

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case Nos. 2003 of 2016 & 1623 of 2008

COMMON ORDER:

The genesis of these two criminal revision cases filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') is the order, dated 30.09.2008, of the learned Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad, passed in M.C.no.70 of 2006.

1.1 By the said impugned orders, the learned Judge, Family Court, Hyderabad, partly allowed the said maintenance case, and directed the sole respondent therein to pay from the date of the petition, i.e., 25.01.2006, monthly maintenance @ Rs.3,000/- to the petitioner on or before 10th of every month. By the said orders the respondent was further directed to deposit the arrears of maintenance amount from the date of the petition till the date of the order and continue to deposit the regular maintenance amount.

2. Aggrieved of the said orders, the respondent/husband filed Criminal Revision Case no.1623 of 2008. Not being satisfied with the quantum of maintenance awarded, the petitioner filed Criminal Revision Case no.2003 of 2016. The parties shall hereinafter be referred to as the petitioner and the respondent as arrayed in M.C.No.70 of 2006 for the sake of convenience and clarity.

3. I have heard the submissions of *Sri Syed Ahmed Ali*, learned counsel for the petitioner in CrI.R.C.No.1623 of 2008, and of *Sri Sharad Sanghi*, learned counsel appearing for the petitioner in CrI.R.C.No.2003 of 2016, and also of the learned Public Prosecutor, *Sri M.Krishna Rao*, appearing for the respondent/ State of Telangana. I have perused the material record.

4. To avoid repetition and to keep it simple, I shall deal with the pleadings, evidence and submissions while dealing with the following points that arise for determination.

5. The points for determination are:-

- 1) Whether the petitioner made out valid and sufficient grounds for awarding maintenance?
- 2) Whether the maintenance awarded to the petitioner by the Additional Chief Judge is not adequate in the circumstances stated by the petitioner?
- 3) Whether the petitioner/ wife is not entitled to claim any maintenance in the facts and circumstances stated by the respondent?
- 4) Whether in the facts and circumstances of the case, the maintenance awarded to the petitioner requires upward or downward revision?
- 5) To what relief?

6. POINTS:

To begin with, it is necessary to advert to the pleadings of the parties.

6.1 The case of the petitioner, in brief, is this:

The petitioner is the legally wedded wife of the respondent. Their marriage was performed at Mumtaz Function Hall, Shahalibanda, Hyderabad, on 03.03.2002, according to prevalent Muslim rites and customs for a deferred dower of Rs.25,000/- . The family of the petitioner gave a paper advertisement inviting marriage proposal for his brother, Raheem Khan Ghouri and for her. The respondent and his father responded to the paper advertisement and approached the petitioner's father along with the bio-data of the respondent and his sister, Anwar Sultana, and expressed their willingness for the marriages. The marriage of the petitioner was fixed after several rounds of talks. During the marriage talks, her brother, Raheem Khan Ghouri, made it clear that the Visa and travel documents of his wife would be arranged by him only after getting back to Australia; and the same was agreed to by the family of the

respondent. Her marriage was performed along with the marriage of her brother. At the time of marriage, the parents of the petitioner fulfilled all the demands of the respondent and his family. Her parents gave 10 tolas of gold ornaments and various other jahez articles as per the jahez list. The respondent gave 5 tolas of gold jewellery as chadva to the petitioner. Immediately after the marriage, the petitioner joined the respondent for leading marital life. A couple of days after the marriage, the respondent and his family started harassing the petitioner physically and mentally. They passed taunting remarks on the jahez articles as if the articles are of substandard quality. They abused the petitioner in filthy language. The respondent always used to abuse her stating that she is not a suitable match for him and that he agreed for the marriage only to please his parents and sister. In the month of April, 2002, the respondent wanted to invest money in business and demanded Rs.50,000/- as additional dowry. She expressed the inability of her parents to fulfil his demand. On that the respondent and his family members started abusing her in filthy language. They pledged all her gold jewellery. They complained that the petitioner is not a suitable match for him as she is of dark complexion. They treated her as a maid-servant and made her to work throughout. Her in-laws used to say that she is fat and never provided her a proper meal a day. Further, her brother, Rajeev Khan Ghouri, informed that immediate arrangement of Visa for his wife is not possible. The family of the respondent became wild and abused her. The respondent beat her on her stomach and then dragged her by pulling her tuft. They threatened her not to inform the incident and their behaviour to any one. The respondent used to come home late and abuse her. He even warned her that she has to tolerate him to continue the marital life. He started demanding Hero Honda Motor bike and said that if his demand is not fulfilled, he has to opt for Khula. They threatened her to arrange Visa immediately for Anwar Sultana or else they will kill her and create a suicide case. On 17.07.2002, the respondent and his

