

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.612 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC') by the petitioner/ husband is directed against the orders, dated 20.12.2016, in MC.No.107 of 2013 passed by the learned Judge, Family Court, at L.B. Nagar, Panga Reddy District, whereby the learned Judge awarded a monthly maintenance of Rs.3,000/- each to the respondents 1 and 2 from the date of the filing of the petition.

2. I have heard the submissions of Sri A. Keshava Reddy, learned counsel for the petitioner/ husband, and of Sri Laxmaiah Kanchani, learned counsel for the 1st respondent. I have carefully perused the material record including the record received from the trial Court. I shall deal with the pleadings, evidence and contentions while dealing with the points for determination to avoid repetition and to keep it simple.

3. The parties in this revision shall herein after be referred to as the petitioner/ husband and the respondents 1 & 2 as arrayed in this case for convenience and clarity.

4. Now the points for determination in the Criminal Revision Case are as under:

- 1) Whether the respondents 1 & 2 made out valid and sufficient grounds for awarding maintenance?
- 2) And, if so, whether the quantum of maintenance awarded to the respondents 1 and 2 is on the higher side and is liable to be reduced in the facts and circumstances urged by the petitioner?
- 3) To what relief?

5. POINTS

5.(a) To begin with it is to be noted that the relationship of husband and wife between the petitioner and the first respondent herein is admitted. The 2nd respondent is their child is also admitted. Whatever may be the reasons, there were disputes between the spouses and those disputes had lead to estrangement is admitted. The petitioner and the respondents 1 & 2 are living separately is also not in dispute.

5.(b) The case of the first respondent is this: 'The petitioner and his parents harassed her both physically and mentally. Unable to bear the torture, the first respondent returned to her parents' house. Thereafter, in a panchayat held, on 15.08.2009, the petitioner and his parents agreed not to harass the 1st respondent. Therefore, the 1st respondent joined the petitioner. As the petitioner and his family members did not change their attitude, the 1st respondent again returned to her parents' house and is living along with her child at the mercy of her parents. Meanwhile, the petitioner married one Salma without the consent of the 1st respondent. As the petitioner deserted the 1st respondent, she lodged a complaint with the Station House Officer, Shamshabad, Ranga Reddy District, against the petitioner and his family members. The 1st respondent also filed a Domestic Violence Case. In the said case she was granted a sum of Rs.2,000/- per month towards maintenance. The petitioner is working as a farmer and is also doing brokerage business in real estates and is getting sufficient income of Rs.50,000/- per month. The petitioner and his family own several house plots and agricultural lands. From the said properties, the petitioner is getting in all Rs.50,000/- per month towards his share and is leading luxurious life having deserted the respondents 1 and 2. The respondents 1 & 2 have no means of their own. They are living at the mercy of the parents of the 1st respondent. The respondents 1 and 2, therefore, are entitled to award of monthly maintenance @ Rs.10,000/- each.'

5.(c) The petitioner having filed a counter denying all the allegations urged *inter alia* as under: 'The petitioner belongs to agricultural family. From the beginning, the 1st respondent is not interested in the marital life as the petitioner belongs to agricultural family. The 1st respondent used to visit her parents' house frequently without the knowledge of the petitioner and his family members. Meanwhile, the 1st respondent conceived and thereafter she started staying with her parents by doing tailoring work. The petitioner and his family members approached the 1st respondent and her parents and requested her to join the petitioner, but, she did not listen to them. However, on the advice of the elders of both the sides, the parents of the 1st respondent sent her to the petitioner; but, the 1st respondent stayed only for one or two days and again left the company of the petitioner. It is not true to say that due to ill health, the 1st respondent was unable to do the household work and that the petitioner and his parents harassed her and for that reason she left for her parents' house. It is true that the 1st respondent filed complaint against the petitioner and his family members and the same was tried as C.C.No.112 of 2010 on the file of the Court of the learned VIII Metropolitan Magistrate, Cyberabad. The said case was contested. Eventually, as the 1st respondent failed to prove the allegations, the matter ended in acquittal, on 03.01.2014. As per the orders in DVC.No.7 of 2010, the petitioner is paying Rs.2,000/- per month. It is not true to say that this petitioner is doing brokerage for purchase and sale of plots/lands and is also getting huge income on agriculture. The petitioner's parents purchased plot No.82 at Ootapally village in his name as his younger brother was out of station. Later, on the demand of his parents, he executed a registered sale deed in favour of his brother, Md.Arif Khan. The agricultural lands mentioned in the petition were purchased with the money of the parents of the petitioner. The petitioner has no manner of right or authority over the said lands. Plot No.61 admeasuring 160 sq.yards situate at Jai Bhavani nagar, Pallaguda village, Shamshabad Mandal, was initially

