

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.R.C.No.1662 of 2017

ORDER

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., questioning the propriety and legality of the order passed in M.C.No.49 of 2014 by the Judge, Family Court-cum-VI Additional District Judge, Khammam, dated 04.05.2017, declining to grant maintenance to the petitioner, who is the wife of 2nd respondent herein.

2. Petitioner along with her daughter, aged 14 years, filed petition under Section 125 Cr.P.C., claiming maintenance at the rate of Rs.6,000/- per month to her and Rs.8,000/- per month to her daughter, 2nd petitioner therein, contending that she is the legally wedded wife of respondent and the 2nd petitioner is the daughter born during their wedlock and she was necked out initially on various grounds and later, the matter was settled and they were residing in one house in different portions as advised by the elders and the respondent refused to pay maintenance to petitioners before the elders.

3. The respondent filed counter stating that the petitioner was leading luxurious life by spending the entire amount, thereby he incurred heavy debts and the persons, who advanced amount on interest basis, were insisting him to repay the same and in such unavoidable circumstances, the respondent sold his house situated

at Pandurangapuram and shifted to a rented house and he denied the liability to pay maintenance.

4. During enquiry, P.Ws.1 and 2 were examined and marked no document on behalf of petitioners. On behalf of respondent, R.Ws.1 and 2 were examined and marked no document.

5. Upon hearing argument of both the counsel, the Court below concluded that the 1st petitioner was living in adultery, thereby she is disentitled to claim maintenance under Sub-section 4 of Section 125 Cr.P.C., and declined to award maintenance. Aggrieved by the said order, the present revision is filed.

6. During hearing, learned counsel for petitioner contended that without considering the alleged adultery, the finding recorded by the Court below regarding adultery is not sufficient to deny the maintenance and unless the 2nd respondent proved that the petitioner was continuously living in adultery, denial of maintenance by exercising power under Sub-section 4 of Section 125 Cr.P.C., is illegal and in fact, no such plea was raised in the counter. Therefore, the order of the Court below in M.C.No.49 of 2014 is irregular and illegal and prayed to set aside the same.

7. Learned counsel for respondent contended that though no plea was raised in the counter regarding the petitioner living in adultery, the facts elicited in the cross-examination of witnesses suffice to deny the maintenance in view of Sub-section 4 of Section 125 Cr.P.C. and supported the order.

8. In view of the specific plea raised by petitioner, the contents of the counter are adverted to by this Court. In the counter filed before the Court below, the respondent did not raise any specific plea that the petitioner was living in adultery to deny maintenance taking advantage of Sub-section 4 of Section 125 Cr.P.C. The only specific plea in paragraph 8 of the counter is as follows:

“The real facts are that the respondent and petitioner No.1 lead happy marital life for a period of 6 years at Pandurangapuram i.e., in the own house of the respondent and both of them lived together happily, were blessed with a male child. It is the petitioner No.1 who used to lead luxurious life and that used to spent huge amounts every month thereby incurred heavy debts the petitioners who advanced the amounts on interest basis have been insisting the respondent to repay the same with interest accrued thereon and as such in such an avoidable circumstances, the respondent sold his only house owned by him, situated at Pandurangapuram and shifted into a rented house. The respondent sold the house only because of heavy expenses incurred by his wife i.e., petitioner No.1 herein”.

9. The contents in other paragraphs are only regarding the status of the petitioner and respondent etc. However, it is explicit from the allegations in the paragraph extracted above that the respondent did not raise any plea regarding the petitioner living in adultery continuously which disentitles her to claim maintenance in view of the bar under Sub-section 4 of Section 125 Cr.P.C. Of course, certain few facts are elicited regarding opening of door by petitioner and one Jagdeesh when the respondent knocked the door of the portion occupied by petitioner. Merely because the petitioner and Jagdeesh opened the door, it is difficult to infer that she was living in adultery and unless sufficient material is placed on record, jumping

to such conclusion to deny maintenance invoking under Sub-section 4 of Section 125 of cr.P.C. is serious irregularity committed by the Court below and therefore, the order under challenge is hereby set aside by exercising power under Sections 397 and 401 of Cr.P.C., while remanding the matter to the Judge, Family Court-cum-VI Additional District Judge, Khammam, with a direction to decide the petition filed under Section 125 Cr.P.C., in accordance with law after affording opportunity to both parties and based on the material on record including the pleadings, within three months from the date of receipt of a copy of this order.

10. In the result, the Criminal Revision Case is allowed, setting aside the order dated 04.05.2017 passed in M.C.No.49 of 2014 by the Judge, Family Court-cum-VI Additional District Judge, Khammam, dated 04.05.2017 and remanded the matter to the Court below with a direction to decide the petition filed under Section 125 Cr.P.C., in accordance with law after affording opportunity to both parties and based on the material on record including the pleadings, within three months from the date of receipt of a copy of this order. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

27th October, 2017

sj