family kept all her articles with them and drove her out of the matrimonial home. Meanwhile, Anwar Sulthana came back and started residing at her parents' house. The petitioner filed a private complaint before the XIII Additional Chief Metropolitan Magistrate, Hyderabad, against the respondent and his family members requesting to punish them for the offences punishable under Section 498-A read with 34 IPC and Section 4 of Dowry Prohibition Act. Her father is a retired employee. Both her parents are old and are suffering from health disorders. One of her brothers is a pensioner and he has his family. Her 2nd brother is a Clerk in the office of an Advocate; and her 3rd brother is a part-time Taxi Driver in Australia and earning 109 Australian Dollars per month. Her last brother is a student. She become an added woe and a burden on her parents, in view of the high cost of living. The respondent is a builder-cum-civil contractor and he is earning Rs.70,000/- to Rs.1,00,000/- per month. He owns two plots of land and a residential home. His father is a pensioner. His other brother is also a civil contractor and he is earning Rs.40,000/- per month. His only sister Anwar Sultana is getting maintenance in M.C.No.101 of 2015 before the Family Court, Hyderabad. The respondent can easily pay an amount of Rs.12,000/- per month. He is neglecting her. It is, therefore, prayed that an amount of Rs. 12,000/- may be awarded as monthly maintenance to her from the date of the petition.

6.2 The averments in the counter of the respondent, as extracted in the order impugned, in brief, are as follows: 'The petitioner is the wife of the respondent, is true. The allegations that dowry, gold and other articles as mentioned in the petition were given to him at the time of the marriage on his demand are false. The parents of the petitioner gave only 7.4 tolas of gold articles and some customary jahez articles worth Rs.30,000/- at the time of the marriage without his demand and he gave 5 tolas of gold to the petitioner. The respondent and his family members never demanded any additional dowry and they never harassed the petitioner either physically or mentally. They

never treated her as a maid servant. The allegation that the respondent demanded additional dowry to invest the same in his business, is denied. In fact, he is not doing any business. He is only a private employee. Therefore, demanding additional dowry for the purpose of investing in his business does not arise. A false criminal case was filed by the petitioner against him and his family members to harass him. It is denied that he is working as a builder-cum-contractor and is earning Rs.70,000/- to Rs.1,00,000/- per month. He is only working as a private employee under a civil contractor and is earning Rs.4,000/- only per month. He has to pay house rent of Rs.3,500/- per month from his salary. He has no sufficient means to maintain the petitioner. The petitioner is a skilled woman and she can maintain herself. The present petition is a counter blast to the M.C.No.101 of 2015 filed by the sister of the respondent against the brother of the petitioner. Hence, the petition may be dismissed.'

6.3 At trial, the petitioner was examined as PW1 and her brother was examined as PW2. Exhibits P1 to P4 were marked on her side. The respondent was examined as RW1 and exhibits R1 and R2 were marked on his side.

6.4 Learned counsel for both the parties made submissions in line with the respective pleaded cases of the parties.

6.5 Learned counsel for the petitioner would further submit as follows:

The trial Court has not properly appreciated the facts while fixing the monthly maintenance. The learned Additional Chief Judge ought to have seen that the respondent is a Civil Contractor and a builder and is earning Rs.70,000/- to Rs.1,00,000/- per month and that he also owns two plots of land and also a residential house. The maintenance was arbitrarily fixed @ Rs.3,000/- per month. The trial Court has not appreciated that in the present day cost of living a petty sum of Rs.3,000/- will not be sufficient for the

maintenance of the petitioner. The trial Court having come to the conclusion that exhibit R1, the salary certificate, is a fabricated document, should have drawn an adverse inference against the respondent and should have fixed the maintenance @ Rs.12,000/- per month. The finding of the trial Court is not based on correct appreciation of facts and law. The trial Court has not properly appreciated exhibit P3, the bio-data, in which the respondent himself stated that he is earning a sum of Rs.20,000/- per month. Having believed exhibit P3, the trial Court should have decreed the maintenance case as prayed for. The order of the trial Court in so far as fixation of meagre monthly maintenance is based on conjectures, surmises, assumptions and presumptions and is liable to be set aside. An amount of Rs.12,000/- per month may be awarded to the petitioner towards her maintenance.