registered in the name of the petitioner by his parents; but, after sometime, on their demand, he executed registered gift settlement deed in the name of his unmarried younger sister, Ishrat Begum. It is not true to say that he is earning Rs.50,000/- through the aforesaid properties and leading luxurious life by neglecting the respondents 1 & 2. The 1st respondent is a tailor by profession and is doing tailoring work and is earning Rs.5,000/- per month. Whereas the petitioner is working as local driver and his earnings are very meagre. From out of the said earnings he has to maintain his old aged parents, who are suffering with chronic old age diseases. Further, as per Muslim marriage rules and regulations when any of the spouses does not show interest in leading marital life, a legal right to take divorce in the presence of elders and Qazi, accrues. When the wife deserts the husband without any valid reason for long period, the husband can go for another marriage to lead his peaceful life. On seeing the attitude and misbehaviour of the 1st respondent towards the petitioner and his family members, the petitioner married another lady and out of wedlock she gave birth to a female child. He has to maintain them. The father and brother of the 1st respondent are Government employees and are having agricultural income. The petitioner is already paying Rs.2,000/- towards maintenance as per the orders in the DVC. Therefore, the respondents 1 and 2 are not entitled to any further maintenance. Therefore, the petition may be dismissed.'

5.(d) Before the trial Court, the 1st respondent was examined as PW1 and exhibits P1 to P8 were marked on her side. The petitioner was examined as RW1 and exhibits R1 to R4 were marked. On merits, the learned Judge, Family Court had awarded monthly maintenance of Rs.3,000/- each to the respondents 1 and 2.

5.(e) The learned counsel for the petitioner submitted as follows: -
'The Court below erred in placing reliance on the highly interested and

discrepant testimony of PW1. The Court below failed to consider the cross examination of PW1. The Court below ought not to have considered exhibits P3 to P8. The respondents 1 & 2 failed to examine any independent witness to prove the allegations levelled against the petitioner. The Court below ought to have considered the evidence of RW1 that he is working as private car driver and his monthly salary is Rs.6,000/- and that out of the said income he has to maintain his second wife and children and also pay Rs.2,000/- to the 1st respondent as per orders in the DV Case. The petitioner is suffering with epilepsy. The Court below has not properly appreciated the evidence on record and had erroneously granted maintenance instead of refusing to grant maintenance. At any rate, the maintenance awarded is excessive and unreasonable.'

5.(f) On the other hand, the learned counsel for the respondents 1 & 2 while supporting the orders of the Family Court submitted that the evidence on record was properly appreciated by the Court below and that the court below after taking into consideration all the relevant aspects had awarded the maintenance and that the maintenance awarded in the present day cost of living is a meagre amount and that unless maintenance as awarded is confirmed, it is difficult for the respondents to sustain and that the contentions urged by the petitioner are devoid of merit and that the well reasoned order of the Court below does not call for any interference.

5.(g) I have carefully perused the evidence on record. Exhibit P1 is the marriage wedding card; exhibit P2 is the birth certificate of the 2nd respondent; exhibits P3 to P8 are the certified copies of registered sale deeds. Exhibit R1 is the certified copy of registered gift settlement deed; exhibit R2 is the certified copy of sale deed, dated 07.08.2009; exhibit R3 is the certified copy of judgment in CC.no.112 of 2010; and, exhibit R4 is the certified copy of Pahani for the year 2013-14.

5.(h) 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 the sustenance of the wife. 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. So far as the children who are minors, the petitioner/father is obliged under facts and in law to pay reasonable amount of monthly maintenance to them. 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 the educational expenses also of the children. 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.

5.(i) For whatever reasons the respondents 1 and 2 are living separately. The petitioner married a second time during the subsistence of his marriage with the 1st respondent and contends that as per Religious and Community customs he can do so. His second wife gave birth to a female child. He would not have married a second time, if really he is not financially sound. The petitioner admittedly transferred the properties in his name in favour of his brother and sister and did not substantiate his defence that he did not acquire the said properties and that his parents acquired the properties in his

name. Admittedly he owns agricultural lands. Now coming to the income of the petitioner and his properties, it is specifically stated by the 1st respondent that the petitioner and his family owns the following properties and from the said properties, the petitioner is getting more than Rs.50,000/- in all per month towards his share:

a) Plot No.82 admeasuring 200 sq.yards in Sy.no.42 & 43 at Southern Mega Township, Ootpally village and G.P, Shamshabad Mandal, R.R district vide Reg.Sale deed No.1932/ 2008, dt.15.3.2008 of SRO, Shamshabad purchased from Malti Lall in the name of Md.Asad Khan.

