THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRL.P.Nos.7335 and 7336 of 2017

COMMON ORDER

The self-same petitioner in the two petitions is the respondent in M.C.No.66 of 2017 pending on the file of the Judge, Family Court, Ranga Reddy District, since transferred from the Judge, Family Court, Hyderabad vide orders of transfer of this Court in Tr.Crl.P.No.309 of 2016 dated 28.12.2016.

2. The first respondent in these petitions is the wife of petitioner and is an Advocate practicing in the High Court, is undisputed. The impugnment in the two petitions is the orders of the learned Judge, Family Court, City Civil Court, Hyderabad in M.P.No.18 of 2015 in M.C.No.186 of 2012 dated 24.11.2016, while it was before that Court as M.C.No.186 of 2012, and the orders of the learned Judge, Family Court, Ranga Reddy District, L.B.Nagar, in Crl.M.P.No.127 of 2017 in M.C.No.66 of 2017 dated 01.05.2017 after the M.C. was transferred and renumbered as M.C.No.66 of 2017.

3. So far as the order in M.P.No.18 of 2015 in M.C.No.186 of 2012 covered by Crl.P.No.7335 of 2017 concerned, it is the docket order dated 24.11.2016, from the application of the wife of petitioner under Order XVI Rule 7 read with Section 151 CPC under Section 254(2) Cr.P.C. and under Section 91 Cr.P.C., seeking the Court to direct the Chief Commissioner of Income Tax, Income Tax Department, I.T.Tower, A.C.Guard, Masab Tank, Hyderabad, to furnish the tax returns vide pan card No.AKGPR8948Q for the years 2006-2015 to know the financial

capacity and the sources of income of her husband. The docket order dated 24.11.2016 reads as under:

> "Heard. In view of the representation, the respondent is directed to file authenticated copies of income tax returns during the period from 2006 to 2015. Call on 02.12.2016".

4. The said order is impugned in the grounds urged in seeking to set aside. The contention of the petitioner is that the marriage of the couple took place on 26.05.2010 and his wife voluntarily left his company in February, 2011 within one year of marriage and he filed matrimonial petition to annul the marriage or alternatively to dissolve on the ground that she is elder to him about 11 years in age and that if at all he succeeds in the said matrimonial petition, she is not entitled to any maintenance from him and that the learned trial Judge erred in not passing the orders when the contention is that his employment was terminated by his employer and he has no income and though he has a house, half of it is now in her occupation in view of the orders of this Court in Crl.M.P.No.409 of 2015 in Crl.R.C.No.2637 of 2013 and he is not even receiving any rental income there from and the trial Judge thereby committed error in passing the order directing him to file authenticated copies of income tax returns when he too filed five petitions in 2015 with S.R.Nos.5920, 5921, 5922, 5924 and 5928 of 2015 on 14.10.2015 by served notice to his wife, she did not even file counters and the trial Judge returned those petitions on silly objections and even resubmitted, the same were not disposed of. It is also the contention that his wife is a leading practicing advocate since 2006, a post graduate in Law, she has LIC agency, she is a tax consultant and is having agricultural lands in her name with income there from apart from

legal counsel for Oriental Insurance Company Limited and also got fixed deposits in several bank accounts and she is an income tax assessee with PAN No.ALTPK4442J. It is also an admitted fact in her counter in I.A.No.261 of 2015 in I.A.No.473 of 2012 in O.P.No.1279 of 2011 that prior to her marriage, she has self earned and saved proceeds of about Rs.10 lakhs allegedly given as dowry and 10 tulas of gold and Rs.1 lakh worth clothes and Rs.1 lakh worth household articles and Rs.5 lakhs allegedly incurred for marriage expenses, that shows she is financially affluent apart from no truth in the allegations of giving any dowry etc., and thereby allowing the petition is unsustainable.

5. Coming to Crl.P.No.7336 of 2017, which is filed against the order dated 01.05.2017 in Crl.M.P.No.127 of 2017 in M.C.No.66 of 2017 after the case was transferred to the Judge, Family Court, Ranga Reddy District and renumbered as M.C.No.66 of 2017, and in Crl.M.P.No.127 of 2017 filed under Order XVI Rule 6 read with Section 151 CPC, he averred that the respondent is a leading advocate having nine years experience and is also working as LIC agent, as legal counsel in Oriental Insurance Company and Tax Consultant and receiving commissions from the said organizations and she also got Ac.1.19 gts of agricultural wet land which was purchased by her and she has got multiple source of income besides fixed deposits in State Bank of India, Adilabad, and receiving interest for the same. She also contested for membership in Bar Counsel and spent amounts in the elections and she filed DVC case against him and his family members and in her cross-examination, she admitted that she was an income tax assessee. Therefore, her income tax returns are essentially required to be summoned with her pan card No.ALTPK4442J. He further averred that

the respondent also admitted in her evidence that she is also working as LIC agent and receiving commission from agent No.709457 and also received commission from Oriental Insurance Company and also got fixed deposits in State Bank of India, Adilabad Branch, referred supra.

