

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.905 OF 2017

ORDER:

This criminal revision case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed questioning the propriety and illegality in the Order dated 12.11.2016 in F.C.O.P. No.64 of 2012 passed by the Judge, Family Court-cum-VIII Additional District Judge, Ongole, whereby the learned Judge granted an amount of Rs.6,000/- per month to the second respondent herein and an amount of Rs.1,500/- per month to the third respondent herein, towards maintenance, which is inclusive of maintenance awarded by way of monetary relief under Section 20(d) of the Protection of Women from Domestic Violence Act, 2005 in DVC No.19 of 2014 on the file of III Additional Judicial Magistrate of I Class, Ongole.

The second respondent is the wife and the third respondent is the daughter of the revision petitioner. Respondents 2 and 3 filed an application before the Judge, Family Court, under Section 125 Cr.P.C. claiming each an amount of Rs.5,000/- per month towards maintenance alleging that the marriage between the petitioner and the second respondent was performed on 15.08.2009 as per Hindu rites and customs at the house of her senior maternal aunt - Turlapati Seetharavamma at Nirmal Nagar, Ongole. At the time of marriage, the parents of the revision petitioner were given an amount of Rs.2,00,000/- cash, gold and household articles worth Rs.1,50,000/- towards dowry. During their wedlock, they were blessed with the third respondent, now she is aged 2 years. Later, the revision petitioner started ill

treating and harassing the second respondent to bring more dowry from her parents and started abusing her on the ground that she gave birth to the female child. While the revision petitioner was working as lecturer in Sri Chaitanya College, Poranki, Vijayawada, set up a family at Poranki Village, Vijayawada, insisted and obtained an amount of Rs.50,000/- from the second respondent and later demanded an amount of Rs.2,00,000/- to carry on business, but her parents refused to pay the same, hence the revision petitioner drove the respondents 2 and 3 from the house, hence the second respondent came down to her parental home along with her daughter – third respondent and staying with them at their mercy. Respondents 2 and 3, having no other source of income to maintain themselves, issued a legal notice dated 02.04.2012 demanding the revision petitioner for an amount of Rs.5,000/- per month each towards maintenance, as he is working as lecturer in Commerce at Sadana Degree College, Markapuram, earning an amount of Rs.50,000/- per month, apart from considerable income from landed properties.

The revision petitioner refuting the contentions filed counter, admitting the relationship between them and complaining that the second respondent foisted a false case against them for the offence punishable under Section 498-A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, later it was compromised in Lok Adalath and she agreed to join the revision petitioner at his work places, after a week when he went and get back the second respondent, she refused and her parents threatened him to file another false case if he visits again and again, mediations were also failed on

that account. It is further contended that he has to maintain his old aged parents, who are living with him at the place where he is working and O.P. No.25 of 2012 on the file of Senior Civil Judge, Markapur, reveals the character of the second respondent. He also complained that he was ill treated by the second respondent and finally prayed to dismiss the petition.

During enquiry, on behalf of respondents 2 and 3, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked and on behalf of the revision petitioner, R.Ws.1 to 3 were examined, but no documents were marked. The evidence of R.W.2 was eschewed by the Judge, Family Court.

Upon hearing argument of both the counsel, the learned Judge, Family Court, awarded an amount of Rs.6,000/- per month to the second respondent and Rs.1,500/- to the third respondent, inclusive of maintenance already awarded by the III Additional Judicial Magistrate of I Class, Ongole, in DVC No.19 of 2014.

Aggrieved by the same, the present revision is filed by the revision petitioner on the ground that he is working in the temple as a priest, he has no means to maintain himself and not in a position to pay an amount of Rs.7,500/- to the respondents 2 and 3 towards maintenance as awarded by the Judge, Family Court, Ongole, besides that he has to maintain his old aged parents and the monthly maintenance awarded by the Judge, Family Court is excessive and prayed to set aside the same.

Sri Nimmagadda Satyanarayana, learned counsel for the revision petitioner reiterated the grounds raised in the revision and

the respondents 2 and 3 supported the order of the Judge, Family Court.

Considering the rival contentions, perusing the material available on record, the point that arise for consideration is,

“Whether the order dated 12.11.2016 in F.C.O.P. No.64 of 2012 passed by the Judge, Family Court-cum-VIII Additional District Judge, Ongole, whereby granting an amount of Rs.6,000/- per month to the second respondent and an amount of Rs.1,500/- per month to the third respondent towards maintenance is excessive?”

