioner was receiving Rs.35,000/- per month as per Ex.A-8, granting 1/3rd of it as maintenance per month to the petitioner is not excessive taking into consideration the same standard of life which she expected to lead and the present price index. Therefore, the maintenance awarded by the Judge, Family Court @ Rs.12,000/- per month to the first respondent is not excessive and the same cannot be reduced while exercising power under

Section 397 and 401 Cr.P.C. Hence, I find no ground to set aside the order passed by the Judge, Family Court by interfering with the order and consequently, the revision is liable to be dismissed.

15. In the result, the criminal revision case is dismissed at the stage of admission confirming the order, dated 13.04.2017 in FC MC No.42 of 2012 passed by the Judge, Family Court, Kurnool. Miscellaneous petitions, if any, pending in this case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:09-08-2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CPLRC. NO.2262 OF 2017

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