

HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

Crl.R.C.No.26 of 2017

ORDER :

The revision petitioner is the respondent in M.C.No.80 of 2014 on the file of the Judge, Family Court, Warangal. Impugning the order of the learned Judge, Family Court, dated 08-11-2016 in the said M.C.No.80 of 2014, the revision is maintained.

2. The contentions in the grounds of revision vis-à-vis oral submissions of the learned counsel for the revision petitioner are that the impugned order of the learned Judge, Family Court is unsustainable and should have seen that the M.C. Petitioner is not entitled to maintenance not only on the fact that there is no neglect or refusal on his part to the entitlement, but also for the fact that she is working and earning more than Rs.20,000/- per month and when he has no means or source of income and what he has income is only Rs.5,000/- per month, the award of Rs.3,000/- per month is also unsustainable and thereby sought for setting aside the order.

3. The revision first respondent (M.C. Petitioner) even served failed to attend thereby taken as heard and heard the learned Public Prosecutor representing the State who generally stated that the order requires no interference.

4. Heard and perused the material on record including the impugned order of the lower Court.

5. In the lower Court on behalf of the M.C. petitioner, she herself was examined orally and for the M.C. respondent (revision petitioner) besides himself as R.W.1, he got examined two more witnesses viz., Pingili Kumar and Asam Venkateswarlu and placed reliance on Exs.R1 to R4 viz., Original pattedar passbook issued by Tahsildar, Kesamudram in respect of Sy.No.9 to an extent of 2.36 guntas, situated at Dhanasri Village, Kesamudram Mandal, Warangal; Original House Tax Receipt; Xerox Copy of notarised affidavit, dated 17-08-2012; and Pahani for the year 2014-2015 for the said land supra. It is from that evidence and after hearing, by the impugned order, the learned Judge, Family Court in the claim for maintenance of Rs.10,000/- per month against him by his wife, out of marriage, dated 18-02-2001, from her contention of she was ill-treated and he was addicted to vices and was beating by demanding for money for his lavish life and on 12-06-2011, he kicked her on stomach and on 08-11-2002, he had stolen away her gold necklace and on 12-01-2008, he has insisted to part with the *mangalasutram* to meet his money needs and from her refusal, he threatened her to commit suicide and taken away under that guise her *mangalasutram* forcibly by removing from her neck and there was a panchayat held and where he undertook to treat her well. On 08-11-2011, the revision petitioner – M.C. Respondent appeared in Mahila Police Station on a complaint given

by the 1st respondent – M.C. Petitioner and gave undertaking in Mahila Police Station for mutual divorce, but violated the conditions and the revision petitioner – M.C. respondent agreed to give two gold chains and to register half of his property in her name in the presence of community elders and then she joined his conjugal society and again he started harassing and ill-treating and later he sold away the open plot at Warangal gifted to her by her parents and he developed contacts with another lady and for her questioning, kicked her and necked her out which made her to stay at the mercy of her parents. So far as that ill-treatment, which justified her living apart, that is also reflected in her version in evidence concerned, his counter contention in this regard is while denying the same by expressing ready to take her back and he is not liable to pay any maintenance saying he provided house and open land that is mentioned in the notarized affidavit, dated 17-08-2012 before elders and she herself left his company and not entitled to maintenance. In this regard even evidence he adduced as R.W.1 by repeating the same through R.Ws.2 and 3, so called independent witnesses, including of admissions of P.W.1, if any, are that she did not accept the property mentioned in the notarized affidavit as it is by mentioning bogus survey numbers of land not in existence, leave about the so called medical treatment for her conceiving and she could not, in his saying he constructed house in Dhanasri Village, Kesamudram Mandal in 2009 and she left his conjugal society staying at her parents and at the instance of elders joined his company, but again left him within few days and despite he

executed notarized affidavit giving the property in her name out of his love and affection to have the conjugal life, she deserted him. The said version rightly not believed by the lower Court for he did not issue any notice demanding her to join him, even R.W.2 deposed that he has no personal knowledge about the giving of property covered by notarized affidavit and its existence and he only came to know through elders in rightly not believing him and R.W.3 also deposed that he has no personal knowledge from his cross-examination to give any credence.

6. So far as the means of the M.C. respondent and entitlement of maintenance therefrom by the M.C. petitioner concerned, it is her claim in the petition and her evidence that he is getting monthly net of Rs.20,000/- per month towards rents and Rs.10,000/- per month on average by cultivation of lands and she required minimum of Rs.10,000/- per month and according to him, he allegedly given the property by execution of notarized affidavit and there is nothing to show he is actually cultivating and appropriating the proceeds and same is not even a registered document conveying any property. Admittedly, to give any credence to the notarized affidavit, which does not confer any right therein for the property of him in her name, leave about the contention of her that the survey numbers mentioned are wrong. It is therefrom for what she could not place even any material about the income from the properties, came to the conclusion to direct payment of Rs.3,000/- per month maintenance besides

Rs.5,000/- towards legal expenses. Evidence on record no doubt shows he got parents also to be looked after.

7. Having regard to the above, but for to reduce the quantum in the factual scenario from Rs.3,000/- per month to Rs.2,500/- per month, there is nothing to interfere.

8. Accordingly, the Criminal Revision Case is partly allowed and other aspect of the order of the lower Court holds good.

9. Consequently, miscellaneous petitions pending, if any, shall stand closed.

20th February, 2017.

skmr

DR.JUSTICE B.SIVA SANKARA RAO

