THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case Nos. 1493 & 478 of 2017

COMMON ORDER:

The genesis of these two criminal revision cases filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') is the order, dated 29.12.2016, of the learned Judge, Family Court-cum-VI Additional District Judge, Kadapa, passed in M.C.no.12 of 2015.

1.1 By the said orders, the learned Judge, Family Court, allowed the said maintenance case with costs of Rs.3,000/-, and directed the sole respondent therein to pay monthly maintenance @ Rs.7,000/- to the 1st petitioner and @Rs.2,500/- each to the petitioners 2 and 3 from the date of the said order, 20.01.2017.

2. The unsuccessful respondent filed Criminal Revision Case no.1493 of 2017. Being aggrieved of the quantum of maintenance awarded, the petitioners filed the other Criminal R.C.No.478 of 2017. The parties in these revisions shall hereinafter be referred to as the petitioners and respondent, as arrayed in the maintenance case for convenience and clarity.

3. To avoid repetition and to keep it simple, I shall deal with the pleadings, evidence and submissions while dealing with the following points that arise for determination.

4. The points for determination are:-

1) *Whether the petitioners made out valid and sufficient grounds for awarding maintenance?*

2) *Whether the maintenance awarded to the petitioners by the Family Court is not adequate in the circumstances stated by the petitioners?*

3) *Whether the 1st petitioner/wife is not entitled to claim any maintenance in the facts and circumstances stated by the respondent?*

4) *Whether in the facts and circumstances of the case, the maintenance amounts awarded to the petitioners require upward or downward revision?*

5) *To what relief?*

5. POINTS: To begin with, it is necessary to advert to the pleadings of the parties.

5.1 The case of the petitioners, in brief, is this:

The 1st petitioner is the legally wedded wife of the respondent. Their marriage was performed, on 17.11.1996, as per the Hindu Customs and family traditions, at Ashta Lakshmi Kalyana Mandapam, N.G.O Colony, Kadapa city, in the presence of elders of both the families and relatives. After consummation of marriage, the 1st petitioner and respondent resided, along with the parents of the respondent, in a house situated at Raja Reddy street, Kadapa. Thereafter, the respondent went to Hyderabad in search of livelihood. The 1st petitioner also accompanied him and they both lived happily for some time at Hyderabad. On 13.03.2001, the 1st petitioner and

the respondent were blessed with a daughter, M.Taanya, the 2nd petitioner. On 06.11.2006, they were also blessed with a son, by name, M.Lalith Akshaya, the 3rd petitioner. However, after the birth of the 2nd child, disputes arose between the 1st petitioner and the respondent and the respondent started harassing the 1st petitioner. In April, 2013, she lodged a complaint with the Mahila Police Station, Kadapa, about the harassment being meted out to her by the respondent. The said police counselled both the 1st petitioner and the respondent. At that time, the respondent agreed not to harass the 1st petitioner. The respondent started harassing the 1st petitioner once again, from May, 2013. The 1st petitioner informed about the same to her parents and also her parents-in-law. Her parents-in-law assured her that the respondent will change his attitude. The parents of the 1st petitioner advised her to adjust with the respondent for the sake of the children. She accepted the advice of her parents and listened to the words of her parents-in-law and lived with the respondent for a period of one month. However, there was no change in the attitude of the respondent and he continued the harassment. In June, 2013, the 1st petitioner came away to her parents' house along with her children, i.e., petitioners 2 and 3 and is living with her parents since then. The respondent did not evince any interest in the petitioners and failed to take them back. The 1st petitioner also filed F.C.O.P.No.53 of 2014 on the file of the Family Court, Kadapa, for dissolution of the marriage; and, the said OP is still pending. The respondent failed to provide any maintenance to the petitioners. The 1st

petitioner spent an amount of Rs.1,19,885/- and also an amount of Rs.1,92,305/- towards educational expenses of the petitioners 2 and 3. The original fee receipts towards the said expenses are filed along with the petition. The mother of the 1st petitioner is providing financial assistance to the 1st petitioner by depositing amount in her Savings account to enable her to meet her expenses and that of her children. Despite a demand made by the 1st petitioner for providing maintenance to her and her children, the respondent did not provide any maintenance and neglected them by failing to provide maintenance. The respondent is working as a Software Engineer at Hyderabad and is earning an income of Rs.1,70,000/- per month. The 1st petitioner has to meet the maintenance expenses of the petitioners 2 and 3 besides their educational expenses. She requires an amount of Rs.30,000/- per month, towards her maintenance and Rs.20,000/- per month each for the maintenance and educational expenses of her children/the petitioners 2 and 3. In all, the petitioners require a monthly maintenance of Rs.70,000/-. The respondent is liable to pay the said amount to the petitioners. Hence, the maintenance case is filed.

