

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1632 of 2017

ORDER:

The unsuccessful respondent filed this criminal revision case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ['the Code', for short], challenging the order, dated 24.04.2017, of the learned Judge, Family court-cum-V Additional District Judge, Tirupati, passed in M.C.No.14 of 2014.

By the said order, the learned Judge, Family Court, while allowing the Maintenance Case awarded maintenance @Rs.3,000/- and Rs.2,000/-per month to the 1st petitioner-wife and the 2nd petitioner-minor son of the respondent payable from the date of the petition and further awarded Rs.2,000/- towards litigation expenses and gave further directions for payment of arrears within the time mentioned in the orders. Aggrieved of the said orders, the respondent filed the instant revision case.

2. I have heard the submissions of Sri O. Uday Kumar, learned counsel for the petitioner/ husband, and of Sri K. Maheswara Rao, learned counsel for the 1st respondent. I have carefully perused the material record.

3. The parties in this revision shall hereinafter be referred to as the petitioner/ husband and the respondents 1 & 2 as arrayed in this revision case for convenience and clarity.

4. I shall deal with the pleadings, evidence and contentions while dealing with the points for determination to avoid repetition and to keep it simple.

5. Now the points for determination in the Criminal Revision Case are as under:

- 1) Whether the respondents 1 & 2 made out valid and sufficient grounds for awarding maintenance?

2) And, if so, whether the quantum of maintenance awarded to them is on the higher side and is liable to be reduced in the facts and circumstances urged by the petitioner?

3) To what relief?

6. POINTS

6.1 To begin with it is necessary to advert to the pleadings. The case of the respondents 1 & 2, in brief, is this: - 'The 1st respondent's marriage with the petitioner was performed, on 08.12.2005, at Kanikipakam of Irala Mandal, Chittoor District, as per Hindu rites and customs & practices of the community. Under lawful wedlock, the 1st respondent gave birth to the 2nd respondent, on 14.09.2007. At the time of the marriage as per the demands made by the petitioner and his mother, the parents of the 1st respondent presented gold jewels weighing 30 sovereigns to the 1st respondent and gold jewels weighing two sovereigns to the petitioner and further paid Rs.80,000/- towards dowry. The marriage was performed in a grand manner. The parents of the 1st respondent also provided household articles worth Rs.25,000/- and paid Rs.25,000/- to the petitioner towards cost of his clothes/dresses. The 1st respondent and the petitioner lead happy family life at Nehrunagar, Tirupati, for about four years. During that period, due to his employment, the petitioner used to leave India to go to Kuwait and used to return to India as per his convenience. During the stay of the petitioner at Kuwait, his mother and sisters-in-law, Rojarani & Sailaja, brothers-in-law, Devarajulu & Subrahmanyam used to make calls to the petitioner and pollute his mind by saying bad words against the 1st respondent. Therefore, the petitioner used to abuse the 1st respondent in filthy language by making calls on cell phone. During the period in which the 1st respondent stayed with the petitioner at Tirupathi, he used to demand her to transfer the properties of her parents in his name and harass her. The petitioner and his family members harassed the 1st respondent both mentally and physically and treated her inhumanly to get her parents

properties transferred in her name. When the 1st respondent expressed her inability for the same, they abused her. The petitioner failed to show any interest and stopped taking care of the respondents. Several mediations held for counselling of the petitioner were of no avail. After separation, the petitioner has not paid a single rupee to the respondents. He is spending his income on his vices. Having lost her patience, she lodged a report with Mahila Police Station, Tirupathi; and, on her said report, a case in Crime No.23 of 2014 was registered against the petitioner and his family members for the offences punishable under Section 498 IPC and Sections 3 & 4 of the Dowry Prohibition Act. The respondents are living under one roof. The 2nd respondent is a student of II class in Annamaiah English Medium school, Nehrunagar, Tirupathi. The petitioner is obliged under facts and in law to maintain both the respondents. Apart from his income from salary, he is having several properties. He owns houses in and around Tirupathi bearing Door Nos.4-4-858, 4-4-859, 4-4-680/ B in Nehrunagar, Tirupathi; and he is getting a sum of Rs.60,000/- per month as rents; He owns a house at Vadamalapeta village; and he is getting Rs.5,000/- to Rs.7,000/- as rents from the said house. The respondent is a driver by profession and is getting Rs.10,000/- to Rs.12,000/- per month; he is also doing finance business (daily thandal business) and getting Rs.15,000/- to Rs.20,000/- per month from the said business. He is having sufficient means and capacity to maintain the respondents. The 1st respondent is a house wife and is not having any income or sources of income. Hence, the petition is filed for awarding monthly maintenance of Rs.15,000/- and Rs.10,000/- respectively to the respondents from the date of the filing of the petition and Rs.25,000/- towards costs of litigation and Rs.30,000/- per annum towards school fee/ educational expenses of the 2nd respondent herein.'

