

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.960 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC'), is filed by the petitioners in M.C.No.6 of 2015, having been aggrieved of the orders, dated 05.01.2017, of the learned IX Additional District & Sessions Judge, Wanaparthy, passed in CrI.R.P.No.34 of 2016.

2. I have heard the submissions of *Sri G. Madhusudhan Reddy*, learned counsel for the petitioners, and of *Sri K. Rathangapani Reddy*, learned counsel for the 2nd respondent. I have perused the material record.

3. At the outset, it is to be noted that in the afore-stated Maintenance Case, after full-fledged trial, the learned Judicial Magistrate of First Class, Wanaparthy, (trial Court) awarded maintenance @ Rs.10,000/- each per month to the petitioners 1 & 2 from the date of the filing of the petition and directed the respondent (2nd respondent herein) to pay the arrears as well as the monthly maintenance as awarded. However, the learned Additional District Judge, while allowing the revision of the 2nd respondent-husband, reduced the monthly maintenance from Rs.10,000/- each to Rs.2,000/- each and directed that the said maintenance be paid from the date of the institution of the Maintenance Case. Aggrieved thereof, the petitioners are before this Court.

4. The parties shall hereinafter be referred to as the petitioners and the 2nd respondent as arraigned in the instant criminal revision case.

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

5.1 The case of the petitioners as disclosed from the pleadings extracted in the orders of the Courts below, in brief, is as follows: 'The 1st petitioner is the legally wedded wife of the 2nd respondent. About 20 years prior to 2015, their

marriage took place at the house of the 2nd respondent at Tadoor village. Under lawful wedlock, they were blessed with two daughters and one son, the 2nd petitioner. At the time of marriage, the parents of the 1st petitioner gave net cash of Rs.10,000/- and 2 tolas of gold to the 2nd respondent as dowry. After marriage, the 1st petitioner and the 2nd respondent lived happily for a considerable time. The 2nd respondent used to work in electricity department. On the pretext of attending to his duty, he used to stay at Nagarkurnool village. He developed illicit intimacy with one Rajitha during that time. When the 1st petitioner, her parents and the mother of the 2nd respondent questioned him about the same, he gave reckless answers. Keeping in view the future of her two daughters and son, the 1st petitioner adjusted her life and stayed in the house of her parents in law. The 2nd respondent started neglecting the 1st petitioner and the children and left them to their fate. However, the mother of the 2nd respondent by name Seethamma performed the marriage of the two daughters of the 1st petitioner and the 2nd respondent by spending an amount of Rs.4.00 lakhs after selling the agricultural land. The 2nd respondent started spending his time and entire salary on his said concubine, Rajitha of Nagarkurnool. The petitioners are not able to maintain themselves. The 2nd petitioner is studying 7th standard at the time of filing of the Maintenance Case. The petitioners require an amount of Rs.10,000/- each per month towards their maintenance. The 2nd respondent is having Ac.4.11 guntas of land. He is earning Rs.47,000/- per month towards salary. Though the 2nd respondent got mutated the land in the name of the 2nd petitioner, he is not allowing the petitioners to cultivate the same. Hence, the petitioners are constrained to file the case seeking maintenance @Rs.10,000/- each per month from the 2nd respondent.'

5.2 The case of the 2nd respondent as could be culled out from the pleadings extracted in the orders of the Courts below, in brief, is as follows: 'The petition is not maintainable. The material allegations in the petition are false,

frivolous and concocted. The relationship between the parties is admitted. This respondent did not receive any dowry either in cash or kind as stated in the petition. This respondent performed the marriage of his first daughter by name Vara Lakshmi @ Sandhya at Gangaram village of Bijinapally Mandal. He paid an amount of Rs.3.00 lakhs towards dowry to the bridegroom and Rs.2.00 lakhs for purchase of household articles. He also presented 80 grams of gold. Within six months thereafter the marriage of the other daughter, M. Rupa @ Sravani was fixed. As such, he borrowed amounts from different persons and performed the marriage of his 2nd daughter, on 21.05.2014, at Jangamayapally village. He paid Rs.3.00 lakhs as dowry and Rs.2.00 lakhs towards value of household articles and presented 80 grams of gold worth Rs.2,40,000/-. He spent, in all, Rs.14,80,000/- on the marriages of his daughters. He borrowed part of the said amount from different people on interest at 2% per month. He is not having any illicit intimacy with Rajitha. He never neglected the petitioners. He has given Ac.4.11 guntas of land in Sy.No.536 situate at Tadoor village to the 2nd petitioner. All the contra allegations in the petition are false. He met with an accident on 25.09.2014. He spent huge amount on his treatment. He is still paying huge amounts to different people from whom he borrowed the amounts. In the afore-stated facts and circumstances, the petitioners are not entitled to claim any maintenance. Hence, the petition is liable to be dismissed.'

