

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case Nos. 290 of 2017 & 1601 of 2017

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 20.10.2016, of the learned Judge, Family Court-cum-VI Additional District Judge, Kadapa, passed in M.C.no.39 of 2014.

1.1 By the said impugned orders, the learned Judge, Family Court, partly allowed the said maintenance case, and directed the sole respondent therein to pay from the date of the order, i.e., 20.10.2016, monthly maintenance @ Rs.2,500/- to the petitioner. By the said orders the respondent was further directed to pay Rs.2,000/- to the petitioner/ wife towards costs of the petition.

2. Aggrieved of the said orders, the respondent/husband filed Criminal Revision Case no.290 of 2017. Not being satisfied with the quantum of maintenance awarded, the petitioner/ wife filed Criminal Revision Case no.1601 of 2017.

2.1 The parties shall hereinafter be referred to as the petitioner and the respondent as arrayed in M.C.No.39 of 2014 for the sake of convenience and clarity.

3. I have heard the submissions of *Sri P.Sridhar Reddy*, learned counsel for the petitioner, and of *Sri G.Ramachandra Reddy*, learned counsel appearing for the respondent. 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 learned Judge, Family Court, 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 marriage of the petitioner with the respondent was performed, on 25.11.1988, as per Hindu Rites and Customs. Out of their lawful wedlock, they were blessed with two sons, namely, R. Gopinath and Venkata Ramana. They are aged 24 years and 23 years respectively. They studied upto intermediate and are searching for jobs. They were under the protection and care of the petitioner till completion of their educations. The respondent started ill treating the petitioner. Without the knowledge of the petitioner, the respondent had lent moneys to others. After the children were born, the respondent began to pressurise the petitioner to get money from her parents. The petitioner being unable to bear the ill treatment was compelled to bring money from her parents. While so, in the month of June, 1998, the respondent beat the petitioner severely and threatened her with dire consequences if she failed to give consent for divorce. Virtually, she was kept under house arrest. Hence, there was no opportunity or possibility for the petitioner to inform her parents about the conduct of the respondent. The petitioner, who was under

mental pressure, was forced to give consent for divorce. The respondent threatened the petitioner by saying that he would kill the minor children by giving poison. The respondent threatened the petitioner by saying that if she failed to sign a paper which was brought by him, he will put poison in the Tiffin boxes, which the children would be carrying to school. The said attitude of the respondent frightened the petitioner and hence, she signed the paper brought by him, on 02.11.1998. She was not even allowed to read the paper or see its contents. The respondent forcibly took her to the Court and threatened her that if she fails to give evidence as per his directions, he will kill her and her sons. As she was terribly afraid about the life of her children, she had to give evidence in the Court, on 02.11.1998, at the point of a gun. On the same day, he obtained decree of divorce. The said fact came to the knowledge of the petitioner subsequently. Thus, the decree in O.P.No.39 of 1998 was obtained under coercion and threat. The petitioner is taking steps separately for cancellation of the said decree. The decree in the said O.P is not binding on the petitioner. The petitioner got issued a notice to the respondent, on 06.12.1998, stating all the facts. The petitioner came to know that the respondent is trying to marry another girl under the guise of the decree obtained by him under coercion and threat. Under coercion, she was made to depose that she has got properties and therefore, she can maintain herself without asking for maintenance and that the children will be looked after by the respondent. In fact, the petitioner is not interested in living separately from her children. After obtaining the decree for divorce, the respondent has brought rowdy elements to the house and wanted to forcibly take away the children. But, by that time, the parents and brother of the petitioner who were present in the house prevented him from taking away the children. If the respondent takes away the children, he may kill them and marry another girl. The intention of the respondent is to kill the children and make way for his second marriage. With great difficulty & struggle and by utilizing all her

property she had brought up the children. The petitioner did not go for a second marriage and is leading her life by taking care of her two children. The respondent used to come to the house of the petitioner, now and then. Now, the petitioner has become a burden on her children. They are not taking care of the petitioner. She is not in a position to maintain her. The respondent is not providing any maintenance since six months prior to the date of the petition and is postponing the matter on some pretext. He is getting a salary of more than Rs.27,000/- per month. He is also having his own house property bearing D.No.36/ 163-27 at Vedachalam Nagar, Chinna Chowk, Kadapa, worth about Rs.50,00,000/- and landed properties worth about Rs.50,00,000/-. He is having sufficient means to pay a maintenance of Rs.10,000/- per month and also a sum of Rs.5,000/- per year towards clothes. Therefore, the Court may be pleased to pass an order directing the respondent to pay Rs.10,000/- per month towards maintenance and Rs.5,000/- per year towards the clothes of the petitioner.

6.2 The averments in the counter of the respondent, in brief, are as follows:

The petition filed by the petitioner is unjust. The allegations in the petition are false. The marriage of the petitioner with the respondent was dissolved, on 02.11.1998, by a competent authority on the consent of both the parties. It is true that out of the wedlock, two children were born. The petitioner filed M.C.No.5 of 2002 on the file of II Additional Judicial Magistrate of First Class, Kadapa, seeking maintenance for the children. That matter was settled before the Lok Adalat, Kadapa, on 20.11.2004. Hence, in the eye of the public, there is no existing relationship of wife and husband between the petitioner and the respondent; and, that of father and sons between the respondent and the children. The disputes are already decided long time back in O.S.No.33 of 2003, M.C.No.5 of 2002 and D.O.P.no.39 of 1998 on the files of the respective Courts. On 27.11.2004, the petitioner received a sum of Rs.80,000/- from the respondent towards her future maintenance. O.S.No.33

of 2003 and M.O.P.No.39 of 1998 and M.C.No.5 of 2002 were settled before the Lok Adalat and there was already a settlement regarding future maintenance. Hence, and as per the award given by the Lok Adalat, the present petition is not maintainable. In fact, this respondent married a second time during the year 2001 and gave birth to two children through his second wife and the said details are also entered in his Service Register. The copy of the document evidencing dissolution of marriage of the petitioner with this respondent is also submitted to the authorities concerned. The respondent is not concerned with the affairs of the petitioner from the date of divorce, i.e., 02.11.1998. The house bearing D.No.36/ 163-27 situated at Vedachalam Nagar, Chinnachowk, does not belong to this respondent. The said house belongs to the second wife of the respondent, namely, R.Krishna Kumari; it was acquired through her parents. There are no *bona fides* in the petition of the petitioner. The ancestral properties of the respondent merged in S.P.V.B.R Project. Hence, there are no immovable properties in the name of the respondent. No cause of action exists and the doctrine of *res judicata* will apply to the facts of the present case. Hence, the respondent prays to dismiss the petition with costs.

6.3 At trial, the petitioner was examined as PW1 and her supporting witnesses were examined as PWs.2 and 3. Exhibits A1 to A3 were exhibited on her side. The respondent was examined as RW1 and his supporting witness was examined as RW2. Exhibits B1 to B7 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 Court below having found that the petitioner is entitled to maintenance ought to have granted maintenance commensurate with the income of the respondent. The Court below having rightly found that the

petitioner was deserted and neglected by the respondent ought not to have restricted the maintenance to a bare minimum of Rs.2,500/- which is not even 5% of the salary and income of the respondent. The amount awarded is not sufficient even for her shelter and survival. The Court below ought to have seen that the petitioner took care of the two children born to this petitioner and the respondent; though, it is the responsibility of the respondent as per the alleged compromise. The Court below having rightly rejected the alleged claim of payment of permanent alimony ought not to have restricted the maintenance amount to a meagre amount.

6.6 Learned counsel for the respondent would submit as follows:

The order of the Court below granting maintenance to the petitioner is illegal, improper and incorrect. It ought to have held that the petitioner forfeited her right to claim any future maintenance in view of the petition filed by her in I.A.No.102 of 1998 in O.S.No.39 of 1998 stating that she is not claiming any future alimony and that she was already owning a house and house site and in view of the fact that the said petition was ordered, on 02.11.1998, the date on which O.P.no.39 of 1998 was ordered granting a decree of divorce. The Court below failed to consider the material documents, the admitted facts and the terms, where under the petitioner has given up her right to claim any future maintenance after accepting a sum of Rs.80,000/-, and that the said terms were also incorporated in the decree in O.S.No.33 of 2003. The Court below failed to consider that the petition in M.C.No.5 of 2002 filed by the wife seeking maintenance was dismissed, by order, dated 25.06.2002 and that on the very same grounds, the present MC is filed. The Court below ought to have held that the subject MC is barred by res judicata and hence not maintainable. The Court below in utter disregard of the provisions of the Evidence Act ignored the documentary evidence and rendered findings on the basis of the sole testimony of the petitioner. The Court below

