

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE Nos.1426 & 1427 OF 2017

COMMON JUDGMENT:

Respondent - husband in M.C. No.36 of 2014 on the file of the Judge, Family Court - cum - IX Additional Sessions Judge, East Godavari District at Rajamahendravaram, is the revision petitioner in Criminal Revision Case No.1426 of 2017, while petitioner No.1 - wife in the aforesaid M.C. is the revision petitioner in Criminal Revision Case No.1427 of 2017.

2. The former Criminal Revision Case is filed by the revision petitioner, who is hereinafter referred to as 'husband' under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code') aggrieved over the order, dated 07.02.2017, passed in M.C. No.36 of 2014, whereby and where-under, the learned Judge, Family Court, allowed the maintenance case partly awarding a sum of Rs.5,000/- towards monthly maintenance to respondent Nos.2 and 3 herein - children each, besides granting Rs.5,000/- towards legal expenses, while declining to grant maintenance to respondent No.1, who is hereinafter referred to as 'wife'. The latter Criminal Revision Case is filed by the wife aggrieved over the very same order declining to grant maintenance to her.

3. Heard Sri K. Venkatesh, learned counsel for the revision petitioner - husband in the former Criminal Revision Case, and Sri

N. Siva Reddy, learned counsel for the revision petitioner - wife in the latter Criminal Revision Case.

4. The ground, on which the learned Judge, Family Court declined to grant maintenance to the wife, was that she failed to establish that she left the matrimonial home because of harassment meted out to her by the husband and his family members and, therefore, did not grant maintenance. Further ground is that the husband filed O.P. No.342 of 2011 for grant of decree of divorce at Pondicherry, and the same was not challenged by the wife. The other ground is that though, the wife alleged that the husband has got illicit intimacy with a lady at Pondicherry, but she failed to establish the same. These are the grounds, on which the learned Judge declined to grant maintenance to the wife.

5. It is not in dispute that the husband is working as a Head-constable and Ex.R-20 is the salary slip for the month of May, 2016 showing that he was drawing a sum of Rs.32,574/- per month. Though, he contended in his evidence that he was getting net salary of Rs.16,984/- after deducting GPF contribution of Rs.12,000/- and GPF loan subscription of Rs.4,500/- per month, he does not come out since in which month he has increased the GPF contribution and what was the purpose for obtaining the loan from GPF account. Unless these details are forthcoming, certainly, it cannot be said that the husband *bona fide*ly making the contribution of Rs.12,000/- out of Rs.32,574/-

per month, which accounts for 32% to 35% of the salary towards contribution. The minimum contribution has to be viewed, but, not where the husband would go for contributing more amount. But, however, the children are aged 11 years old and 9 years old, and the Maintenance Case was filed in the year 2014. Admittedly, they are entitled only till they attain majority. Thus, when viewed from the context of the salary which the husband was drawing as per the pay-slip, the amount of Rs.5,000/- each can be reduced to Rs.4,000/- each. Accordingly, the former Criminal Revision Case is allowed in part.

6. Turning to the later Criminal Revision Case, the reasoning adopted by the learned Judge appears to be not convincing. When there have been acts of harassment attributed to the husband and his family members, it cannot be said that she herself left the society of the husband and, therefore, she is not entitled to claim monthly maintenance. The learned Judge, Family Court did not properly appreciate the evidence on record. One more reason by which the learned Judge appears to have been carried away by the decree of divorce granted by the Court at Pondicherry. The wife being a lady, it is difficult for her to travel to Pondicherry and contest the case. It appears, the husband deliberately moved the Court at Pondicherry seeking divorce. It is an *ex parte* decree obtained by him. The submission that she did not even make an application for restitution of conjugal rights is no ground to deprive of her monthly maintenance.

The law is well-settled that unless wife is re-married, certainly, husband cannot seek exoneration, nor can he be exempted from paying monthly maintenance. The learned counsel appearing for the wife, placed reliance in **L. Srinivasulu Reddy v. L. Ramalakshumamma and another¹**, **Mondi Ammanna v. Mondi Appayya and another²**, **D. Lakshmana Rao v. D. Kamala Bai and another³**, and **Kondaparthi Leelavathi @ Rajeshwari and another v. State of Andhra Pradesh and another⁴**, for the said proposition. Therefore, there is legal infirmity in the order passed by the learned Judge, Family Court in depriving the wife towards her monthly maintenance, to which she is legitimately entitled to.

7. Now, the question is as to what amount she is entitled. As already mentioned in the above, as per the salary drawn by the husband, it would be just and reasonable to award a sum of Rs.5,000/- to the wife from the date of petition. Accordingly, the latter Criminal Revision Case is allowed in part.

8. In the result, Crl.R.C. No.1426 of 2017 filed by the revision petitioner - husband is allowed in part, reducing the monthly maintenance to Rs.4,000/- each to the children from Rs.5,000/-, and Crl.R.C.No.1427 of 2017 filed by the wife is also allowed in part,

¹. 1996 (2) ALD 1236 (D.B.)

². 1996 (4) ALD 550

³. 1996 (1) ALD (Crl.) 415 (A.P.)

⁴. 2011 (2) ALD (Crl.) 544 (AP)

granting monthly maintenance of Rs.5,000/- to her from the date of petition.

As a sequel thereto, miscellaneous petitions, if any, pending in these revisions, stand closed.

A. SHANKAR NARAYANA, J

December 06, 2017.

Mgr