6.6 Learned counsel for the respondent would submit as follows:

The Court below without considering the facts and the evidence on record came to a wrong conclusion and wrongly disbelieved exhibit R1, Salary Certificate, and the evidence of RW2, the employer of the respondent, only on the ground that the respondent mentioned in exhibit P3, his matrimonial Bio-data, that he is a Contractor & Businessman and is earning Rs.10,000/- per month. The Court below ought to have seen that it is not an authenticated document and that it was prepared only for the purpose of marriage alliance. The Court below failed to properly consider the facts and evidence came to a wrong conclusion and erroneously observed that when the respondent is earning Rs.4,000/- per month, how he is able to pay a rent of Rs.3,000/- per month. The Court below failed to consider the fact that the respondent is residing in a joint family and he is responsible for payment of rent and that other domestic needs will be looked after by his father and other brothers. The Court below also failed to consider the fact that the respondent married the petitioner and in reciprocity the brother of the petitioner married the

sister of the respondent and that the disputes between her brother and sister in law resulted in divorce and dissolution of their marriage. Since then, the respondent is incurring extra expenditure on his divorced sister and is also bearing the responsibility of the Court case expenses of his sister. The petitioner on her own accord left the society of the respondent even though there are no disputes/differences. She did so, on the instigation and the directions of her brother and parents. The Court below also failed to take into consideration the fact that till today, the respondent had not divorced the petitioner, though the sister of the respondent was divorced by the brother of the petitioner. It is apt to note that the respondent even offered to take her back, but the petitioner refused to join his society and decided to live on her own accord.

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. I have carefully perused the material record including the deposition of PW1 and the exhibits. Exhibit P1 is Nikha Nama; exhibit P2 is the Wedding Card; exhibit P3 is the Bio data; exhibit P4 is the copy of FIR; exhibit R1 is the Salary Certificate showing that the respondent is being paid a salary of Rs.4,000/- per month; exhibit R2 is the Photostat copy of the Rental agreement.

9. The relationship between the parties is not in dispute. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. In the present revisions, there is no need to deal with the principal and the other serious matrimonial disputes between the spouses and record any findings as to who amongst the spouses was at fault/ guilty and responsible for the rift and/ or estrangement as the proceeding for maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and as the order

of maintenance under the Code of Criminal Procedure is subject to final determination of their rights in a civil Court and as it is well settled that the provision provides for speedy remedy for providing maintenance to the wife. In the considered view of this court, there is no reason to deny award of maintenance to the wife unless it is sufficiently established by the husband that the income of the wife, if any, is sufficient for her sustenance. The law is well settled that the maintenance awarded shall be adequate for sustenance, food, clothing and shelter besides essential incidental expenses. While awarding maintenance the social status, economic and living conditions of the family will have to be taken into consideration; and, the maintenance awarded to the wife must be sufficient to enable them to live in a reasonable comfort and with dignity. The provision for maintenance was enacted with the avowed object of preventing vagrancy and destitution. Therefore, in view of the contentions of the petitioner, award of maintenance to her cannot be denied unless adequate grounds are established by the respondent for denial of award of maintenance.

9.1 The petitioner contends that she filed a private complaint against the respondent and his family members requesting to punish them for the offences punishable under Section 498-A read with 34 IPC and Section 4 of Dowry Prohibition Act and that the same was referred to the police and a case in Crime No.38 of 2005 was registered against the respondent and his family members and that the respondent completely neglected the petitioner and that she has no means to maintain herself and that she is living with her parents who are not having means to maintain her. Her further case is that though the elders intervened to resolve the disputes, the disputes could not be resolved due to the adamant conduct of the respondent. Per contra, the respondent states that the petitioner voluntarily left the matrimonial home and further refused to return back, despite his willingness to take her back. His specific case is that the present petition is filed by the petitioner as a counter

blast to M.C.No.101 of 2005 filed by the sister of the respondent against the brother of the petitioner.