6. At trial, the 1st petitioner, her two daughters and the sister of the 2nd respondent were examined as PWs1 to 4 and exhibit P1, the *bona fide* certificate of the 2nd petitioner, was marked on the side of the petitioners. The 2nd respondent and his supporting witness were examined as RWs1 & 2. However, no documents were marked on his side.

7. At the hearing, learned counsel for both the sides made submissions in line with the pleadings of the parties.

8. I have carefully gone through the pleadings, which are extracted supra and also the copies of the depositions of PWs1 to 4 and RW1, which are produced before this Court. I have given detailed and thoughtful consideration to the facts and submissions.

9. The points for determination in the Criminal Revision Case are as under:

- 1) *Whether the petitioners made out valid and sufficient grounds for award of maintenance to them?*
- 2) *And, if so, what is the quantum of maintenance to be awarded to the petitioners? Whether the Court below was not justified in reducing the maintenance granted by the trial Court to the petitioners? Whether the reduced maintenance is inadequate in the facts and circumstances stated by the petitioners? And, if so, whether the same requires an upward revision in the facts and circumstances of the case?*
- 3) *To what relief?*

10. POINTS:

The relationship between the 1st petitioner and the 2nd respondent, as husband and wife, is admitted. The 2nd petitioner is their child is also admitted. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. The 1st petitioner and the 2nd respondent are living separately is also not in dispute. The 2nd petitioner is under the care and custody of the 1st petitioner. Whatever be the disputes between the spouses and the reasons for the said disputes, the 2nd respondent is legally obliged to maintain the 2nd petitioner, who is his Son. In the considered view of this court, there is no reason to deny award of maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for her sustenance. Unless the husband establishes that his wife has income of her own and needs no financial support from him, she cannot be denied maintenance from the husband. The maintenance awarded shall be adequate for sustenance, and sufficient for meeting expenses towards food, clothing and shelter, besides essential

incidental expenses. In case of children, it takes in its compass educational expenses and expenses on their extra curricular activities as well. The law is well settled that the maintenance has to be awarded keeping in view the social status and economic & living conditions of the family; and, the maintenance awarded to the wife and children must be sufficient to enable them to live in reasonable comfort. The provision for maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of maintenance under the Code of Criminal Procedure is subject to final determination of their rights in a civil Court. The provision provides for speedy remedy for providing maintenance to the wife and eligible children.

10.1 The 1st petitioner maintained her stand in her evidence and affirmed her pleaded case. Her version was corroborated by PWs 2 to 4. Similarly, the 2nd respondent also reiterated his stand in his evidence. It is undisputed that the 1st petitioner is unemployed and is a house-wife. The 1st petitioner submits that after the 2nd respondent neglected her and her children, that is, two daughters and son, the mother of the 2nd respondent sold away her land and performed the marriages of her two daughters by spending an amount of Rs.4.00 lakhs. Whereas the 2nd respondent contends that he performed the marriages of his daughters and that he spent, in all, Rs.14,80,000/- on their marriages and on the presentations given to the bridegrooms. He further contends that for the said purpose he borrowed amounts and that he is still discharging his loans contracted for the marriages of his daughters. PWs 2 & 3, who are the daughters, stated in their evidence that their grandmother sold away agricultural land and that their mother took hand loans and that their grandmother and mother performed their marriages by meeting the marriage expenses to a tune of Rs.4.00 lakhs and Rs.3.00 lakhs respectively and that the 2nd respondent merely attended the marriages and performed the rituals, but,

did not extend any other help. PW4, who is no other than the sister of the 2nd respondent testified to the following effect: “On the death of their father, the 2nd respondent was provided job as a line man in the Electricity Department, on compassionate grounds. He was posted at Telkapally. She came to know that he was having illegal contract with one lady, Rajitha, and that on developing such illegal contact, he neglected the 1st petitioner and her children. After the daughters of the 1st petitioner have come of age, the land belonging to her mother was sold and the marriages of PWs 2 and 3 were performed. The 2nd respondent, her brother, did not help the 1st petitioner financially or morally in performing the marriages of the daughters. Though he was reluctant, their mother forcefully brought him to attend the marriage ceremonies. The 2nd respondent is getting a salary of Rs.49,000/- as per her knowledge. He is independent and has no dependants. He is also availing financial facilities being a Government servant; whereas the petitioners have no means of survival.’ This witness was not cross-examined and the cross examination was recorded as ‘Nil’. Though the 2nd respondent has reiterated his case, in the light of the evidence on the side of the petitioners, his self serving statement is of no avail to him. In view of the above said unrefuted and overwhelming evidence on record, the evidence of RW2 does not advance the defence of the 2nd respondent any further. Therefore, the 2nd respondent’s unsubstantiated defence needs no countenance. The evidence on record thus sufficiently establishes the case of the petitioners and lays bare that the case of the 2nd respondent is indefensible. Hence, this Court finds that the petitioners made out valid and sufficient grounds for awarding maintenance to them.

