

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2163 OF 2017

ORDER:

This criminal revision case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), is filed questioning the propriety and illegality of the Order dated 19.06.2017 in CrI.M.P. No.232 of 2015 in M.C. No.124 of 2015 passed by the Judge, Family Court, Ranga Reddy District, wherein the learned Judge awarded an amount of Rs.5,000/- per month towards interim maintenance to the second petitioner therein from the date of petition while dismissing the claim of the first petitioner, the revision petitioner filed the present revision for not awarding interim maintenance in her favour.

The revision petitioner, along with her daughter filed CrI.M.P.No.232 of 2015 in M.C. No.124 of 2015 for grant of interim maintenance an amount of Rs.15,000/- per month i.e. Rs.7,500/- to each of the petitioner and Rs.5,000/- towards legal expenses alleging that her marriage was performed with the first respondent in the year 1980 and they lived happily for two to three years and blessed with two daughters and one son. It is further alleged that the first respondent wilfully neglected to maintain them though he possessed sufficient means and having independent source of income, whereas the petitioner herein had no independent source of income, depending on the mercy of her elder son, who is not in a position to maintain them. Whereas the first respondent is working as Security guard and earning an amount of Rs.15,000/- and also receiving an amount Rs.50,000/- towards pension as ex-

service men and leading luxurious life. Thus, the first respondent possessed sufficient means to maintain the petitioners.

The first respondent filed counter denying the material allegations, while admitting the relationship between himself and the petitioner herein, denied the alleged harassment and refusal to maintain the petitioner and their daughter, while contending that he worked in Indian Army during 1978-99, retired from service in the year 1999. Their Son completed M.Tech and the second daughter has also completed B-Tech. It is further contended that he sacrificed everything for the welfare of the petitioners and children, purchased a house site after retirement and constructed a house and residing therein, obtained loan for an amount of Rs.5,00,000/- from a private money lender and he is repaying the said amount with interest @ Rs.10,000/- per month, he also performed the marriage of his elder daughter by obtaining loan of Rs.5,00,000/- from private persons and repaying the loan with interest @ 2% per month, he is getting only Rs.16,208/- per month. It is further contended that on 26.06.2015 the petitioners along with his son quarrelled with him and necked out of the house and lodged false complaint with the Police Narsingi Police Station and also threatened him to implicate in false cases. Since then he is residing in a rented house, paying an amount of Rs.7,000/- per month towards rent, while suffering from various ailments like blood pressure, sugar etc., and he is also paying an amount of Rs.20,000/- towards loans. He has no means much less sufficient means to maintain the petitioner, whereas the

petitioner is able to maintain herself and filed maintenance case without any bonafide cause.

During enquiry, no evidence either oral or documentary was produced before the trial court.

Upon hearing argument of both the counsel, the learned Judge denied to grant maintenance to the first petitioner, who is the revision petitioner herein, on the ground that she is staying with her son, who is legally bound to maintain her being the son and therefore she is disentitled to claim maintenance dismissed the claim petition.

Aggrieved by the same, the present revision is filed on the ground that though she is staying with her son, the husband cannot disown his responsibility to maintain his legally wedded wife, denying liability of the first respondent is not substantiated by any material, therefore, the order passed by the Judge, family court is erroneous and prayed to set aside the same.

During hearing, Sri Jakkamsetti Ravindra, learned counsel for the revision petitioner, reiterated the grounds of revision and would contend that the first respondent worked as armed constable and having sufficient means to maintain himself, cannot disown his responsibility to maintain his legally wedded wife, but the trial court on erroneous appreciation of fact and law, rejected the claim of the revision petitioner and prayed to set aside the same.

Whereas Ms.K.Sridevi, learned counsel for the first respondent, supported the order in all respects, when she is staying with the son, who is under obligation to maintain, denial of

liability of the first respondent by the Judge, Family Court is justified and prayed to dismiss the criminal revision case.

The jurisdiction of this Court under Sections 397 and 401 of Cr.P.C. is limited and it can be exercised sparingly only in exceptional circumstances where the court finds the order passed by the court below is perverse and apparently erroneous, not as a matter of routine. Therefore, keeping in mind the limitations on the power of this court, I would like to decide the real controversy between the parties.

Admittedly the revision petitioner is a legally wedded wife to the first respondent, who is under obligation to maintain his wife. He was working as security guard, earning an amount of Rs.20,000/- per month besides getting an amount of Rs.16,000/- towards pension consequent upon his retirement as an ex-army. Therefore, he was getting more than Rs.36,000/- per month. He construed a house and performed the marriage of his elder daughter etc. The main contention of the first respondent he obtained loan for an amount of Rs.5,00,000/- to perform the marriage of his elder daughter and also obtained loan an amount of Rs.5,00,000/- for construction of house and paying the loan amount in instalments. This fact is not substantiated by any material before the Judge, Family Court.

Moreover, he admitted that he is paying an amount of Rs.20,000/- towards monthly installments for discharge of the loan besides paying an amount of Rs.7,000/- towards rent where he is staying and getting only Rs.16,000/- per month. Therefore, taking into consideration the entire amount he is spending, it can

be concluded that he is earning an amount of Rs.36,000/- per month.

The only ground for denial of maintenance to the revision petitioner, who is the first petitioner in the Crl.M.P., is that she is staying with her son, who is under obligation as contemplated under Section 125 Cr.P.C.

It is for the revision petitioner to choose any one to claim maintenance against her husband or the children, when she was neglected. The revision petitioner having no other alternative staying with her son, it does not mean that the first respondent disown his responsibility to maintain his legally wedded wife. The first respondent being an employee, receiving salary and getting pension as an ex-army, he is under obligation to maintain his legally wedded wife.

Section 125 Cr.P.C. is incorporated only to grant speedy relief to the neglected and refused wife and children, the latter whether they are legitimate or illegitimate, to get maintenance. A two-Judge Bench of the Apex Court in **Kirtikant D. Vadodaria v. State of Gujarat and another**¹, while advertng to the dominant purpose behind Section 125 Cr.P.C., ruled that while dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc., and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in

¹ (1996) 4 SCC 479

Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 Cr.P.C. clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation. The same principle is reiterated in **Bhuwan Mohan Singh v. Meena and Ors.**²

The learned Judge, Family Court, did not keep in mind the primary object of Section 125 Cr.P.C. and refused to grant maintenance to the revision petitioner. When the revision petitioner is residing with her son as she was neglected by the husband, who is under legal obligation to maintain her, would not disentitle her to claim maintenance from her husband. Therefore, taking into consideration, the facts and circumstances of the case, income of the first respondent, I find the petitioner is entitled to claim maintenance against her husband, who is the first respondent herein, so as to enable to meet necessary monthly expenses for food, clothing and shelter and medication at her old age.

Taking into consideration the present price index, cost of living and other requirements at the old age, while setting aside the order passed by the Judge, Family Court, who did not appreciate the facts in right perspective, the criminal revision case is liable to be allowed.

² 2014 CrL.L.J. 3979

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In the result, the criminal revision case is allowed, awarding an amount of Rs.7,000/- to the revision petitioner towards interim maintenance from the date of filing CrI.M.P.No.232 of 2015 in M.C. No.124 of 2015. The first respondent is directed to pay monthly maintenance on or before 10th of every succeeding month.

Miscellaneous petition, if any, pending in the criminal revision case shall stand closed.

M.SATYANARAYANA MURTHY, J

11.08.2017
BV