9.2 The petitioner is a house wife and the respondent failed to plead and establish that the petitioner is having income or sources of income. As per her pleaded case and evidence, the respondent is a civil contractor and a builder and he is earning Rs.70,000/- to Rs.1,00,000/- per month and that he also owns two plots and a residential house and that he has no other responsibility except maintaining the petitioner and as such, he has got sufficient means to pay maintenance as claimed by her. Dealing with the financial and economic status and the income of the respondent it is to be noted that his case is that he is not a builder-cum-contractor as contended by the petitioner and that he is only a private employee under a civil contractor and that he is earning Rs.4,000/- per month and that he is paying Rs.3,000/- per month from his salary towards house rent and that he has the responsibility of maintaining his divorced sister and as such, he is not having sufficient means to maintain the petitioner. The petitioner examined RW2, who is said to be his employer to prove his income is Rs.4,000/- per month. The said version of the respondent is rightly disbelieved by the Court below for the reason that his contention that he is paying monthly rent of Rs.3,000/- lays bare the falsity of his claim regarding his alleged monthly income. Further, in exhibit R3, his matrimonial bio-data, he mentioned his monthly income as Rs.20,000/- per month. His contention that an exaggerated income was mentioned for the purpose of marriage alliances needs no countenance.

9.3 In *Shamima Farooqui vs. Shahid Khan*¹, the Supreme Court held as follows:

“....It can never be forgotten that the inherent and fundamental principle behind Section 125 Code of Criminal Procedure is for amelioration of the financial state of affairs as well as mental agony

¹ 2015 (2) ALD (Crl.) 549 (SC)

and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 Code of Criminal Procedure, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order Under Section 125 Code of Criminal Procedure can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance Under Section 125 Code of Criminal Procedure, unless disqualified, is an absolute right. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge Dehradun and Ors.* [(1997) 7 SCC 7] has held as follows:

The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.

Grant of maintenance to wife has been perceived as a measure of social justice by this Court.

In *Chaturbhuj v. Sta Bai* [(2008) 2 SCC 316], it has been ruled that 'Section 125 Code of Criminal Procedure is a measure of social

justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* [(2005) 3 SCC 636]. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in *Chander Prakash Bodhraj v. Shila Pani Chander Prakash*: [AIR 1968 Delhi 174] wherein it has been opined thus:

An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance."

9.4 In a proceeding seeking maintenance, if it appears to the Court that the wife has either no independent income or sufficient income to support her and meet the necessary expenses of the case, the Court may, on the application of

the wife, order the husband to pay to the wife, maintenance, as well as the expenses of the proceedings. On the above analysis, this Court finds that the petitioner made out valid and sufficient grounds for awarding maintenance to her.

9.5 Dealing further with the quantum of maintenance to be awarded to the petitioner, it is to be first noted that the petitioner claimed Rs.12,000/- towards her monthly maintenance. However, the trial Court awarded Rs.3,000/- per month. As already noted, the respondent failed to establish that the petitioner is having any income or source of income. Therefore, the petitioner has to sustain herself on the amounts of maintenance to be awarded to her. From the evidence brought on record and in the light of the reasoned discussion supra, this Court finds that it is adequately established that the petitioner has no source or means of income and that on the other hand, the respondent's income on his own showing is Rs.20,000/- per month and that he cannot evade payment of reasonable maintenance to the petitioner.

10. Viewed thus, this Court finds that the petitioner made out valid and sufficient grounds to enhance the amount awarded to her though there are no grounds for enhancing the maintenance awarded to the petitioner @ Rs.12,000/- per month. This Court further holds that the respondent failed not only to dislodge the case of the petitioner but also in establishing his defence that the petitioner is not entitled to maintenance and that the maintenance amount awarded to her needs no upward revision.

11. In the result, the revision filed by the respondent in Crl.R.C.No.1623 of 2008 is dismissed and the revision filed by the petitioner in Crl.R.C.No.2003 of 2016 is partly allowed. Accordingly, while confirming the award of maintenance @ Rs.3,000/- per month to the petitioner from the date of the petition, the said maintenance amount payable by the respondent to the petitioner is enhanced to Rs.5,000/- per month from 01.05.2009 onwards, as

her revision case was filed on 22.04.2009. The amount of maintenance awarded to the petitioner at the enhanced rate shall be paid accordingly from the said date. The respondent shall pay the entire arrears of maintenance, if any, to the petitioner in two equal monthly instalments, however, within two months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, in these Criminal Revision Cases shall stand closed.

M. SEETHARAMA MURTI, J

21.08.2017
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