

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.713 OF 2006

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C, questioning the propriety and legality of the order in C.R.P.No.25 of 2005 dated 28.11.2005 passed by the VI Additional District & Sessions Judge (Fast Track Court), Narsapur, reversing the order passed by the Trial Court, declining to grant maintenance to the petitioner herein/wife on the ground that she is leading adulterous life, in view of Section 125(4) Cr.P.C.

For the sake of convenience, the parties will hereinafter be referred as arrayed in M.C.No.2 of 2001.

M.C.No.2 of 2001 was filed by the petitioners under Section 125 Cr.P.C before the Judicial I Class Magistrate, Palakol, first petitioner is the wife of the respondent and petitioner nos. 2 & 3 are the children of the first petitioner. The first petitioner contended that her marriage was performed with the respondent and during wedlock, she gave birth to two children i.e petitioners 2 & 3. On the allegation that the first petitioner is leading adulterous life, the respondent refused and neglected to provide maintenance to the petitioners. On the other hand, the respondent/husband denied the paternity of the third petitioner, contending that the first petitioner/wife was leading adulterous life which disentitled her to claim maintenance under Section 125(4) Cr.P.C. The Trial Court did not accept the contention of the

respondent/husband that the first petitioner/wife was leading adulterous life and one stray instance of adulterous sexual intercourse is not sufficient to term it as 'living in adultery' and further held that the respondent/husband failed to prove that the first petitioner/wife is living in adultery for the purpose of Section 125 Cr.P.C. The Trial Court also noticed that the first petitioner being the divorced wife of the respondent is entitled to claim monthly maintenance, as the respondent is having sufficient means, refused to maintain the first petitioner/wife and allowed M.C.No.2 of 2001 granting maintenance of Rs.500/- to the first petitioner and dismissed the petition with respect to claim of petitioner no. 3/child. Aggrieved by the order passed by the Judicial I Class Magistrate, Palakol in M.C.No.2 of 2001, the respondent/husband preferred C.R.P.No.25 of 2005 before the VI Additional District & Sessions Judge (Fast Track Court), Narsapur, on the sole ground that the first petitioner/wife was living in adultery.

The Appellate Court observed that the wife became pregnant when the husband had no access with her and he was away working in Army, which cannot be said that it is a single act of adultery. The Appellate Court held that the wife had committed act of adultery more than once and she became pregnant due to sexual intercourse with others, which is not a single act of deviation from the path of virtue. The Appellate Court came to the conclusion that the wife is living in adultery due to which she became pregnant and gave birth to third petitioner, as such, she is

not entitled for maintenance as per Section 125(4) Cr.P.C and set-aside the order passed by the Trial Court. Aggrieved by the order in C.R.P.No.25 of 2005 dated 28.11.2005 passed by the VI Additional District & Sessions Judge (Fast Track Court), Narsapur, the present criminal revision case is preferred.

During hearing, learned counsel Sri A. Hari Prasad Reddy appearing for Sri C. Saran Reddy for the petitioner herein/wife would contend that a stray incident of adultery is not sufficient and it must be living in adultery continuously and in the absence of any proof that the petitioner herein/wife is living in adultery continuously, denial of maintenance under Section 125 Cr.P.C is an error committed by the Appellate Court and prayed to set-aside the same.

As seen from the material on record, marriage was performed between the first petitioner/wife and the respondent/husband and she gave birth to the second petitioner during wedlock, but denied paternity of the third petitioner by the respondent/husband. Based on the finding recorded in O.P.No.54 of 2000 by the Senior Civil Judge, Narasapuram that the first petitioner/wife lead adulterous life and the third petitioner was not born through the respondent/husband, the Trial Court denied grant of maintenance to the third petitioner, which is not challenged before the Appellate Court by filing a separate revision petition by third petitioner or through his mother. Therefore, the finding regarding the paternity of the third petitioner has attained finality and the same cannot be disturbed.

In **S.S. Manickam v. Arputha Bhavani Rajam**¹, wherein, the phrase 'living in adultery' under Section 125(4) Cr.P.C was interpreted by the Madras High Court and it was held that a stray instance of lapse from virtue does not amount to living in adultery and living in adultery does not mean that wife should be living in adultery on the date of petition. The proper interpretation would be that there should be proof of adulterous living shortly before or after the petition, shortly being interpreted in a reasonable manner. In the facts of the above judgement, wife had been leading adulterous life with the brother of her husband prior to the petition and begot a child as a result thereof. However, there was no sexual acts between wife and her paramour. So the Court held that wife is not entitled for maintenance since there is no evidence to show that she repented for her past misconduct and became virtuous. Hence, from the above decision, it is clear that it is not necessary to establish that wife was living in adultery by the date of petition. There must be evidence to show that the wife lead adulterous life shortly prior to filing petition.

Here, in the present case, the first petitioner/wife lead adulterous life and gave birth to the third petitioner. Therefore, living in adultery by the first petitioner is proved which disentitled her to claim maintenance, in view of bar under Section 125(4) Cr.P.C. Therefore, I find no ground to interfere with the findings recorded by the Appellate Court while exercising power under

¹ 1980 Cri.L.J 354

Sections 397 & 401 Cr.P.C. Consequently, the criminal revision case is devoid of merits and liable to be dismissed.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:05.10.2017

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