

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2208 of 2017

ORDER:

Aggrieved by the order dated 31.03.2016 in FCOP.No.71 of 2012 passed by the Judge, Family Court-cum-III Additional District Judge, Vizianagaram, whereby and whereunder, the application filed under Section 125 of the Code of Criminal Procedure (for short, 'the Code') by the petitioner – wife against the respondent – husband, seeking monthly maintenance of Rs.25,000/-, was allowed awarding monthly maintenance of Rs.10,000/-, the present Criminal Revision Case is filed by the husband mainly on the ground that the wife, the 2nd respondent herein, is able to sustain herself as she is an employee working in Maharaja College of Vizianagaram, but the court below, somehow, overlooked this fact and awarded Rs.10,000/- per month towards maintenance despite the fact that he has given up his employment on account of the criminal case registered against him on the complaint given by his wife, for the offence under Section 498-A IPC and Section 4 of the Dowry Prohibition Act.

2. Heard Sri A.S.C. Bose, learned counsel for the revision petitioner, and Sri T.N.M. Ranga Rao, learned counsel for the 2nd respondent – wife.

3. Perused the order under challenge and the evidence on record. The Judge, Family Court, having recorded the evidence of the wife as PW.1 and the documentary evidence marked as Exs.P1 to P4 and, on behalf of the husband, examined himself as RW.1 and another

witness as RW.2 and the documentary evidence marked as Exs.R1 to R7, granted Rs.10,000/- towards monthly maintenance.

4. Learned counsel for the revision petitioner would submit that, in fact, there was no ground to grant the maintenance to the wife, as she herself left the company of her husband and later, she filed a complaint against her husband and others alleging the offence under Section 498-A IPC and Section 4 of the Dowry Prohibition Act. He would also submit that the wife suppressed the factum of her employment and getting salary, but the same was unravelled by examining RW.2, an official of Maharaja College, through whom the documents Exs.R5 to R7 were exhibited. The learned counsel would point out that even the Judge, Family Court, in paragraph '18' of the order, referred to the trial as chequered trial and the same has been pending for a long time and, from the discussion he made, according to the learned Judge, it can be presumed that the wife might have vexed with the adamant behaviour of her husband and out of over excitement, she might have gone to the extent of denying her avocation and it also can be presumed that as her position in the College as a Lecturer is quite temporary which may or may not be in existence as her appointment is not on permanent basis, she would have gone to the extent of saying that she has no job. Basing on the said observations, the learned counsel for the revision petitioner would submit that the court below went wrong in making such observations and they were so made only to overcome the suppression of material fact by the wife. It is also the submission of the learned counsel that the order under challenge, thus, makes it clear that

basing on assumptions and presumptions, the conclusion was arrived at in awarding monthly maintenance of Rs.10,000/- and, therefore, the same is unsustainable.

5. Yet another submission made by the learned counsel for the revision petitioner is that, though, earlier the revision petitioner was working as Software Engineer and drawing Rs.75,000/- per month towards salary, he was later removed from service on account of the criminal case registered against him on the complaint given by his wife and, from then, he is not pursuing any job at all.

6. Per contra, the learned counsel for the 2nd respondent would submit that, in fact, the 2nd respondent - wife secured the employment subsequent to filing of the present F.C.O.P before the Judge, Family Court and, therefore, there is no occasion for her to mention about her employment in the petition.

7. When the learned counsel for the revision petitioner was put a question whether the revision petitioner has got averred in his counter filed before the Court below as to suppression of material fact of the employment of his wife, the learned counsel, on going through the record, would come out fairly that no such stand was taken by the revision petitioner.

8. Even from the evidence of RW.2, it is clear that the wife was employed from 22.07.2014, whereas the F.C.O.P was filed on 17.08.2012. Therefore, the question of the wife mentioning in her petition about her employment does not arise.

9. Turning to the wife's income, RW.2, in his evidence, has stated that the salary certificate of PW.1 would show that she was getting pay of Rs.5,300/- per month and allowance of Rs.600/- per month, but no DA and other benefits were admissible to her, thus, showing her total pay as Rs.5,900/- per month. This indicates that she was a temporary employee, as rightly observed by the learned Judge, Family Court, and even the evidence of RW.2 would give a definite indication that the employment of the wife is temporary. In the cross-examination, RW.2 has clearly stated that PW.1 was purely appointed on consolidated basis and their department will not pay salary to the employees in the break period and there is no guarantee for the employment. In his further re-examination, RW.2 stated that generally, their College gives only temporary appointments and later, basing on the seniority, their management will regularise the employment and they did not specifically mention with regard to break salary in the salary certificate. The Judge, Family Court, having considered the income of the wife as Rs.5,900/- per month and various other factors, felt it just to grant Rs.10,000/- towards monthly maintenance and, accordingly, directed the revision petitioner to pay the said amount. It is not in dispute that the revision petitioner was working as Software Engineer, but he has not placed any material that he was removed from the job and sitting idle, as contended by him. In such an event, keeping in view the salary the revision petitioner was getting, certainly, the monthly maintenance of Rs.10,000/- awarded by the court below, besides earnings of the wife at Rs.5,900/- per month, which is considered by the court below, cannot be

construed as excessive and, thus, the order under challenge warrants no interference, as no legal infirmity crept in the order. There is no merit in the present revision.

10. The present Criminal Revision Case is, accordingly, dismissed confirming the order under challenge in all respects.

Miscellaneous applications, if any pending in the present revision case, stand closed.

JUSTICE A.SHANKAR NARAYANA

27.11.2017
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