

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No. 281 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, unsuccessful respondent, is directed against the orders, dated 01.11.2016, in MC.No.269 of 2012 passed by the learned Judge, III Additional Family Court, Ranga Reddy District at Malkajgiri.

1.1 By the said orders, the learned Judge, Family Court, awarded a monthly maintenance of Rs.13,000/- to the 2nd respondent herein/ wife from the date of the petition.

2. I have heard the submissions of Sri T.L. Kantha Rao, learned counsel for the petitioner/ husband and of Sri S. Venkateswarlu, learned counsel for the 2nd respondent/ wife. I have carefully perused the material record.

3. The parties in this revision shall hereinafter be referred to as the petitioner and the 2nd respondent as arrayed in this case for convenience and clarity.

4. To begin with it is necessary to refer to the pleadings and submissions of the parties.

4.1 The case of the second respondent as stated in her petition and her rejoinder, in brief, are as follows: 'Her marriage with the petitioner was performed in the month of July, 1980, at Tirupati as per Hindu rites and caste customs. She joined the petitioner at Tirupati. They lived in a rented house. At that time the petitioner was studying M.B.B.S final year. They were blessed with a Son, Rajasekhar, and a daughter, Bhargavi. From the date of the marriage the behaviour of the petitioner used to be different. He also worked

as a house surgeon. They stayed at Tirupati for 11 years. Later, the family shifted to Kavali and the petitioner worked at Tellapallem Hospital. After six months he started private practice at Janathapeta of Kavali and practised for 2 years. Thereafter the family shifted to Lingasamudram, the native place of the petitioner and the 2nd respondent. He worked for some time at Svarama Reddy Hospital at Singaraikonda and after six months he started a private hospital and continued practice for three years at Lingasamudram. During the said three years period one Krishnaveni joined as a maid servant in the said hospital. The petitioner developed illegal intimacy with the said Krishnaveni and, in the year 1996, eloped with her by leaving the 2nd respondent and her children. The 2nd respondent and her children lodged a complaint with Lingasamudram police. Thereafter, the petitioner came and promised that he would take the 2nd respondent and her children to Hyderabad within a short period and that in the meanwhile he would pay a sum of Rs.400/- per month. But, the petitioner failed to do so. Thereafter, on 24.07.2004, the petitioner gave a written undertaking, agreeing to pay Rs.3,500/- to the 2nd respondent towards monthly maintenance. He again failed to pay the said amount. The petitioner also failed to take the responsibility of performing the marriage of their daughter, Bhargavi. The 2nd respondent with great difficulty performed the marriage of the said daughter, Bhargavi, in the year 2003. The petitioner is not maintaining the 2nd respondent since more than ten years. The 2nd respondent has to clear the debts to a tune of nearly Rs.4,00,000/- with interest. The petitioner is working as a Medical Officer and earning nearly Rs.60,000/- per month. He is also running two private clinics, one at his residence and the other at Kallu compound at Alwal and he is earning nearly Rs.50,000/- per month. Therefore, he is capable of paying maintenance to the 2nd respondent. The 2nd respondent has no sources of income to maintain herself. The 2nd respondent has undergone gynaecology operation. She is prone to severe

health problems and she is undergoing treatment. Therefore, the application is filed for award of maintenance @Rs.30,000/- per month.'

4.2 The case of the petitioner in his counter and additional counter is in the nature of denial. His principal contentions are as under: 'The 2nd respondent is not his legally wedded wife. She is the wife of his elder brother, Nagaiah @ Veera Raghavaiah. Their marriage was solemnized in the year 1980. They both lead marital life for about 3 ½ years. Thereafter, the 2nd respondent developed illicit relation with some other person and eloped with him by converting into Christianity. The petitioner pursued his MBBS from 1979-1980 as an inmate of Mens' Hostel, SV Medical College, Tirupathi. The petitioner completed his internship at SV Medical College and married Ms. Hebseeba. About 15 years back, the petitioner attended the marriage function of his elder brother's daughter with the brother of the 2nd respondent. He saw the 2nd respondent on the said occasion. Therefore, the question of the 2nd respondent's marriage with this petitioner and leading of marital life as alleged by the 2nd respondent does not arise. Therefore, the claim of the 2nd respondent is false and concocted for the purpose of filing the petition. The documents and the alleged undertaking are false and fabricated for the purpose of the petition. The 2nd respondent is put to strict proof of the same. The petition may be dismissed.'

