

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL REVISION CASE Nos.220 and 1363 of 2009

COMMON ORDER:

Crl.R.C. No.220 of 2009 is filed by the petitioner-husband, under Sections 397 and 401 of Cr.P.C., assailing the orders dated 08.9.2008 in M.C. No.6 of 2008 on the file of the Judge, Family Court, Guntur, wherein and whereby an amount of Rs.1,200/- per month was granted towards maintenance of the respondent-wife.

2. Crl.R.C. No.1363 of 2009 is filed by the petitioner-wife, under Sections 397 and 401 of Cr.P.C., questioning the orders dated 08.9.2008 in M.C. No.6 of 2008 on the file of the Judge, Family Court, Guntur, being not satisfied with the quantum of maintenance of Rs.1,200/- per month.

3. The parties will be referred to as they are arrayed before the trial Court, to avoid confusion.

4. Learned counsel for the petitioner submitted that the trial Court, without taking into consideration the financial status of the respondent, granted meager amount of Rs.1,200/- per month to the petitioner towards maintenance. He further submitted that the trial Court failed to consider that the respondent is having immovable property and allowed the petition in part on erroneous and untenable grounds. **Per contra**, learned counsel for the respondent submitted that the trial Court, having come to a conclusion that the petitioner is not fit for conjugal life in view of her gynecic problem, ought not to have granted maintenance of Rs.1,200/- per month to her. He further submitted that the trial Court has not taken into consideration the that the petitioner is

having Ac.1.00 cents of land and getting kowl (maktha) of Rs.25,000/- per annum. He further submitted that the trial court has not taken into consideration that the respondent is not having any immovable property and he has to look after the welfare of his mother, maternal grand-mother and the aunt.

The points that arise for consideration, in these revision cases, are:

- (i) Whether the trial Court is not justified in granting maintenance of Rs.1,200/- per month to the petitioner?
- (ii) Whether the maintenance amount granted in favour of the petitioner is on higher side? and
- (ii) Whether there is any illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court?

5. Points 1 to 3 are interlinked with each other; hence, this Court is inclined to address all the three points simultaneously, in order to avoid recapitulation of facts.

6. Before the trial Court, to substantiate her case, the petitioners examined herself as P.W.1. P.Ws.2 and 3 were examined to substantiate the stand of the petitioner. To demolish the case of the petitioner, the respondent himself examined as R.W.1. R.W.2 was examined to substantiate the case of the respondent.

7. Basing on the oral evidence and other material available on record, the trial Court arrived at a conclusion that the petitioner is entitled to claim maintenance from the respondent and granted maintenance of Rs.1,200/- per month.

8. The following admitted facts can be culled out from the material available on record. The marriage of the petitioner was performed with the respondent on 05.6.2002 at Nagendraswamy Temple, Pedakurapadu, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. For one reason or the other, disputes arose between the petitioner and respondent; therefore, the petitioner has been residing at her parents' house. The respondent faced trial in C.C. No.109 of 2005 on the file of the Court of VII Additional Munsif Magistrate, Guntur, for the offence punishable under Section 498-A read with 34 of IPC. After full-fledged trial, the respondent and other accused were acquitted on 19.6.2006. The respondent filed H.M.O.P. No.196 of 2005 against the petitioner for dissolution of the marriage and the same was allowed.

9. A perusal of the record clearly reveals that the petitioner left the matrimonial home of the respondent. The registration of the criminal case against the respondents justifies the petitioner to leave the matrimonial home of the respondent. The trial Court in para-10 of the order made an observation that the petitioner is not fit for conjugal life. Admittedly, no doctor was examined in this case to prove the health condition of the petitioner. This Court is unable to understand how the trial Court arrived to such a conclusion without examining the doctor. It appears, the trial Court gave such a finding basing on the family counseling. Absolutely there is no material on record to establish that the petitioner is not fit for conjugal life. The finding recorded by the trial Court, in this aspect, is not sustainable either on facts or in

law. The material placed before this Court reveals that the respondent intentionally and willfully avoided to provide maintenance to the petitioner.

10. The next question that falls for consideration is whether granting of an amount of Rs.1,200/- per month is sufficient for sustenance of the petitioner or not. The trial Court made an observation that the petitioner is not having any income. In order to appreciate the finding of the trial Court, it is not out of place to extract hereunder the relevant portion of the deposition of P.W.1:

“I am having Ac.1.00 cents of land in my name and I get Rs.25,000/- per year as kowl.”

11. The testimony of P.W.1 negatives the finding of the trial Court that the petitioner is not having source of income. The testimony of P.W.1 clearly establishes that she is having Ac.1.00 cents of land and getting yearly income of Rs.25,000/-. Her testimony further reveals that she has been attending to coolie work. In the cross-examination, P.W.1 in unequivocal terms deposed that she did not file any document to prove that the respondent is having landed property. If really the respondent is having landed property, what prevented the petitioner to secure necessary documents from the Mandal Revenue Office, and file before the court, in support of her case. Except the self-served testimony of P.W.1, there is no other convincing evidence to prove that the respondent is having landed property. In the cross-examination, P.W.1 admitted that the respondent has to maintain his mother, maternal grand-mother and aunt. There is a moral and social obligation on the part of the husband to provide maintenance to the wife. Under Section 125 Cr.P.C., wife includes

a divorced wife. There is no dispute between the parties with regard to their marital status. In the cross-examination, the respondent (R.W.1) denied the suggestion that he is earning Rs.3.00 lakhs per annum. The petitioner may earn something even by attending coolie work. Now-a-days, a coolie may get not less than Rs.200 to 300/- per day depending upon the nature of the work. The amount of Rs.1,200/- per month is hardly sufficient for sustenance of an individual. The petitioner herself admitted that the respondent has to maintain his mother, grand-mother and aunt. The respondent is not having any immovable property; in such circumstances, it is not a fit case for enhancement of maintenance amount granted by the trial Court.

12. Having regard to the peculiar facts and circumstances of the case, I am of the considered view that granting of an amount of Rs.1,200/- per month to the petitioner is neither on higher side nor on lower side. There are no grounds much less valid grounds to interfere with the findings recorded by the trial Court to the extent of granting of quantum of maintenance.

13. Accordingly, both the Criminal Revision Cases are dismissed. Consequently Miscellaneous Petitions, if any, pending in these revisions shall stand closed.

T.SUNIL CHOWDARY, J

August 10, 2017
Rns