5.2 Per contra, the case of the respondent as could be seen from the pleadings extracted in the order of the Court below, in brief, are as follows: 'The relationship between the parties is admitted. The material allegations in the petition are false. After the birth of the 3rd petitioner, the 1st petitioner started harassing the respondent for unwanted things, like not providing gold ornaments to her. She gave a false police complaint. At the

time of counselling, he agreed that he will not harass the 1st petitioner and he has also signed a statement reduced into writing on a stamp paper, dated 04.05.2013. After the respondent has taken the petitioners to Hyderabad, the 1st petitioner suddenly left the respondent and went away to the house of her parents even without informing the respondent. The respondent is ready and willing to live with the petitioners. The respondent is earning Rs.15,000/- per month. He has to look after his aged parents, who are suffering from old age ailments. The mother of the 1st petitioner is having a Kerosene dealership in the name of the 1st petitioner. The 1st petitioner owns movable and immovable properties and is in a position to maintain her. The petition is liable to be dismissed.

5.3 At trial, the 1st petitioner and the respondent were examined as PW1 and RW1. Exhibits A1 to A13 were marked on the side of the petitioner. No documents were exhibited on the side of the respondent.

5.4 Learned counsel for both the parties made submissions in line with the respective pleaded cases of the parties.

5.5 Learned counsel for the petitioners would submit that the petitioners 2 and 3 are students and that the 2nd petitioner is studying in an institution of Narayana Group of Educational Institutions and the 3rd petitioner is studying in Montessori School and that the 1st petitioner is alone meeting their educational expenses and that to substantiate the said contentions, she has also produced fee receipts of the children and that, therefore, the

contention that the respondent is meeting the educational expenses of his children is incorrect. He would further submit that in view of the fact that the respondent is obliged to meet the educational expenses of the children, the meagre maintenance amount awarded to petitioners 2 and 3 @ Rs.2,500/- per month each is grossly insufficient in the present day cost of living and educational expenses. It is the duty of the parents to provide best education to the children and therefore, the 1st petitioner admitted the children in good educational institutions. The respondent cannot complain that the educational expenses are high as it is his duty and legal obligation to provide best education to his children. He would also submit that the Court below ought to have awarded monthly maintenance @ Rs.10,000/- at least to the 1st petitioner considering the present day cost of living, family status and economic conditions. The trial Court rightly held that the respondent failed to establish that the 1st petitioner is having Kerosene business. However, it erred in not accepting case of the petitioners that the respondent is getting Rs.70,000/- per month towards his salary, besides a sum of Rs.1,00,000/- per annum from his properties. Hence, the orders, insofar as awarding meagre maintenance to the petitioners is required to be modified and the petitioners are entitled to award of maintenance, as prayed for, in the fats and circumstances of the case.

5.6 On the other hand, the learned counsel for the respondent would submit as follows:

After the birth of the second child, the 1st petitioner started harassing the respondent for unwanted things and deserted him for no reason and even without informing him. Her mother and aunt are staying together. She left the company of the respondent/her husband along with her children only to stay with her mother and aunt and help them as there is nobody to look after them. In FCOP 53 of 2014, which was already disposed of by the very same learned Judge, who disposed of the maintenance case, a finding was recorded that the 1st petitioner has left the conjugal society and returned to her parental home and filed the maintenance case and that the 1st petitioner and her mother and PW3-K.Usha Rani, her aunt, are residing together in Kadapa and as the petitioner's mother and PW3 have got no issues, they required the assistance of the 1st petitioner and that might be the reason for the 1st petitioner for returning to the parental home and that there is no specific averment that the respondent has subjected the 1st petitioner to cruelty or proof thereof. The said findings are sufficient not to award any maintenance to the 1st petitioner. The said findings make it manifest that the 1st petitioner alone deserted the respondent without any reason much less valid reason and distanced herself and the children from the respondent. In view of the fact that the 1st petitioner herself deserted the respondent, she is not entitled under law to claim any maintenance. The respondent is meeting the educational expenses of his children. Earlier, he used to pay the fee payable to the educational institutions of the children and give the receipts to the 1st

petitioner as they are required to be shown in the educational institutions as and when required. Taking advantage of the said fact, the 1st petitioner is propagating that she is meeting the educational expenses of the children. Having realised the said fact, the respondent is now retaining the original fee receipts with him. He had produced copies of the receipts in support of his defence. Since he is meeting the huge educational expenses of the children, the maintenance awarded @ Rs.2500/- per month each to the children is adequate. The wife is not entitled to claim any maintenance as she deserted her husband voluntarily and for no reason and estranged herself and the children from the respondent and caused mental agony to him. The findings in the FCOP are by themselves sufficient to deny maintenance to the 1st petitioner. In any view of the matter, the maintenance awarded @ Rs.7,000/- to the 1st petitioner is excessive. The order of the trial Court awarding maintenance to the wife is liable to be set aside, in the facts and circumstances of the case.