5. Before the Family Court, the 2nd respondent and her supporting witnesses were examined as PWs1 to 3 and exhibits P1 to P6 were marked. The petitioner and his supporting witness were examined as RWs1 and 2 and exhibits R1 to R3 were marked. Exhibit P1 is a pair of family photos; Exhibit P2 is the undertaking, dated 24.07.2004, said to have been given by the petitioner herein; Exhibit P3 is his salary certificate, dated 06.12.2003; Exhibit P4 is the original medical certificate, dated 05.10.2013; Exhibit P5 is the marriage card; and, Exhibit P6 is a bunch of three family photos. Exhibit R1 is the certificate

issued by the Health Department; Exhibit R2 is a marriage certificate of the petitioner herein; and, Exhibit R3 is a photograph.

6. On merits and by the order impugned in this revision, learned Judge of the Additional Family Court awarded monthly maintenance @Rs.13,000/- from the date of the petition besides a sum of Rs.20,000/- towards costs of the petition.

7. The learned counsel for the petitioner-husband submitted as follows: 'The Court below committed a grave error in accepting and acting upon the evidence of PW1 and in considering exhibit P1 (group photo) as the basis to draw a conclusion that there is marital relationship as wife and husband between the petitioner and the 2nd respondent. The Court below went wrong in placing the onus on the petitioner to prove the defence contentions. The Court below wrongly exempted the 2nd respondent from proving her relationship as a legally wedded wife of the petitioner, as alleged in her petition. The Court below overlooked the requirement of essential documentary evidence like wedding card, marriage photos and lack of family members' evidence and went out of way in deciding the marital relationship of the petitioner and the 2nd respondent by merely accepting a group photo wherein all the relatives appear on the occasion of the marriage of a daughter of the elder brother of the petitioner. The Court below went perverse in not considering the evidence of RW2, who was an eyewitness to the marriage of the 2nd respondent with the petitioner's elder brother. The Court below misled itself while considering the evidence of PWs1 and 3, who made contradictory statements in their depositions about the 2nd respondent's alleged marriage with the petitioner. PW1 clearly deposed that exhibit P6 photo related to her daughter's marriage. The Court below utterly went wrong in presuming that exhibit P1 belongs to the newly wedded couple and decided the marital relation of the petitioner and the 2nd respondent by assuming that they are

blessing the newly wedded couple. The Court below has not assigned any reasons much less cogent reasons for reaching at a conclusion in favour of the 2nd respondent regarding the plea of alleged marriage alleged to have been performed in the year 1980. The Court below solely based its decision on the group photo taken in the year 2004. The Court below has not taken into consideration exhibit P5, marriage card, which is self contradictory in its contents and is unfavourable to the case of the 2nd respondent. The Court below utterly failed to take into consideration the conditions required to be pleaded and proved by the 2nd respondent for grant of maintenance on the ground of live-in relationship between the petitioner and the 2nd respondent as envisaged in the judgment reported in AIR 2011 SC 479. The Court below granted maintenance from the date of petition and not from the date of the order. The award of Rs.20,000/- towards costs of the petition is unfair, unjust and unreasonable. The Court below based its findings on mere surmises and conjectures and not on any evidence available on record. Hence, the order under revision awarding maintenance to the 2nd respondent is liable to be set aside.'

8. On the other hand, the learned counsel for the 2nd respondent while supporting the orders of the Court below had submitted that the Court below after taking into consideration all the relevant aspects awarded the maintenance and that the maintenance amount 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 2nd respondent 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. He further submitted that the 2nd respondent by adducing required standard of evidence proved her relationship and also her entitlement to claim maintenance and the liability of the petitioner to pay maintenance to her and that in a case filed for award of maintenance no detailed enquiry is necessary

as the findings in the maintenance proceedings are subject to the final determination of the rights of the parties in competent civil proceedings.

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

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

10. POINTS:

10.1 The relationship between the petitioner and the 2nd respondent is disputed by the petitioner. However, the 2nd respondent in her evidence as PW1 maintained her stand and reiterated her pleaded case, which is stated supra. She also stated that the petitioner is her maternal uncle. She denied the suggestion that one C. Nagaiah, the elder brother of the petitioner, was her husband and that she deserted him after living with him for a period of 4 years. She further denied the suggestion that she is not the wife of the petitioner and that he never married her and stated that she and the petitioner lived at Tirupati, Sngarayakonda, Kavali and Lingasamudram. She filed exhibit P6 photographs taken at the time of marriage of her daughter. She asserted that after marriage she embraced Christianity. She also filed and relied upon exhibit-P2 undertaking, dated 24.07.2004, and stated that a meeting was held in the presence of elders and that in their presence the petitioner agreed to pay Rs.3,500/- and gave the above said written undertaking; but failed to fulfil the undertaking given by him. Though the learned counsel for the petitioner contended that the said photograph was a group photograph taken on the occasion of the marriage of a daughter of the family, that is, the daughter of the elder brother of the petitioner and that the trial Court accepted the same