failed to consider the material evidence adduced by the respondent. It failed to consider that the petitioner is owning a house property and the same is proved by the respondent by filing exhibit B2 and B7, endorsements given by the Municipal Corporation. The Court below failed to consider that the petitioner did not lead any rebuttal evidence to disprove the same. The Court below erred in observing that the respondent cannot rely on exhibit B7 to establish that the petitioner owned house property while admitting that the endorsement reveals that the petitioner is the owner of the house bearing No.64/ 56-12, Akkayapalli, Kadapa. The Court below failed to consider the effect of the consent award passed by the Lok Adalat in O.S.No.33 of 2003.

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 PW2 in O.P.No.39 of 1998 and the Lok Adalat awards in LAC No.650 of 2004 and LAC No.638 of 2004. Exhibit A1 is the certified copy of deposition of the petitioner in O.S.no.33 of 2003 on the file of the Senior Civil Judge, Kadapa; exhibit A2 is the legal notice, date 21.04.1999; exhibit A3 is the postal acknowledgment; exhibit B1 is the award copy of Lok Adalat, dated 20.11.2004, passed in M.C.No.5 of 2002; exhibit B2 is the receipt relating to House No.64/ 56-12 standing in the name of the petitioner (PW1) issued by the Municipal Corporation; exhibit B3 is the certified copy of the complaint in C.C.No.100 of 2015 on the file of the Court of the learned Judicial Magistrate of First Class, for Excise, Kadapa; exhibit B4 is the pair of certified copies of plaint and written statement in O.S.No.33 of 2003 on the file of the Senior Civil Judge Court, Kadapa; exhibit B5 is the Lok Adalat award in LAC 653 of 2004 in O.S.No.33 of 2003; exhibit B6 is the certified copy of the petition in pauper O.P.no.27 of 1999 on the file of the Senior Civil Judge Court, Kadapa; and,

exhibit B7 is the endorsement/letter relating to House No.64/ 56-12, given by the Municipal Corporation.

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 or was 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 or even a divorced 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 and the 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 her to live in 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 allowance to her cannot be denied unless adequate grounds are established by the respondent for denial of award of maintenance allowance.

10. In support of the contention that the petitioner is not entitled to claim maintenance from him and to show that he is not liable to pay maintenance to

the petitioner, the respondent submits that petitioner has given consent for passing a decree of divorce, on 02.11.1998, and that the respondent has paid permanent alimony to the petitioner and his two Sons, *vide* proceedings in M.C.No.5 of 2002 before the Lok Adalat, on 20.11.2004, and that the respondent already married a second time after passing of the decree of divorce. Whereas, the petitioner submits that she gave birth to two sons through the respondent under their wedlock and that the respondent harassed her and subjected her to cruelty with an intention to marry another woman and that he forcibly obtained her signature on some papers and that under threat he obtained a consent decree of divorce from her and that she is entitled to claim maintenance from the husband, as long as she remains unmarried and that she has not relinquished her right to seek maintenance and that the respondent continued to visit her home even after passing of the awards before the Lok Adalat and that the decree of divorce granted by the Lok Adalat was not given effect to in its letter and spirit. Her alternate submission is that since the permanent alimony allegedly paid is a paltry amount and is not sufficient for her life long sustenance, she is entitled to claim maintenance in any view of the matter and that the respondent is obliged under law and facts to pay reasonable and fair sum as maintenance to her.