5.7 I have gone through the record including the chief examination affidavit of RW1, certified copy of his deposition, copy of order in FCOP 53 of 2014, lodgement schedule, copies of school fee receipts etcetera filed by both the sides along with the material papers in these revisions. I have given detailed and earnest consideration to the facts and submissions and I have perused the material record.

5.8 The relationship between the parties is not in dispute. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. The petitioners 2 and 3 are the children of the couple and that they are presently under the care and custody of the mother, the 1st petitioner, is also admitted. The 2nd petitioner is studying in Narayana Group of Educational Institutions and the 3rd petitioner is studying in Montessori International School is also admitted. In the present revisions, there is no need to deal with the principal matrimonial issues and record any findings as to who amongst the spouses was responsible for the rift and/or estrangement and the serious matrimonial disputes between them as 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 and as it is well settled that the provision provides for speedy remedy for providing maintenance to the wife and eligible children. In the considered view of this Court, there is no reason to deny award of maintenance to the wife unless it is sufficiently established by the husband that the income of the wife, if any, is sufficient for her sustenance. Insofar as the children, who are minors, the petitioner, father is obliged under facts and in law to pay reasonable amount of monthly maintenance to them irrespective of the disputes between him and his wife. The law is well settled that the maintenance awarded shall be adequate for sustenance, food, clothing and

shelter besides essential incidental expenses. In case of children, maintenance to be awarded to them takes in its compass their educational expenses as well as expenses on their extra curricular academic, sports and other activities. While awarding maintenance the social status, economic and living conditions of the family will have to be taken into consideration; 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. Therefore, in view of the contentions of the petitioners, award of maintenance to the 1st petitioner/ wife cannot be denied unless adequate grounds are established by the respondent for denial of award of maintenance to her.

5.9 The wife contends that she has to leave the matrimonial home on account of harassment meted out to her by the respondent and as there was no change in his attitude even after she rejoined and lived with him for about 15 days after counselling and that she returned to the parental home in July 2013 and that the respondent is not providing maintenance to her and her children and they are living at the mercy of her mother and that her mother is maintaining them and providing financial assistance to them. Her further case is that the respondent is a Software Engineer at Hyderabad, and earning an income of Rs.1,70,000/- per month and that the 1st petitioner requires an amount of Rs.30,000/- per month towards her maintenance and the petitioners 2 and 3 require Rs.20,000/- each per

month towards their maintenance including educational and other expenses. She further contends that the maintenance amounts awarded to the petitioners are inadequate and therefore, the same require upward revision. The respondent pleaded that the respondent is earning Rs.15,000/- per month. Per contra, the respondent contends that he never harassed the 1st petitioner and that he is always willing and prepared to take back the petitioners and live with them and that he scribed the statement on a stamp paper on 04.05.2013 agreeing not to harass the 1st petitioner pursuant to the false police complaint given by the 1st petitioner and that the 1st petitioner, after the birth of the 2nd child, harassed him for unwanted things and for not providing gold ornaments to her and that the 1st petitioner voluntarily deserted him for no reason only to live with her mother and aunt and that her intention is to live with them as they have nobody else to support them and that the mother of the 1st petitioner is having kerosene dealership business in the name of the 1st petitioner and that the 1st petitioner owns movable and immovable properties and that she is in a position to maintain herself and her children and that, therefore, she needs no amount towards maintenance from him and that he is not getting the income as stated by the petitioner and that he is earning Rs.15,000/- per month and that he has to look after his aged parents, who are suffering from old age ailments and that in the facts and circumstances of the case, the maintenance awarded by the Family Court is high and excessive and that he is already meeting the educational expenses of the children and that therefore, the maintenance

awarded to the wife has to be cancelled and the maintenance awarded to the children has to be reduced reasonably. The 1st petitioner asserted her case in her examination in chief and withstood the test of cross examination. The respondent also asserted his case in his evidence. The evidence brought on record is thus in the nature of statements made on oath against oath. Though the respondent filed copy of the order in FCOP no.53 of 2014, which was disposed of on the same day MC 12 of 2015 was disposed of, and contended that in the said FCOP, the learned Judge held that the 1st petitioner failed to plead and prove cruelty and that she left for her parental home in order to look after her mother and aunt who are not having any other support, it is to be noted that the order in the FCOP, which is simultaneously passed along with the MC, has not become final. Moreover, the husband has not filed any petition for restitution of conjugal rights or for custody of children and it is not in dispute that there are disputes between the spouses and that the 1st petitioner/wife is living separately along with her children. As already noted, in the absence of proof that she has no income or source of income, denying of maintenance would be contrary to the avowed object with which the provision is enacted.