6.2 The case of the husband/revision petitioner, in brief, is this: - 'The material allegations in the petition of the respondents are all false. The same are denied. There is no cause of action for them to file the petition. The 1st

respondent is his wife and the 2nd respondent is his son. The allegations regarding payment of dowry and gifts allegedly given at the time of marriage and the further allegations that the same were given on the alleged demand of the petitioner and his mother are all false and the said allegations are invented. The allegations that when this petitioner was in Kuwait, his mother and family members instigated him by saying bad words against the 1st respondent and that the petitioner abused the 1st respondent and ill-treated and harassed mentally and physically are all false. The allegation about this petitioner's occupation, income and properties are also false and invented. The house bearing no.4-4-458 does not belong to this petitioner or his joint family. Two elder brothers of this petitioner are having a share in the house bearing no.4-4-859 in which the 1st respondent and her parents are residing. This petitioner is paying the rents for the said house. In the house bearing no.4-4-680 and 4-4-680/B the other joint family members have got share along with this petitioner. The houses are situate in a village and they do not fetch any rents. The properties are ancestral properties; and, the houses are in dilapidated condition and are not useful for any purpose. On the petitioner's return from Kuwait, on 03.12.2013, the respondents went to the house of the parents of the 1st respondent, on 15.12.2014. Subsequently they did not return. This petitioner made three attempts to take back the respondents and even sent a mediator by name Muniraju who performed the marriage. Thus, this petitioner made an attempt to take back the respondents. All the said efforts proved in vain. The 1st respondent stated that she is not interested in residing with the petitioner. She lodged a false complaint with Mahila Police station against the petitioner and his family members. This petitioner informed the police that the 1st respondent is not interested in joining him and that the attempts made by him through mediators did not fructify. However, on the direction of the officers of Mahila Police Station, the respondents came back to the matrimonial home, on 06.03.2014. Since that date the 1st

respondent showed hell to the petitioner and never co-operated to lead happy marital life. The 1st respondent stated that she only came to prepare food but not for cohabitation. She warned the petitioner that if he touches her she will jump down from the terrace. However, the petitioner waited patiently with the fond hope that she would change her attitude. The 1st respondent used to talk to others on telephone while in bath room and used to make love symbols on the bath room walls. She used to say that she was talking to her relatives. She used to be giddy with one Amarnath Reddy. Hence, this petitioner questioned her. She stated that he is a relative by name Kishore. On enquiries, the petitioner came to know that said Kishore is working at a Photo studio and the said Amarnath Reddy is doing pesticide business at Tirupati. The 1st respondent used to receive and attend 20 to 30 calls everyday. On questioning by the petitioner she used to switch off her cell phone and give adamant replies. When once the 1st respondent was preparing food, the petitioner checked her phone numbers and made calls to that numbers. Some male persons answered the calls and some male persons have not lifted their cell phones when called. This petitioner tried to convince the 1st respondent and wanted to forget all the bad days and made efforts to live with the respondents only to enjoy happy marital life. The said effort also proved futile. When the 1st respondent fell sick, the petitioner took her to the hospital and thus used to take care of her health whenever she suffered from ill-health. This petitioner never neglected the respondents. The 1st respondent did not change her attitude and never acted like a dutiful wife. Instead of changing her attitude she became more adamant and started picking up quarrels for no reason. The 1st respondent gave a false police complaint roping in all the relatives of this petitioner. He was arrested and remanded to judicial custody and was later released on bail. The 1st respondent is bringing up the 2nd respondent in such a way that he develops adamant nature and training him to behave like a villain against this petitioner. On 02.07.2014, this

