

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE Nos.2948 AND 3071 OF 2016

COMMON ORDER:

The former revision case is filed by the wife questioning the order, dated 27.09.2016, passed in M.C.No.35 of 2014 on the file of the learned Judge, Family Court, East Godavari at Rajamahendravaram, on the ground that the amount of Rs.5,000/- per month awarded towards maintenance is totally inadequate, when compared with the earnings of respondent – husband and she claims Rs.30,000/- per month towards maintenance.

2. The latter revision case is filed by the husband challenging the very same order, which was questioned by the wife.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in CrI.R.C.No.2948 of 2016.

4. The main ground urged by the respondent - husband in resisting grant of maintenance is that the Family Court, somehow, failed to see that the petitioner - wife was owning a house and deriving rent of Rs.15,000/- per month. Except that, in the grounds of latter revision, the respondent - husband has not specified anything. Even, no ground is taken in regard to Talaq.

5. Before the Family Court, the petitioner - wife besides examining herself as PW.1, examined two more witnesses and marked Exs.P1 to P7 to substantiate her claim. Resisting the claim and to

substantiate his own stand, the respondent - husband besides examining himself as RW.1 also examined two witnesses and marked Exs.R1 to R9. Among these documents, Ex.P6 - bank statement copies, Ex.P7 - P.P.O. slip of father of the respondent - husband and Ex.R8 - pay slip of the respondent - husband, are of relevancy to decide the controversy. Paper publications have also been marked as Ex.P2 and P3 on behalf of the petitioner - wife, and Ex.R3 on behalf of the respondent - husband, in relation to pronouncement of Talaq, as alleged by the respondent - husband.

6. The learned Judge, Family Court, on a thorough appraisal of evidence, answered the points formulated by him in paragraph No.11. Initially, the finding recorded by the learned Judge in relation to Talaq requires advertence. The learned Judge, having analyzed the evidence on record, to what extent the respondent - husband has proved pronouncement of Talaq, would observe that the respondent - husband except examining himself to prove the said stand, has not examined any other witness. The learned Judge also evaluated the evidence of RWs.2 and 3 and found that even as per their admissions, they were actually not present at the time when the respondent - husband alleged to have pronounced Talaq. On that score, the learned Judge did not agree with the respondent - husband in regard to Talaq being pronounced and thus, rejected that stand.

7. Now, turning to the other aspect as to the means of the petitioner – wife and respondent – husband, though, the respondent – husband has put forth the stand that the petitioner, his wife, owns a house and derives rent, but nothing positive or concrete material has been placed nor elicited in the cross-examination of PWs.1 to 3 nor the respondent–husband did substantiate it by filing any documentary evidence or examining any witness. So, that stand also falls to the ground.

8. So far as the earnings of the respondent – husband is concerned, the learned Judge has detailed it in paragraph No.30. According to the answers given by the respondent – husband in his cross-examination, which is perused, on placing a copy of the same by the learned counsel for petitioner - wife, he admits that he was getting annual package of Rs.7,40,000/-, besides getting Rs.1,69,776/- towards incentives. The learned Judge, in paragraph No.30, referred to Ex.P9 – salary certificate, perhaps, has wrongly quoted Ex.P9 instead of Ex.R8 filed by the respondent - husband, and the admission made by the respondent – husband that he was earning Rs.50,000/- per month after deductions and that he has been incurring regularly Rs.15,000/- per month towards house rent, Rs.10,000/- towards expenses and Rs.5,000/- towards transport charges. The learned Judge, then referred to the savings at Rs.20,000/- per month, after meeting all the expenses by the respondent - husband. Thereafter, the

learned Judge referring to the ruling in **Chaturbhuji v. Sita Bai**¹, wherein the Honourable Supreme Court ruled that irrespective of wife's earning capacity, husband has a social obligation to pay maintenance and the husband is liable to pay maintenance, as per his status and standards of living, and considering all the aspects, awarded Rs.5,000/- per month towards maintenance to the petitioner - wife. In fact, the learned Judge, having referred to the ruling aforesaid, where the standards of living and the status of the husband were required to be analyzed or examined, has not referred to on what criteria he was awarding Rs.5,000/- per month towards maintenance to the petitioner-wife. When the savings or the left out amounts, after meeting all the expenses by the respondent – husband, was to the tune of Rs.20,000/- per month, certainly, there was no reason for restricting the monthly maintenance at Rs.5,000/-, as hitherto the petitioner – wife was enjoying or leading a decent life. Therefore, keeping in view, the total earnings of the respondent - husband, even according to his admission that his annual salary was Rs.7,40,000/- and he was drawing incentives at Rs.1,69,776/-, put together amounting to Rs.9,09,776/-, that too on the date of filing of the present petition, it would be reasonable to award Rs.15,000/- per month towards maintenance to the petitioner - wife. Thus, answering the former Criminal Revision Case, the amount of Rs.5,000/- per month awarded by the learned Judge, Family Court, East Godavari at Rajamahendravaram, towards

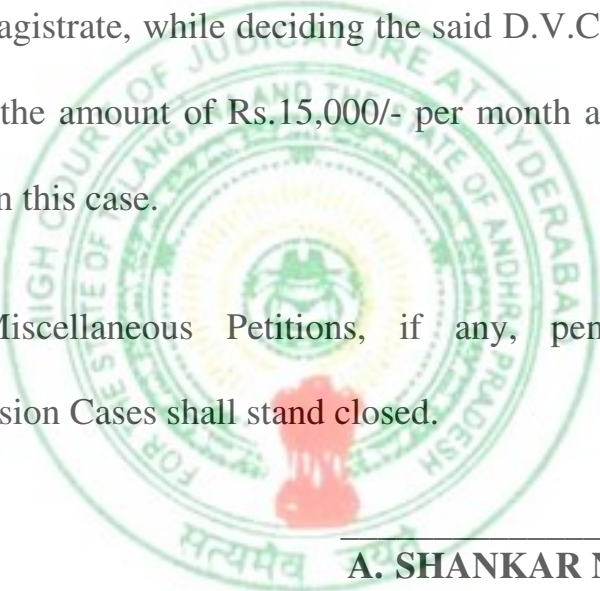
¹ 2008 (1) ALD (CrI.) 97 (SC)

maintenance to the petitioner – wife is enhanced to Rs.15,000/- per month.

9. Accordingly, Criminal Revision Case No. 2948 of 2016 is partly allowed, whereas Criminal Revision Case No.3071 of 2016 is dismissed.

10. Since, it is stated that D.V.C.No.48 of 2014 is pending on the file of learned VI Judicial Magistrate of First Class, Rajahmundry, the learned Magistrate, while deciding the said D.V.C., shall take into consideration the amount of Rs.15,000/- per month awarded towards maintenance in this case.

11. Miscellaneous Petitions, if any, pending in these Criminal Revision Cases shall stand closed.



A. SHANKAR NARAYANA, J

November 02, 2017.
MD