6. To arrive at correct conclusion of the income tax, it is just and essential to summon the income tax returns of her and the LIC policy particulars of her with commission earned and received and also the documents relating to pattadar passbooks and title deeds and registered document of her relating to the property and as legal counsel of Oriental Insurance company with the commission she earned and the particulars there from.

7. The said petition was contested by her by denying the averments and impugning the maintainability saying that earlier, she filed M.P.No.18 of 2015, referred supra, to summon the income tax returns of petitioner and the Court passed order directing him to file income tax returns for the years 2006-2015, but he did not comply with the same and the present petition is filed by misleading the facts to force the respondent to accept for divorce in FCOP No.378 of 2017 and the MC filed by her is pending for more than four years and she could not get maintenance though he is rich and efficient having filed income tax returns with pan card and paid income tax to a tune of Rs.9,66,807/- and drawing more than Rs.4,00,000/- per month in Google India International Software company. According to her, she is neither leading Advocate nor earning much there from and it is a false allegation and she denied that she is an agent of LIC, legal counsel of Oriental Insurance Company and Tax Consultant and that though she earlier worked as LIC agent and earned commission, presently she is not doing

the alleged business and so far as agricultural land of Ac.1.19 gts concerned, she purchased the same from her savings is not correct, but her grand father purchased the same, which is at Sadasivapet and it is a dry land and no crops are raised. She admitted that she is having fixed deposits in the State Bank of India, Adilabad Branch, in the joint account of her and her mother and the said fixed deposits were taken by her mother being illiterate and her name was mentioned as joint account holder and that she used to receive Rs.5,000/-per month as a Junior Advocate, but now she is unable to get the same in view of the several cases filed against her by her husband and thereby sought for dismissal.

8. The Court observed in the impugned order that she filed Crl.M.P.No.26 of 2012 for interim maintenance, which is renumbered as Crl.M.P.No.73 of 2017 after transfer of original M.C.No.186 of 2012 to the Court of Judge, Family Court, Ranga Reddy and renumbered as M.C.No.66 of 2017. So far as summoning of the income tax returns and the particulars of policies from LIC, Oriental Insurance Company and from tax consultant concerned, the trial Judge observed that the petitioner must explain whether he made efforts to get the certified copies by approaching appropriate authorities by virtue of Rule 129 of Civil Rules of Practice and thereby dismissed the said petition.

9. Heard the learned counsel for the petitioner and also the first respondent as party-in-person and also the Public Prosecutor as formal party representing the State, the second respondent.

10. The impugnment from the facts referred supra to lead evidence regarding the means of both of them respectively, in the said maintenance case since transferred from the Judge, Family Court,

Hyderabad to the Judge, Family Court, Ranga Reddy District, and original M.C.No.186 of 2012 was renumbered as M.C.No.66 of 2017 concerned, a perusal of the two orders would show that the petition filed by the petitioner was dismissed when he sought for income tax returns etc., and the petition filed by the respondent was allowed when she sought for income tax returns etc., both are running contrary to other though passed by two different Courts before the date of transfer of M.C., by the Judge, Family Court, Hyderababd and the other on transfer by the Judge, Family Court, Ranga Reddy District.

11. Having regard to the above, the very orders are *per se* unsustainable and are liable to be set aside and accordingly set aside by remanding the two petitions with a direction to the Judge, Family Court, Ranga Reddy District, for disposal afresh also with reference to the three Bench expression of the Apex Court in **GOPAL KRISHNAJI KETKAR v. MOHAMED HAJI LATIF**[1] of the principle laid down therein that it is the duty of the parties to produce the best evidence and failure to produce, irrespective of burden of proof, the Court can draw adverse inference respectively.

12. Accordingly, the Criminal Petitions are disposed of. Miscellaneous petitions, if any, pending in these petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

13th September, 2017
sj

[1] 1968 SC 1413