

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C.NO.728 OF 2016

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 19.12.2015 in M.C.No.158 of 2012 passed by the Judge, Family Court, Ranga Reddy at L.B.Nagar, awarding maintenance of Rs.1500/- per month each to the 1st and 2nd respondents in addition to the maintenance of Rs.2,000/- being paid by the petitioner and received by the 1st respondent herein.

2. The 1st and 2nd respondents are mother and son and they filed maintenance case under Section 125 Cr.P.C for grant Rs.7,000/- per month each, towards maintenance and educational expenses of the 1st and 2nd respondent alleging that the 1st respondent is legally wedded wife of the petitioner and the 2nd respondent is the son born during their wedlock. As the petitioner refused and neglected to maintain her and her son, they claimed maintenance @ Rs.7,000/- each.

3. The petitioner herein filed counter before the trial Court denying material allegations of the maintenance case while admitting the relationship between him and the respondents and other allegations relating to presentation of gold, dowry etc. The petitioner contended that he himself paid some amount to the 1st respondent/wife as Voli and there was no practice of payment of dowry to the bride groom and that the father of the 1st respondent was mason and his marriage was performed without disclosing the ill health of the 1st respondent and that the father of the 1st respondent was in poverty the question of payment of rupees one lakh, presentation of 80 grams of gold does not arise and that the petitioner used to look after his ailing wife with utmost love and care as she used to suffer epilepsy (fits). Father of the 1st respondent has not purchased the plots or constructed shops and the said allegation is false. In fact, the petitioner purchased the plots in the open auction with his

own money and constructed shops and house. Father of the 1st respondent borrowed money from him for his family necessity and when he demanded for repayment, he created disputes between him and the 1st respondent. As such the 1st respondent filed D.V.C.No.4 of 2007, where she was getting maintenance of Rs.2,000/- per month and that the 1st respondent has got sufficient means to maintain herself while maintaining her child. Therefore, prayed for dismissal of the petition.

4. During enquiry, before the trial Court, the 1st respondent herein herself was examined as PW.1 and marked Exs.P.1 to P.4. On behalf of the petitioner herein, himself examined as RW.1 and marked Exs.R.1 and R.2.

5. Upon hearing arguments of both counsel, the Judge, Family Court, Ranga Reddy District passed the impugned order granting maintenance of Rs.1500/- per month each to the respondents 1 and 2 in addition to the amount paid under the Protection of Woman from Domestic Violence Act in D.V.C.No.4 of 2007 and considering the rent being received by her.

6. The present revision is filed on the sole ground that the Court below did not consider the income of the 1st respondent being received by her as rent and the income derived by her from the business, which she is admittedly carrying on and thereby she failed to establish that she had no means muchless to maintain herself, in such a case, the 1st respondent is disentitled to maintain petition under Section 125(3) Cr.P.C. and prayed to set aside the same dismissing the maintenance case.

7. During hearing, notice was ordered to the respondents, non none appeared today before this Court.

8. During hearing, learned counsel for the petitioner contended that when wife had sufficient means to maintain herself and deriving income

from business, which she is carrying on as per her own admission, the Court below ought to have taken into consideration the said fact and on the strength of admission, learned counsel also contended that the order of the Court below is erroneous and prayed to set aside the same dismissing the maintenance case.

9. The scope of revision under Sections 397 and 401 Cr.P.C. is limited and the Court is required to decide legality of the order and normally factual aspects cannot be gone into, except when the findings of the Courts below are based on no evidence or found any perversity in the findings of the Courts below. Therefore, in view of limited scope of the revision under Sections 397 and 401 Cr.P.C., I would like to decide the entitlement of the 1st respondent/wife to claim maintenance.

10. Since, the 2nd respondent became major during pendency of the revision and even otherwise, the petitioner being father is under legal obligation to maintain the minor son during his minority and he did not dispute his obligation to maintain his son being the father. Therefore, this Court need not disturb the finding recorded by the Court below awarding maintenance to the 2nd respondent during his minority. After attaining majority, the 2nd respondent is disentitled to claim maintenance.