b) Agricultural land in Sy.no.82 admeasuring Ac.0.12 gts at Kacharam village, Shamshabad Mandal, R.R. District vide Reg.Sale Deed No.1016/ 2004, dt.3.3.2004 of SRO purchased from Mailaram Balaiah & others in the name of Md.Osman Khan.

c) Agriculture land in Sy.No.82/ A admeasuring Ac.1-22 gts at Kacharam village, Shamshabad Mandal R.R District vide Reg.Sale Deed No.1121/ 2000 dt.18.5.2000 purchased from Yerra Ramchandraiah and another in the name of Md.OSman Khan.

d) Agriculture land in Sy.No.82/ A admeasuring Ac.1.22 grs. At Kacharam village Shamshabad Mandal R.R District, vide Reg.Sale deed No.2938/ 2003, dt.6.10.2003 purchased from Mailaram Venkataiah and another in the name of Md.Osman Khan.

e) Agriculture land in Sy.No.76/ ee & 76/ Vu admeasuring Ac.0.20 gts., at Kacharam village Shamshabad Mandal R.R District, vide Reg.sale deed No.2026/ 2010, dt.26.7.2010 purchased from Md.Khaja Khan & another in the name of Md.Osman Khan.

f) Plot No.61 admeasuring 167 Sq.yards in Sy.No.544, 545, 546/ 1 & 546/ 2 at Jai Bhavani Nagar, Rallaguda, Shamshabad, vide reg.sale deed No.7593/ 2007, dt.23.10.2007 of SRO, Shamshabad purchased from R. Ashok in the name of Md.Asad Khan.

No evidence worth the name was adduced by the petitioner to dislodge the case established by the 1st respondent. Hence, it can safely be held that the petitioner neglected to maintain the respondents 1 and 2 and that they have made out valid and sufficient grounds to award maintenance. Be that as it may. The petitioner is an able bodied man capable of earning. By taking into consideration the economic condition of the petitioner, his properties & income, the capacity of the petitioner to earn, the basic needs of the respondents 1 & 2, the present day cost of living and the social status of the

families, the court below had awarded a maintenance of Rs.3,000/- each to the respondents 1 & 2. The wife was awarded only Rs.3,000/- per month as she was already awarded Rs.2,000/- per month in the DV Case. The said amount awarded to the respondents 1 and 2 warrants no interference in the facts and circumstances of the case. On a careful examination of the facts and evidence this Court is satisfied that there is no merit in the contentions of the petitioner and that the order impugned is justified and is sustainable under facts and in law. The points are accordingly answered against the petitioner herein and in favour of the respondents.

6. It is to be noted that the learned counsel for the petitioner contended that the learned Judge of the Court below ought to have awarded maintenance from the date of the order but not from the date of the petition. In the decision in *Jaiminiben Hirenbai Vyas & ANR. Vs. Hirenbai Rameshchandra Vyas & ANR*¹ the Supreme Court referred to the earlier decision in *Shail Kumari Devi v. Krishan Bhagwan Pathak*² wherein it was held as follows:

20. Again, there is no substantial change so far as the date of payment is concerned. Under Sub-section (2) as originally enacted, it was provided that such maintenance could be made payable from the date of the order or if so ordered, from the date of application. Even after the amendment of 2001, an order for payment of maintenance can be made by a Court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the amount of maintenance can be paid from that date, i.e. from the date of application.

In *Jaiminiben Hirenbai* case it was held as follows:

“In *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 9 SCC 632; Para's 39-41 this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In *Shail Kumari Devi*, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so

¹ AIR 2015 SC 300

² (2008) 9 SCC 632

ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.”

“Section 125 of the Code of Criminal Procedure, therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Code of Criminal Procedure, the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.”

In the case on hand, considering the plight of the respondents and the facts and circumstances in which 1st respondent and her child are placed, it is just and fair to award maintenance from the date of the application. Accordingly this Court finds that the Court below rightly awarded maintenance from the date of the petition.

7. On the above analysis, this Court holds that there is no infirmity or illegality or impropriety in the order of the Court below and hence, the impugned order brooks no interference. Viewed thus, this Court finds that there is no merit in the revision and that, therefore, the revision is liable to be dismissed.

8. In the result, the Criminal Revision Case is dismissed confirming the order of the Family Court. There shall be no order as to costs. The petitioner shall pay the entire arrears of maintenance upto date to the 1st respondent within two months in two equal monthly instalments.

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

M. SEETHARAMA MURTI, J

28.07.2017
Vjl