

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.132 OF 2014

JUDGMENT:

The present Criminal Revision Case is preferred by the wife, who is the petitioner in M.C. No.36 of 2008, questioning the order dated 06.07.2012 in Criminal Revision Petition No. 67 of 2011 passed by the learned Assistant Sessions Judge, Guntur.

2. Heard Mrs. Marella Radha, learned counsel for the revision petitioner, Mrs. Harija Akkineni, learned counsel for respondent No.2, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh, and perused the material on record.

3. The revision petitioner filed M.C. No.36 of 2008 on the file of Additional Junior Civil Judge, Bapatla, under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Code') requesting to grant monthly maintenance of Rs.2,000/-. Counter was filed by her husband - respondent No.2 herein resisting the request.

4. The learned Assistant Sessions Judge having examined PWs.1 and 2 on behalf of the wife, and, the husband as RW.1 and marking Exs.R-1 to R-10, opined that the wife is entitled to maintenance and accordingly Rs.1,000/- was granted to the petitioner towards her monthly maintenance. When the husband questioned the said order in Criminal Revision Petition No.67 of 2011, on the file of

Sessions Judge, Guntur, having agreed with the husband's stand despite a decree for restitution of conjugal rights, under Section 9 of Hindu Marriage Act, 1955, in H.M.O.P. No.18 of 2008 passed by the learned Senior Civil Judge, Bapatla, was obtained, still, she did not join him, and, therefore, she disentitles for award of maintenance and thereby dismissed it by placing reliance in **Madavarapu Ramakrishna v. State of Andhra Pradesh** [2010 (2) ALD 9Crl.) 536 (AP)].

5. In the present case, it is to be seen whether any attempt is made by the husband to show that what further steps have been taken by him having obtained the decree for restitution of conjugal rights. In fact, these documents were considered by the learned Assistant Sessions Judge and awarded Rs.1,000/- towards regular monthly maintenance by discarding the documentary evidence filed on behalf of the husband. The husband cannot just merely sit by obtaining a decree for restitution of conjugal rights from the competent Court, he shall also show in furtherance of that decree, whether he took any steps to show that his wife joins him. Absolutely, there is no evidence on behalf of the husband and it is not his case that he filed execution petition to execute the decree passed by the Civil Court. There is mode provided under Order - XX1 of the Code of Civil Procedure, 1908, for execution of a decree for restitution of conjugal rights. Therefore, it cannot be said that the wife is disentitled for award of

maintenance on the mere ground that decree was obtained for restitution of conjugal rights by the husband.

6. Therefore, the Criminal Revision Case is allowed, at the admission stage itself, setting aside the order passed by the lower appellate Court while maintaining the order passed by the trial Court.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision stand closed.

November 30, 2017.
PV

A. SHANKAR NARAYANA, J