11. The 1st respondent is admittedly legally wedded wife and not healthy and suffering from epilepsy fits as contended by the petitioner in the counter before the Court below. But only grievance of the petitioner before this Court is that the Court below did not consider the admissions made by the 1st respondent in her cross examination before the Court below with regard to the rental income and the income from business being carried on, engaging three assistants, as such learned counsel contended that the order of the Court below is suffers from illegality and

requested to interfere with the finding recorded by the Court below as it is not based on any evidence.

12. The 1st respondent in her petition pleaded that she had no income much less sufficient income to maintain herself while contending that the petitioner is earning more than Rs.30,000/- per month being Central Government Employee, thus, the 1st respondent pleaded her inability to maintain herself. In such a case, the burden is upon the petitioner/husband to prove the means of the 1st respondent and capability to maintain herself. When the petitioner/husband discharged his initial onus of proof, the burden will shift on to the 1st respondent/wife before the Court below.

13. In **Rajathi v Ganesan**¹, the Apex Court categorically held that when the burden is on the wife to prove that she was unable to maintain herself and that it is obligation of the husband to maintain his wife, children and parents. It will, therefore, for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain wife. Hence, it is for the husband to plead and prove that he has no means to maintain wife and children or that the wife is having sufficient means to maintain herself.

14. Here, in this case, the petitioner though pleaded that he had sufficient means and admitted that the wife was suffering from epilepsy (fits) and that without disclosing the ill-health of the 1st respondent, the father of the 1st respondent performed their marriage. When the 1st respondent is suffering from such serious ill health i.e. epilepsy, she is required to undergo treatment. However, she admitted that she let out shop and her father is not receiving any rents of the shop and that she is running two shops i.e. Ladies Emporium and Embroidery shop. Thus, the 1st respondent clearly made admission about letting out shop and

¹ AIR 1999 SC 2374

carrying on business. The Court below considered the income of the 1st respondent by way of rent, but there is reference about the income she is being received from the business which she is admittedly carrying. Curiously, in the entire cross examination of PW.1 no suggestion was put to her that she is earning income from the business, which is sufficient for her maintenance. Therefore, in the absence of eliciting any material in the cross examination that the 1st respondent is deriving income from the business, which is sufficient to maintain herself, it is difficult to hold that the 1st respondent has possessed sufficient means to maintain herself.

15. No doubt, according to Section 125 Cr.P.C. when the wife, who has sufficient means to maintain herself, is disentitled to claim maintenance. But while assessing the amount of maintenance, the Court has to taken into consideration the status of the parties, requirements of the claimant, income and property of the claimant, number of persons to be maintained by the husband, liabilities if any of the husband, amount required by the wife to lead similar lifestyle which she enjoyed in the matrimonial home, keeping in view her requirement of food, clothing, shelter, education and medical needs and paying capacity of husband are relevant factors.

16. In the present facts of the case, the 1st respondent is staying in the house belonging to her husband and carrying on business in two shops while suffering from serious ill health. In such a case, she has to incur some medical expenses and she is not in a position to attend the business and that she engaged two persons as assistants to run the business. In such a case, granting maintenance of Rs.1500/- per month each to the respondents in addition to the maintenance awarded by the Court below in D.V.C is just and reasonable and since the husband is earning Rs.30,000/- being a Central Government Employee. In total the petitioner was ordered to pay Rs.3,500/- per month, but the said amount

is not sufficient during these days while staying at Hyderabad to lead the same standard of life which the husband is leading. Therefore, I find that the maintenance awarded by the Court below in addition to the maintenance in D.V.C is just and reasonable since the wife is required to meet medical expenses besides other incidental expenses like food, clothing etc. Accordingly, the contention that the Court below did not consider rental income etc. is invented and consequently, I find no ground to interfere with the order of the Courts below while exercising power under Sections 397 and 401 Cr.P.C.

17. Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions if any in this Criminal Revision Case shall stand closed.

DATE: 31-07-2017
kvrn

M.SATYANARAYANA MURTHY,J