10.2 Coming to the quantum of maintenance, it is well established that the 2nd respondent is a Government servant and that he is an able bodied man capable of earning. By taking into consideration the economic condition of the 2nd respondent, his capacity to earn, the basic needs of the petitioners and the present day cost of living, the trial Court awarded a maintenance of

Rs.10,000/- each to the petitioners 1 & 2. Nonetheless, the Court below, while partly allowing the revision filed by the husband, reduced the quantum of maintenance to Rs.2,000/- each per month. The main reason assigned by the Court below for such reduction of monthly maintenance granted to the petitioners is that the petitioners' witnesses in one voice admitted in their cross examinations that the 2nd respondent has given land of an extent of Ac.4.11 guntas in S.No.563 apart from a house bearing No.4-26 situate at Tadoor to the petitioners for their maintenance. Though the sale deed in respect of the said land is not exhibited, there is no dispute that by a registered document the landed property was given by the 2nd respondent to the 2nd petitioner with absolute rights. However, there is no similar document insofar as the house property to show that the house property was conveyed with absolute rights to the 2nd petitioner. However, in the maintenance case itself the 1st petitioner pleaded and asserted that though the land is mutated in the name of the 2nd petitioner, the 2nd respondent is not allowing the petitioners to cultivate the land and that the 2nd respondent is only enjoying the land. In the cross examination of PW1, she stated that she is residing at Jangamayapalli village since past eight months and that she filed a criminal case under Section 498-A IPC and that she is not cultivating the land which is at Tadoor village and that the 2nd respondent is cultivating the above said land. She denied the suggestion that she is enjoying the said land by cultivating the same. Insofar as the house property, the trial Court noted in its order that the 2nd respondent in his cross examination deposed that he is residing in house no.4-26 at Tadoor village, that is, the house which he was alleged to have given to the petitioners. The trial Court also held that the petitioners are not having any control over the house as well as the land. Despite such standard of evidence brought on record by the petitioners, the 2nd respondent did not file any documents like copies of pahanies or cultivation accounts to show that the petitioners are cultivating the land and realising the crops. The 2nd respondent

did not plead and establish as to through whom and how the petitioners are cultivating the land and what are the crops being raised and what are the incomes that were realised by them in the past few and recent years. No suggestions were even put to PW1 on the said aspects during her cross-examination. Mere conveying the property under a document or asserting that the properties are given to the petitioners would be of no avail to the 2nd respondent when the petitioners are not able to have possession and enjoyment of the properties and realise any income from the said properties. The contentions of the 2nd respondent that the petitioners are getting income from the land and that they are having house property that was given to them by him cannot be accepted in the absence of sufficient evidence to come to a safe conclusion that the petitioners are in possession and enjoyment of the agricultural land and are realising income by cultivating the same and that the house property was conveyed with absolute rights to the petitioners and that they are in exclusive possession of the said house property. Hence, in the considered view of this Court, the learned Additional District & Sessions Judge was in error in reducing the maintenance on the sole ground that the land of Ac.4.11 guntas was admittedly given by the 2nd respondent to the 2nd petitioner and in not considering the fact that the said land is not in possession and enjoyment of the petitioners and the further fact that the 2nd respondent is also in occupation of the house said to have been given to the petitioners.

11. On the above analysis this Court finds that the Court below is not justified in reducing the monthly maintenance awarded to the petitioners by the Trial Court and that, therefore, the impugned order of the Court below is liable to be set aside and as a sequel the order of the trial Court deserves to be restored. The points are accordingly answered in favour of the petitioners and against the 2nd respondent.

12. In the result, the Criminal Revision Case is allowed and the impugned order, dated 05.01.2017, passed by the learned IX Additional District & Sessions Judge, Wanaparthi, in CrI.R.P.No.34 of 2016 is set aside and the order, dated 08.06.2016, of the learned Judicial Magistrate of First Class, Wanaparthi, in M.C.No.6 of 2015 is restored. The 2nd respondent is directed to pay the entire arrears as per the said orders of the trial Court in four equal monthly instalments starting from 15.07.2017 and shall continue to pay monthly maintenance payable to the petitioners by depositing the same in the S.B. Account that may be opened by the 1st petitioner as directed in the order of the trial Court.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

10.07.2017
Vjl



M. SEETHARAMA MURTI, J