POINT:

As seen from the material on record, by the date of filing F.C.O.P., the petitioner was working as a lecturer in Commerce at Sri Chaitanya College, Poranki, Vijayawada, and later he worked as lecturer in Sadhana Degree College, Markapuram and earning an amount of Rs.50,000/- per month towards salary, but no document was produced to establish that he was earning Rs.50,000/- per month while working as a lecturer in Commerce. Respondents 2 and 3 produced marriage photos of petitioner and the second respondent, household card, copy of legal notice, postal receipt and acknowledgment, which would not serve any purpose to establish the income of the petitioner. Therefore, no documentary evidence is available except oral testimony of P.Ws.1 and 2, and R.Ws.1 and 3 to substantiate their contention. Moreover, when respondents 2 and 3 are contending that the petitioner earning an amount of Rs.50,000/- per month towards salary while working as a lecturer in Commerce in Sadana Degree College, the burden is upon him to prove that he is not earning any

amount and that the second respondent lodged a complaint before the police for the offence punishable under Section 498-A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act. She was not supposed to live along with her husband, since she was tortured by her husband for her failure to meet the illegal demand for payment of dowry. There is reasonable apprehension arising from the conduct of the petitioner that she is likely to be physically harmed due to persistent demands of dowry from her husband's parents or relations, such an apprehension also would be manifestly a reasonable justification for the wife's refusal to live with her husband as held by the Apex Court **Sirajmchmedkhan v. Hafizunnisa Yasinkhan**¹.

In the present case on hand the second respondent, admittedly, filed earlier complaint which ended in compromise before the Lok Adalath and again filed complaint for the offence punishable under Section 498-A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act and it is pending before the concerned police for investigation. In such case, her refusal to live with him is justifiable as she was subjected to physical torture, *prima facie*, by the petitioner herein. When the second respondent proved that she was subjected to cruelty, the burden will shift to the petitioner/ husband to prove that the second respondent was not subjected to cruelty. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are

¹ AIR 1981 SC 1972

the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes as held by the Apex Court in Smt. **Mayadevi Versus Jagdish Prasad² and Rajathi vs C. Ganesan³**.

In the present facts of the case, the petitioner, who is the respondent before the Judge, Family Court, Ongole, is failed to establish that he did not subject the second respondent herein to cruelty for her failure to meet the illegal demand. Therefore, there is any amount of justification for the second respondent to live separately

The other contention of the petitioner is that he has no means to maintain himself.

In fact, the petitioner suffered an order in D.V.C. No.19 of 2014 passed by the III Additional Judicial Magistrate of First Class, Ongole, wherein the learned Magistrate ordered the revision petitioner to pay maintenance under Section 20 of the Protection of Women From Domestic Violence Act, having recorded a finding that the petitioner subjected the second respondent to an

² 2007 AIR SCW 1803

³ AIR 1999 SC 2374

economic abuse as defined under Section 3(d)(iv) of the Protection of Women From Domestic Violence Act. Therefore no proof is required and apart from that he was working as a lecturer in Sadhana Degree College, though denied, did not produce any proof as to when he was removed from service or resigned as a lecturer except contending that he was now working in the temple as a priest. Therefore, in the absence of any material, it is difficult to believe as he worked in Sri Chaitanya College, Poranki, Vijayawada, and now working in Sadhana Degree College Markapur, as a lecturer in Commerce. Hence the contention of the petitioner that he is working in the temple as a priest is not believable.

The contention of the petitioner is that he has to maintain old aged parents.

He is also equally responsible to maintain the legally wedded wife and legitimate child. So far as the maintenance in favour of the third respondent- minor child is concerned, since it is a legal statutory duty of the petitioner to maintain his legitimate child. Hence, the order passed by the Judge, Family Court, Ongole, cannot be set aside on the ground that there is substantive evidence on record to establish that the second respondent refusing to live with the petitioner. The same was already upheld in DVC No.19 of 2014.

When the petitioner is working as a lecturer in Commerce and failed to prove that he resigned to service as lecturer, respondents 2 and 3 are expected to lead same standard of life which they led while they were staying with the petitioner. Hence,

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taking into consideration of the hike in price of essential commodities, cost of living, an amount of Rs.6,000/- per month to the second respondent and Rs.1,500/- per month to the third respondent was awarded by the Judge, Family Court, Ongole, towards their maintenance, which is inclusive of maintenance already awarded DVC No.19 of 2014, cannot be interfered while exercising power under Section 397 and 401 Cr.P.C., since I find no manifest perversity or apparent error in the order impugned in the revision. Consequently the criminal revision case is liable to be dismissed.

In the result, the criminal revision case is dismissed.

Miscellaneous petition, if any, pending in the criminal revision case shall stand closed.

11.08.2017
BV

M.SATYANARAYANA MURTHY, J