11. O.P.No.39 of 1998 was filed by the respondent under Section 13-B of the Hindu Marriage Act for passing a decree of divorce against the petitioner and for dissolving their marriage by mutual consent. Further, a decree was passed, on 02.11.1998, in O.P.No.39 of 1998 on the file of the learned Senior Civil Judge, Kadapa, dissolving the marriage of the petitioner and the respondent solemnised on 25.11.1988. Thereafter, I.A.No.1902 of 1998 was filed by the petitioner in the said OP to incorporate the reliefs, viz., that the respondent is permitted to take care of the minor sons & maintain them by providing good education and that the petitioner is not entitled to maintenance in view of the permanent alimony paid and as she is possessing properties. However, no

orders were passed in the said interlocutory application. Subsequently, the petitioner filed a suit in O.S.No.33 of 2003 on the file of the Senior Civil Court, Kadapa, against the respondent seeking cancellation of decree of divorce, dated 02.11.1998, passed in O.P.No.39 of 1998. In the said suit, it was contended by the petitioner that her signature in the petition seeking divorce was obtained under threat and coercion and that she was forced to give evidence before the Court of law only under threat and coercion. However, the said suit again ended in compromise before the Lok Adalat, on 27.11.2004. The suit was dismissed as the petitioner agreed to withdraw the suit in O.S.No.33 of 2003 and as it was stated that the petitioner has no objection for the decree passed in Marriage OP No.33 of 1998. In this backdrop, the question is whether the petitioner is disentitled to claim maintenance.

12. Be it first noted that the Supreme court in the matter of Vanmala Vs. H.M. Ranganatha Bhatta [1995 (5) SCC 299] held, that section 125(4) Code of Criminal Procedure does not take away right of a wife to claim maintenance and that the expression "living separately by mutual consent" does not cover cases although living separately due to divorce. The respondent contends that in view of the fact that the petitioner forfeited her right to claim any maintenance and in view of the decree in O.S.No.33 of 2003 and the other proceedings of the Lok Adalat, the petitioner is not entitled to seek maintenance. The respondent's further contention is that he paid, in all, Rs.80,000/- towards permanent alimony in the year 1998; and, hence, the petitioner is not entitled to claim any further amounts towards maintenance from him. After a decree of divorce by mutual consent, he remarried, but, the petitioner remained unmarried. Simply because some amount was paid a very long time back, that is, about more than 15 years prior to the institution of the maintenance case and assuming that she received the said amount, she cannot be denied the relief of maintenance in a case filed in the year 2014, more particularly when the amount that was said to have been paid is not

adequate for a woman's life long maintenance. Any permanent alimony paid by her husband to a divorced and neglected woman should be sufficient for that woman to live in reasonable comfort and with dignity for the rest of her life. When the amount paid, if any, towards permanent alimony is paltry or is insufficient for life long sustenance, the woman who received such insufficient sum is entitled under facts and in law to claim monthly maintenance not withstanding the fact that certain amount was paid and received towards permanent alimony. In such cases the bar of relinquishment of right to claim maintenance would not get attracted. Further, there is no question of giving up of a right to maintenance as there is no estoppel against a statute in such cases.

In Nagendrappa Natikar v. Neelamma¹ the facts are as follows: ‘

The marriage between the Petitioner (husband) and Respondent (wife) took place on 24.5.1987. Alleging that the Petitioner is not maintaining her, the Respondent filed, an application Under Section 125 Code of Criminal Procedure for grant of maintenance, before the 1st Additional JMFC at Gulbarga, being Misc. Case No. 234 of 1992. While the matter was pending, an application was preferred by the parties under Order XXIII Rule 3 Code of Civil Procedure, on 3.9.1994, stating that the parties had arrived at a compromise, by which the Respondent had agreed to receive an amount of Rs. 8,000/- towards permanent alimony and that she would not make any claim for maintenance in future or enhancement of maintenance. A consent letter, dated 30.3.1990, was also executed. The Court recorded the compromise on the parties admitting the execution of the same before court. The respondent also paid Rs. 8000/- (eight thousand) before court towards full satisfaction of the claim for maintenance, as per the compromise that was recorded. In view of the compromise, the petition was dismissed. Thereafter the wife filed a suit claiming maintenance at the rate of Rs.8,000/- per month. The claim was resisted by the husband contending that in view of the compromise reached between the parties in Misc. Case No. 234 of 1992 filed Under Section 125 Code of Criminal Procedure, the respondent could not claim any monthly maintenance and that the suit

¹ AIR 2013 SUPREME COURT 1541

filed Under Section 18 of the Hindu Adoption and Maintenance Act, 1956 was not maintainable.