as evidence in proof of marriage, the said contention needs no countenance. If the contention of the petitioner that the 2nd respondent is the wife of his elder brother and that after four years of marriage she deserted him and eloped with some other person, she would not have attended the marriage function. The photograph clearly reflects the petitioner and 2nd respondent are together blessing the new couple. PW2 in her evidence stated as follows: - 'The petitioner and 2nd respondent are her parents. She studied upto 5th class at Kavali. Initially she studied 1st to 3rd classes in Vignana Balaniketan and 4th and 5th classes in B N R School. At that time the 2nd respondent was doing private practice at Janathapet. He later shifted the family to Lingasumudram and started his private practice as a Doctor at Ummadisetty Narasimha Satram opposite to Tirumalsetti Kotaiah Samadhi. When she was 11 years of age her father disappeared from the house and after some time she came to know that her father eloped with Krishnaveni who worked as a maid servant in the clinic and set up a family with her at Hyderabad. Afterwards they traced him and she, her mother, brother and uncle approached him. The said Krishnaveni, also known as Hepsiba, abused them in filthy language. Her mother lodged a police complaint with police of Lingasamudram. Her father came to the police station and agreed to take care of them by taking them to Hyderabad and that he would pay Rs.400/- till then. But the petitioner not stood on his words. When she was 18 years of age her mother approached the petitioner along with D. Malyadri, T. Malyadri and T. Chinnamma and informed about her marriage with one Balakotaiah. He refused to attend the marriage but promised to arrange for money and gave two promissory notes for Rs.50,000/- each in favour of her husband but did not pay any money. Her brother's marriage was performed on 30.04.2008. At the time of marriage talks and on all important marriage functions her father/petitioner participated and the concerned photographs are filed. Her father is having much attachment towards her daughter Hearty. In the year 2004 her mother shifted to Jagathgirigutta near

her Father's house at Hyderabad. A meeting was held with elders. At that time her father gave an undertaking that he would pay Rs.3,500/- per month but again failed to pay the same.' She maintained her stand in her cross examination. In fact she was not cross examined on any of the aspects spoken to by her. Further, it was suggested to her that the petitioner herein agreed to pay Rs.50,000- to them and that the petitioner has been providing amounts to them. She denied the suggestion that the petitioner attended the marriages not in the capacity of the father. PW3 is said to be an independent witness who was said to have attended the marriage of the petitioner with the 2nd respondent at Tirupati. He testified that the petitioner and 2nd respondent lived together at Tirupati during the year 1990 and that they shifted to Kavali and resided there till 1995 and that he visited their house. Though the petitioner deposed as per his defence, the above said overwhelming evidence on the side of the 2nd respondent herein remained unrefuted. Though RW2, an advocate who is said to be childhood friend of RW1 was examined, in his cross examination he stated that he does not know if the petitioner married the 2nd respondent while he was in final year MBBS and he also does not know whether the 2nd respondent gave birth to two children through the petitioner. Thus the evidence brought on record on plain consideration sufficiently established that the 2nd respondent is the wife of the petitioner and that she gave birth to PW2, daughter, and a son under lawful wedlock. Hence, the defence that there is no marital relationship is untenable and needs no countenance.

10.2 Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is also established. The petitioner and the 2nd respondent are living separately. In the considered view of this court, there is no reason to deny award of maintenance to the 2nd respondent-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. 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. As already held, the 2nd respondent sufficiently established her relationship with the petitioner; on the other hand the petitioner having denied the relationship failed to establish the defence or dislodge the well established case of the 2nd respondent. Hence, it can safely be held that the petitioner neglected to maintain the 2nd respondent.

10.3 Now coming to the income of the petitioner, the 2nd respondent having pleaded that the petitioner is working as a Medical Officer and earning nearly Rs.60,000/- per month produced exhibit P3, salary certificate, dated 06.12.2013. By taking into consideration the economic condition of the petitioner, the capacity of the petitioner to earn, the basic needs of the 2nd respondent and the present day cost of living, the court below had awarded a monthly maintenance of Rs.13,000/- to the 2nd respondent. The said amount awarded to the 2nd respondent warrants no interference in the facts and circumstances of the case. The points are accordingly answered against the petitioner herein and in favour of the 2nd respondent.

10.4 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 Hirenbbhai Vyas & ANR. Vs. Hirenbbhai 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 Hirenbbhai* 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 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 2nd respondent and the facts and circumstances in which she is placed, it is just and fair to award maintenance from the date of the application. Accordingly this Court finds

¹ AIR 2015 SC 300

² (2008) 9 SCC 632

that the Court below rightly awarded maintenance from the date of the petition.

11. 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.

12. 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 2nd respondent within two months in two equal monthly instalments.

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

28.07.2017
Vjl



M. SEETHARAMA MURTI, J