

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1696 OF 2011

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the order dated 22.06.2011 in F.C.M.C.No.62 of 2008 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Karimnagar, wherein and whereby the petition filed by the petitioners under Section 125 Cr.P.C. was allowed in part and granted maintenance of Rs.1,500/- per month each to them.

2. In spite of service of notice, respondent Nos.1 and 2 did not choose to appear. Hence, this Court is inclined to pass orders on merits.

3. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed in the F.C.M.C. before the trial Court to avoid confusion.

4. The facts leading to filing of the present criminal revision case are briefly as follows:

The marriage of the first petitioner was performed with the respondent on 31.03.2000 at Padmanagar, Karimnagar, as per Hindu rites and caste customs. Immediately after the marriage, the first petitioner joined the respondent to lead marital life. Out of the lawful wedlock, the first petitioner and the respondent were blessed with a son i.e., petitioner No.2. For one reason or other, disputes arose between the first petitioner and the respondent. The petitioners have filed a petition under Section 125 Cr.P.C., claiming maintenance of Rs.5,000/- per month each from the respondent. The respondent filed counter *inter alia* contending

that the first petitioner developed illicit intimacy with one Srinivas for the last five years. It is the further case of the respondent that the first petitioner left the matrimonial home without any justifiable cause, therefore, the petition is not maintainable under law.

5. Before the trial Court, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.P.1 to 21 were marked. On behalf of the respondent, RWs.1 and 2 were examined and Exs.R.1 to R.4 were marked.

6. Basing on the oral, documentary evidence and other material available on record, the trial Court allowed the petition in part by granting maintenance of Rs.1,500/- per month each to the petitioners. Hence, the revision.

7. The learned counsel for the respondent (petitioner herein) strenuously submitted that the trial Court failed to consider the findings recorded in F.C.O.P.No.67 of 2009 and granted maintenance to the first petitioner. He further submitted that the trial Court has not considered the scope of Sub-Section (4) of Section 125 Cr.P.C. and allowed the petition in part. He also submitted that if the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice.

8. Now the points that arise for consideration are:

1. Whether the petitioners are entitled to claim maintenance from the respondent or not? and

2. Whether there is any illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court or not?

9. Point Nos.1 and 2 are interlinked with each other; hence, this Court is inclined to address both points simultaneously in order to avoid recapitulation of facts and evidence.

10. It is not in dispute that the marriage of the first petitioner was performed with the respondent on 31.03.2000. Out of their lawful wedlock, the first petitioner and the respondent were blessed with a son i.e., petitioner No.2. Due to one reason or other, bad weather prevailed in the family life of the first petitioner and the respondent; therefore, the first petitioner approached the Court and filed the petition under Section 125 Cr.P.C. seeking maintenance. It is needless to say that duty is cast on the first petitioner to establish that the respondent intentionally and wilfully neglected to provide maintenance to her and her son.

11. It is an admitted fact that the respondent filed F.C.O.P.No.67 of 2009 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Karimnagar under Section 13(1)(ia) of the Hindu Marriage Act against the first petitioner for dissolution of marriage on various grounds. F.C.O.P.No.67 of 2009 and F.C.M.C.No.62 of 2008 were disposed of by the trial Court on 22.06.2011.

12. In order to appreciate the contention of the learned counsel for the respondent, it is not out of place to extract para No.12 of the judgment dated 22.06.2011 in F.C.O.P.No.67 of 2009, which reads as follows:

“12. Ex.P.10 is a letter. To whom it was addressed is not mentioned and it is not signed by anybody. When R.W.1 was confronted with Ex.P.10 letter, she admitted that Ex.P.10 letter is in her hand writing, but she says it was also obtained forcibly. In my considered view, her

contention that Ex.P.10 letter was obtained forcibly is false one as to the naked eye the writing in Ex.P.10 shows, it was written in a leisurely manner, wherein it is stated that she got illicit intimacy with the person to whom Ex.P.10 was addressed and on account of their physical intimacy, she became pregnant and then she got it aborted. In the middle of the letter, the person to whom Ex.P.10 letter was addressed is mentioned as Srinu and also at the end of the letter. In my considered view, this Ex.P.10 letter admittedly written by R.W.1 addressed to one Srinu clearly shows she got physical intimacy with one Srinu and in spite of her giving undertaking under Ex.P.4 on 23-10-2007, she did not change her attitude. In the said circumstances, I got no hesitation to hold that R.W.1 was way ward in her marital life and she is not loyal to P.W.1 and she got an affair with one Srinu and even-after Ex.P.4 undertaking, she continued to have that affair. In view of the evidence and in view of the admissions made by R.W.1, it is not necessary to discuss the evidence of other witnesses particularly the evidence of R.W.2 and R.W.3 and there is nothing in the evidence of R.Ws.2 and 3 to show that P.W.1 is loyal to R.W.1 and she never behaved in any way ward towards P.W.1. The point No.2 is answered accordingly.”

13. As per the findings recorded in F.C.O.P.No.67 of 2009, the first petitioner herself deserted the respondent without any justifiable cause. The trial Court made an observation that the first petitioner developed illicit intimacy with one Srinu and the same was supported by the recitals of Ex.P.10. A perusal of the record *prima facie* reveals that the first petitioner herself voluntarily deserted the respondent without any justifiable cause. As observed earlier, some observations are made in F.C.O.P.No.67 of 2009 against the first petitioner touching her chastity. It is needless to say that the finding recorded in a civil matter is binding on the Criminal Court and not vice versa. The findings recorded in F.C.O.P.No.67 of 2009 are binding on the first

petitioner unless and until the same is set aside by the competent Court. Sub-Section (4) of Section 125 Cr.P.C. reads as follows:

“No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

14. As rightly pointed out by the learned counsel for the respondent, the trial Court has not considered the scope of Sub-Section (4) of Section 125 Cr.P.C. in right perspective. The trial Court while disposing of the petition filed under Section 125 Cr.P.C. on the same day, ought to have considered the findings recorded in F.C.O.P.No.67 of 2009. Having regard to the facts and circumstances of the case, this Court is of the considered view that the first petitioner is not entitled to claim maintenance from the respondent.

15. The trial Court granted maintenance of Rs.1,500/- per month to the second petitioner. The petitioners did not file a revision assailing the quantum of maintenance granted by the trial Court to the second petitioner. The finding recorded by the trial Court so far as the quantum of maintenance granted to the second petitioner became final. It is an admitted fact that the second petitioner is the son of the respondent. There is a moral and social obligation on the part of the respondent to look after the welfare of his son. The trial Court, after taking into consideration the financial status of both parties, granted maintenance of Rs.1,500/- per month to the second petitioner. By the time of filing of the petition, the second petitioner was aged about three years. At the

time of filing of the revision, the second petitioner was aged about six years. An amount of Rs.1,500/- per month is hardly sufficient for sustenance of an individual in view of the prevailing price index.

16. Taking into consideration the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the respondent that granting maintenance of Rs.1,500/- per month to the second petitioner is on higher side. There is no illegality, irregularity or impropriety in the order of the trial Court so far as granting of maintenance to the second petitioner is concerned. The trial Court lose sight of Sub-Section (4) of Section 125 Cr.P.C. and granted maintenance to the first petitioner. The order passed by the trial Court by granting maintenance to the first petitioner is not sustainable either on facts or in law. Therefore, I am of the considered view that the first petitioner is not entitled to claim maintenance from the respondent.

17. In the result, the Criminal Revision Case is allowed in part setting aside the order dated 22.06.2011 in F.C.M.C.No.62 of 2008 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Karimnagar, insofar as maintenance granted in favour of the first petitioner is concerned while confirming the order insofar as granting maintenance to the second petitioner is concerned.

18. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 26.10.2017

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