In the said factual back drop it was held as follows:

“Section 125, Cr.P.C is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Cr.P.C. and the order made under Section 125 Cr.P.C is tentative and is subject to final determination of the rights in a civil Court.

Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125, Cr.P.C is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125, Cr.P.C by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the 1956 Act.”

The ratio in the decision on an analogy can be applied to the facts of the case and it can safely be held that mere agreement with the wife or a consent given by her does not foreclose the remedy available to her under law. Hence, this Court finds that the defence of the respondent that the petitioner is not entitled to claim maintenance is untenable and that the petitioner/ divorced wife is entitled to claim maintenance under facts and in law.

13. Dealing now with the quantum of maintenance to be awarded to the petitioner, it is to be noted that the petitioner is an unemployed divorcee. The contention of the petitioner is that she has no income or sources of income and that she is unable to maintain herself and that her two sons are not able to get permanent employment. It is to be re-noted that the petitioner claimed Rs.10,,000/- towards her monthly maintenance, but, the trial Court awarded Rs.2,500/- per month. The respondent filed exhibit B7 showing that the house bearing D.No.64/ 56-12, Akkayapalli, Kadapa, stands in the name of the

petitioner and that she has been paying house tax from the year 2013. It is the case of the respondent that the petitioner has a house to reside and that the petitioner and her brother are doing finance business and are earning Rs.20,000/- per month. However, there is no reliable evidence to show that the wife/petitioner is doing finance business with her brother. As per her pleaded case and evidence, the respondent is working as a Junior Assistant and is earning a salary of Rs.35,000/- per month and that he also owns landed property and a residential house and as such, he has got sufficient means. Earlier, by orders, dated 25.06.2002, the 2nd and 3rd petitioners were awarded maintenance in M.C.No.5 of 2002.

While determining the quantum of maintenance, the Supreme 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.

In *Shamima Farooqui vs. Shahid Khan*², the Supreme Court held as follows:

Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sta Bai* MANU/ SC/ 8141/ 2007 : (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* MANU/ SC/ 0067/ 1978 : (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* MANU/ SC/ 0193/ 2005 : (2005) 3 SCC 636.

² 2015 (2) ALD (Crl.) 549 (SC)

14. Dealing further with the quantum of maintenance to be awarded to the petitioner, 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 amount of maintenance to be awarded to her. The petitioner contends that a bare minimal amount of Rs.2,500/- per month which is 5% of the salary of the respondent is not sufficient for her sustenance. The respondent contends that the petitioner is not entitled to seek maintenance in view of various proceedings including the awards of the Lok Adalat and as she has forfeited her right to seek maintenance. However, having regard to 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 who has no income or source of income is entitled to claim maintenance allowance. The respondent's income on his own showing is Rs.35,000/- per month and hence, he cannot evade payment of reasonable maintenance to the petitioner.

15. Viewed thus, this Court holds that the respondent failed not only to dislodge the case of the petitioner but also to establish his defence that the petitioner is not at all entitled to any maintenance. In the present day cost of living, maintenance allowance @ Rs.25,000/- per month is hardly sufficient by any standards. Considering the social, economic and financial status of the family, this Court finds that maintenance allowance can be awarded to the petitioner/ wife @ Rs.5,000/- per month. This Court further holds that the petitioner made out valid and sufficient grounds not only for granting maintenance allowance to her but also for enhancement of the maintenance already awarded to her @Rs.2,500/- per month.

16. In the result, the revision filed by the respondent in Crl.R.C.No.290 of 2017 is dismissed and the revision filed by the petitioner in Crl.R.C.No.1601 of 2017 is partly allowed. Accordingly, the maintenance allowance awarded to the petitioner is enhanced from Rs.2,500/- to Rs.5,000/- per month from the

date of the order passed in the MC, that is, 20.10.2016. The respondent is directed to pay the entire arrears of maintenance payable to the petitioner within two months from the date of receipt of a copy of this order, however, in two equal monthly instalments.

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

M. SEETHARAMA MURTI, J

19.09.2017
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