5.10 Though the respondent/husband asserted that the 1st petitioner owns properties and that she is having kerosene dealership business in her name and is doing business and is earning sufficient income, no evidence is adduced and the said contentions remained unsubstantiated. In a

proceeding seeking maintenance, if it appears to the Court that the wife has either no independent income or sufficient income to support her and her children and meet the necessary expenses of the case, the Court may, on the application of the wife, order the husband to pay to the wife and her children, maintenance, as well as the expenses of the proceedings. On the above analysis, this Court finds that the 1st petitioner made out valid and sufficient grounds for awarding maintenance to her and her children.

5.11 Dealing with the quantum of maintenance to be awarded to the petitioners, it is to be first noted that the petitioners claimed Rs.30,000/- towards monthly maintenance of the 1st petitioner/wife and Rs.20,000/- each per month towards monthly maintenance of children, petitioners 2 and 3. However, the trial Court awarded Rs.7,000/- per month to the 1st petitioner and Rs.2,500/- each to the petitioners 2 and 3. As already noted, the 2nd petitioner is studying in Narayana Group of Educational Institutions and the 3rd petitioner is studying in Montessori School and therefore, their educational expenses and other expenses on extra curricular activities have also to be met from out of the maintenance amount to be awarded to them. As already noted, the respondent failed to establish that the 1st petitioner is having any income or source of income. Therefore, the 1st petitioner has to sustain herself on the maintenance amount and has to meet the expenses for the maintenance and education of the petitioners 2 and 3 from the maintenance to be awarded to them. It is not the case of the respondent that the 1st petitioner intentionally admitted the children in educational

institutions in which the educational expenses are high in order to harass the respondent. On the other hand, it is the case of the respondent that he is meeting the educational expenses. Therefore, it can safely be concluded that the respondent is in a position to meet the educational expenses of the children.

5.12 Coming to the income of the respondent, the case of the petitioners is that he is a Software Engineer at Hyderabad and is earning an income of Rs.1,70,000/- per month. The salary certificate of respondent (RW1) is not filed though he contended that he is presently getting Rs.35,000/-. It was also suggested to him that he is getting Rs.1,00,000/- per annum from his properties and that he is getting a salary of Rs.70,000/- per month. He admittedly sold a house located in Chinnachowk, Kadapa on 14.01.2012 for Rs.27,60,000/- and later executed a registered document in favour of the purchaser. Though he stated that the said house was sold for discharging of bank loan, he did not file any documents evidencing the said fact. According to him, he provided financial assistance to a tune of Rs.8 lakhs to the 1st petitioner for purchasing a house. From the evidence brought on record, it is adequately established that the respondent is earning substantial income and that he is a substantial person having good financial and social status.

5.13 Viewed thus, this Court finds that the petitioners made out valid and sufficient grounds to enhance the amounts awarded to the two children

though there are no grounds for enhancing the maintenance awarded to the 1st petitioner @ Rs.7,000/- per month. On the other hand, the respondent failed to establish that the 1st petitioner is not entitled to maintenance and that the maintenance amounts awarded to the children are adequate and need no upward revision and further failed to dislodge the case of the petitioners that the maintenance awarded to the petitioners 2 and 3 requires upward revision.

6. In the result, the revision in Crl.R.C.No.1493 of 2017 filed by the respondent is dismissed and the revision in Crl.R.C.No.478 of 2017 filed by the petitioners is partly allowed. While confirming the award of maintenance @ Rs.7,000/- per month to the 1st petitioner, the maintenance amounts awarded to the petitioners 2 and 3 @ Rs.2,500/- each is enhanced to Rs.20,000/- each per month. The amount of maintenance to petitioners 2 and 3 at the enhanced rate shall be paid from 1st March, 2017, since their revision was filed on 23.02.2017. The respondent shall pay the entire arrears of maintenance, if any, payable to the 1st petitioner and the petitioners 2 and 3 within two months from the date of receipt of a copy of this order in two equal monthly instalments.

Pending miscellaneous petitions, if any, in these Criminal Revision Cases shall stand closed.

M. SEETHARAMA MURTI, J

28.07.2017
RAR

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते