

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2358 of 2015

JUDGMENT:

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C, is filed by the petitioners questioning the propriety, legality and regularity of the Order passed by the Judge, Family Court at L.B.Nagar, Rangareddy District, in M.C.No.218 of 2011 dt. 18.08.2015, dismissing the petition filed under Section 125 of Cr.P.C. by the petitioners herein, upholding that the petitioners herein are having sufficient means to maintain themselves.

Petitioner Nos. 1 and 2, who are aged 53 and 29 years respectively, filed a Petition under Section 125 of Cr.P.C. claiming maintenance @ 12,000/- per month alleging that petitioner No.1 is the wife and petitioner No.2 is the daughter of the respondent herein, who retired from service in Commercial Tax Department and drawing Rs.19,000/- per month as pension, and petitioner No.1/wife was blessed with two children by name Rajnarayana and Aruna and Rajnarayana, the son of the petitioner No.1, is working in Bangalore and petitioner No.2 i.e., the daughter, completed her MBBS in the year 2009.

It is specifically contended by the petitioners that the respondent developed illicit intimacy with another lady, who is now living with him, and neglected them to provide anything. It is further contended that Petitioner No.1 is suffering from old age ailments and incurring huge amount towards medication, but the respondent being a pensioner refused and neglected the petitioners to provide any maintenance to eak out their livelihood and therefore, claimed

Rs.12,000/- each by both the petitioners towards monthly maintenance.

The respondent filed Counter, while admitting the relationship between the petitioners and respondent as wife and husband, contending that he never refused and neglected to maintain the petitioners and that he purchased a house in the name of petitioner No.1 at Chityal and also purchased 29 gunts of plotted land in Chityal and later petitioner No.1 sold away the house and the land of 29 guntas without his knowledge for an amount of Rs.20,00,000/- and also she received compensation from the National High Way Authority for acquiring part of the said land in Chityal. He also claimed that petitioner No.1 is getting Rs.6,500/- per month towards rent from the house at Madhura Nagar and not Rs.1500/- as contended by her. The respondent further contended that he spent entire retirement benefits for construction of first floor on the house at Madhura Nagar believing petitioner No.1 and his son and that petitioner No.2 was completed her MBBS and M.Sc in Organic Chemistry and shifted to Bangalore, earning Rs.35,000/- towards salary. He further contended that the present application is filed with ulterior motive, inspite of the fact that he is incurring heavy expenses towards his old age ailments and he spent huge amount to the petitioner No.2 by obtaining loans from others when she was suffering from left lower lobe pneumonities with para pneumonities effusion while pursuing her house surgeon at Khammam in the year 2008 and presently, petitioner No.2 is normal and healthy and is working in Medicare Hospital at LB Nagar and getting income of Rs.15,000/- to 20,000/- per month and therefore, none of the petitioners are entitled to claim any maintenance.

He further contended that petitioner No.1 fell sick in the year 1982-1983 and as she was not in a position to attend the household

work or cooking food for the family, on her advice, he got married another women, who is his relative, namely Jayamma in the year 1983, after obtaining consent from the petitioner No.1 and lived jointly in the village. He also contended that he married Jayamma as petitioner No.1 wanted someone to look after her two children and later Jayamma gave birth to two daughters namely Bhargava Laxmi and Yamuna, who are college going, and hence, the respondent has to maintain his two children born through Jayamma by spending huge amount for his treatment because he is suffering from diabetic and other old aged problems and prayed for dismissal of the petition.

During enquiry, Pws. 1 and 2 were examined and Exs. P.1 to P.6 were marked. None were examined on behalf of the respondent and no documents were marked.

Upon hearing both the counsel, the Judge, Family Court, dismissed the petition on the ground that the petitioner No.1 is having sufficient means to maintain herself.

Aggrieved by the Order dt. 18.08.2015 in M.C.No.218 of 2011 passed by the Judge, Family Court at L.B.Nagar, Rangareddy District, the present Criminal Revision case is filed on various grounds, mainly on the ground that the dismissal of the petition recording a finding that petitioner No.1 had sufficient means to maintain herself is illegal and refusal to maintain wife, while admitting relationship between petitioner No.1 and the respondent as husband and wife, is grave error in the order passed by the trial Court and prayed to set aside the same.

During hearing, learned counsel for the petitioner contended that petitioner No.1 did not possess anything to maintain herself and on the other hand, the respondent is admittedly a pensioner receiving

more than Rs.19,000/- per month as pension and the respondent has to maintain her legally wedded wife till his death. That apart, the contention of the learned counsel for the petitioner is that the respondent married one Jayamma and blessed with two children and he is maintaining Jayamma and the children born through her, while denying maintenance to the petitioners, that itself is sufficient to conclude that respondent neglected the petitioners without providing any maintenance for them and prayed to allow the petition granting maintenance as claimed by petitioner No.1.

Learned counsel for the respondent contended that respondent is a diabetic patient and all toes of his leg were removed and they are oozing now and he requires bandage every day to maintain good health and therefore, he is spending huge expenditure for his medical expenses, besides maintaining his two children born through Jayamma, who are college going children, as the daughter and son born through petitioner No.1 are having sufficient income, the petitioner No.1 cannot demand maintenance from him, who is a pensioner, and prayed to dismiss the petition confirming the Order passed by the Judge, Family Court.

Considering rival contentions and perusing the material available on record, the Points that arise for determination are:

- 1) *Whether petitioner No.2 is entitled to claim maintenance being a major under Section 125 of Cr.P.C.?*
- 2) *Whether the respondent neglected and refused to maintain the petitioner No.1 and if so, petitioner No.1 is entitled to any maintenance and at what amount ?*

Point No.1: Undisputedly, petitioner No.2, is major aged 29 years, who is a medical graduate by the date of filing the petition. Section 125 of Cr.P.C. deals with maintenance to wife, children and parents. As per Section 125 of Cr.P.C., if any person having sufficient means neglects or refuses to maintain his wife, who is unable to maintain herself, or his legitimate or illegitimate minor children, whether married or not, unable to maintain itself, or to the legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate shall award maintenance.

The minor is defined under the explanation to 125 Cr.P.C. and according to it, a person who, under the provisions of the Indian Majority Act, 1875 (Act 9 of 1875), is deemed not to have attained his/her majority. Therefore, a person, who did not attain majority, is a minor. But, however, there is no clear provision of law in the above Act as to whether a person, who crossed 18 years, is a major. But the normally a person who crossed the age of 18 years is treated as major.

But here, Petitioner No.2 was aged 29 years by the date of filing the petition and she is a medical graduate. She being a major daughter, who is a medical graduate, is not entitled to claim maintenance under Section 125 Cr.P.C. as the grant of maintenance is restricted to minor legitimate or illegitimate children, who are unable to maintain themselves. Therefore, the petitioner No.2 is not entitled to claim maintenance. Accordingly, the Point is answered against the petitioner No.2 and in favour of the respondent.

Point No.2: Undisputedly, petitioner No. 1 is the wife of respondent. But, conveniently, the respondent married another woman by name Jayamma and is blessed with two children through her and living with her separately, leaving petitioner No.1 as destitute. Therefore, the respondent, living separately with another woman, neglecting and refusing to take care of petitioner No.1, is not a ground to deny maintenance to his legally wedded wife.

The other ground leading to dismissal of the petition by the Judge, Family Court, is that petitioner No.1 possessed sufficient means to maintain herself. In view of the reasons assigned by the trial Court, it is necessary to advert to the evidence of PW.1. In her cross examination, she admitted about receipt of compensation of Rs.1,75,000/- from National High Way Authority for acquiring the land at Chitiyal and so also admitted that she borrowed amount from her brother Kotilingam for purchasing the said land and she discharged the debts by purchasing 29 guntas of land. It is further clear from the evidence that she did not possess any means to maintain herself. In the cross examination of PW.1 by the counsel for respondent, she admitted that the house bearing D.No.3-9-513/1 is only one portion purchased about 6 years back, but the counsel for the respondent put certain questions to the petitioner to elicit some facts, but she did not admit in the cross examination that the house in which she is residing, was constructed by the respondent with his retirement benefits, but admitted that her son obtained loan from ICICI Bank and constructed first floor. Therefore, the material on record does not disclose that she possessed any amount to maintain herself like clothing, food and medication etc., In the entire cross examination of PW.1, nothing has been elicited to substantiate the contention of the respondent that petitioner No.1 is having sufficient means to maintain herself. She

admitted that she received Rs.1,75,000/- from National Highway Authority for acquiring the land for road widening at Chitiyal. Mere possessing Rs.1,75,000/- is not sufficient to meet her daily necessities like food, clothing and medication etc., during her entire life time. But, the trial Court recorded a finding that she possessed sufficient means to maintain herself as the source of income is rent from the first floor of the building, which is allegedly let out for Rs.15,000/- to Rs.20,000/-. But, this contention was not substantiated by any evidence and more curiously, the respondent did not enter into the witness box, at least to deny the allegations made in the petition and support the contentions he raised before the trial Court in his counter. Therefore, in the absence of any evidence let in by the respondent, it is difficult to uphold the contentions of the respondent.

Learned counsel for the petitioner, during hearing, requested this Court to dismiss the petition on humanitarian grounds, contending that the respondent is suffering from diabetic and other health problems and petitioner No.1 can recover maintenance from her son and daughter, who are highly placed. But, that is not a ground to deny maintenance to petitioner No.1/wife.

Admittedly, the respondent is receiving Rs.19,000/- per month as pension and he is maintaining his second wife and two children born through second wife while refusing to maintain first wife for one reason or the other, which is not substantiated by any amount of evidence, since he was not examined as a witness before the Judge, Family Court.

In *State of Bihar v. Arvind Kumar*¹, the Apex Court held that individualized or personalized justice or sympathy and issue of

¹ (2012)12 SCC 395

direction contrary to law or de hors statutory provision and such direction is impermissible. Thus, the Courts are expected to pronounce judgments in accordance with law and sympathy will not be considered in pronouncing the Orders by the Courts. As per the principal laid down by the Apex Court, sympathy will have no place in the judgment and the Court is bound to decide the matter in accordance with law. So, the alleged suffering from Diabetic and inconvenience of the respondent to maintain the petitioner No.1, while maintaining his second wife and children, is unbelievable and therefore, I am not inclined to accept the contentions of the learned counsel for the respondent.

As seen from the material on record, petitioner No.1 is living in the house bearing No.3-9-513/1 and getting Rs.1500/- per month by way of rent and on the other hand, the respondent failed to substantiate his contention that she is getting more than Rs.15,000/- or Rs.20,000/- by examining any witness including himself. Therefore, such contention cannot be accepted. When petitioner No.1 is getting Rs.1500/- only, it is hardly insufficient to meet both ends, taking into consideration the price index and cost of living during these days and on the other hand, it is a fit case to award maintenance to the petitioner No.1 @ Rs.6000/- per month, as claimed by the petitioner No.1 since the trial Court did not consider the legal obligation of the respondent to maintain his legally wedded wife. Hence, this issue is answered in favour of petitioner No.1 and against the respondent.

Accordingly, this Criminal Revision Petition is allowed setting aside the Order Dt. 18.08.2015 in M.C.No.218 of 2011 passed by the Judge, Family Court at L.B.Nagar, Ranagareddy District, while granting maintenance to the petitioner No.1/wife @ Rs.6000/- per month.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 07-08-2017.
eha



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



Crl.R.C. No.2358 of 2015

Dt. 08-08-2017

eha