petitioner called the parents of the 1st respondent; and, after two days, that is, on 04.07.2014, two women came on a scooter to the petitioner's house and made the 1st respondent to talk over their cell phone to others while the petitioner was inside the house. When the petitioner came out and questioned them, they gave evasive replies. The investigation revealed that no offence was committed by the relatives of this petitioner; and, the family members of the petitioner were discharged from the criminal case. The petitioner worked as a driver at Kuwait and not in India. At present, he is not having any means.'

6.3 At trial, the 1st petitioner and her supporting witnesses were examined as PWs1 to 3 and exhibits A1 to A10 were marked. The respondent and his supporting witness were examined as RWs1 & 2. Exhibits B1 to B3 were marked.

7. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. The petitioner and the respondents are living separately is also not in dispute. In the considered view of this court, there is no reason to deny award of maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for the sustenance of the wife. Unless the husband establishes that his wife has income of her own and needs no financial support from him, she cannot be denied maintenance from the husband. So far 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. The maintenance awarded shall be adequate for sustenance, and sufficient for meeting expenses towards food, clothing and shelter, besides essential incidental expenses. In case of children, it takes in its compass the educational expenses also of the children. The law is well settled that the maintenance has to be awarded keeping in view the social status and economic & living conditions of the family; 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. 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. The provision provides for speedy remedy for providing maintenance to the wife and eligible children.

8. PW1 in her evidence affirmed her pleaded case and exhibited wedding invitation card, her voter identity card; copies of Aadhar cards of the respondents 1 & 2; photostat copy of FIR in Cr.no.23 of 2014 of Mahila PS, Tirupati; school identity card of the 2nd respondent; notices exchanged between the parties and school fee receipts of the 2nd respondent. She withstood the test of cross examination and maintained her stand in the cross examination. In her cross examination following points were elicited: 'Respondent went to Kuwait, on 23.01.2013, and returned to India, on 03.12.2013. During that period she resided at her junior paternal aunt's house in Chintakayala Street at Tirupati. After her report, on 05.03.2014, police held conciliation session and that, thereafter, she again lodged a report with the police, on 04.04.2014, against the respondent and his family members and that the said complaint was pending (on the date of her cross examination). One Amarnath Reddy belongs to her village. He is in the photograph shown to her.' She denied the suggestion that she is living with Amarnath Reddy and disputes arose between her and the petitioner herein due to her intimacy with the said Amarnath Reddy. She denied the suggestion that she is having illicit intimacy with Amarnath Reddy and hence, the respondent is not liable to maintain her. PW2 is the mother of the 1st respondent. She corroborated the version of the 1st respondent. PW3 is the relative of the respondents. He spoke about the dowry allegedly given at the time of marriage and the mediations conducted between

the parties. Similarly, RW1 in the evidence, affirmed his pleaded case and maintained his stand in the cross examination. He asserted that the telephone conversations between the 1st respondent and Amarnath Reddy, which were recorded in Mobile phone, revealed that the 1st respondent is having illicit intimacy with the said person. He further stated that she is receiving rents by letting out the house property to one Kumar. He stated that he has no means and capacity to maintain the respondents and that he never neglected the respondents. He also deposed that he expressed willingness to live with the 1st respondent; but, the 1st respondent refused to live with him and that he also issued a written notice, dated 10.05.2015, calling upon her to come and join him and lead marital life. He admitted in his cross examination that one K. Jayaram, K.Srinivasulu and Tailor Muniraja conducted mediations, but, stated that he does not know in which school his son is studying. In his evidence, exhibits B1 to B3 were marked. When it was suggested to him that his wife has no illicit intimacy with Amarnath Reddy and that he beat her and sent her out from the house, he denied the said suggestions. RW2 is the mother of RW1 and she supported his case.

9. It is pertinent to note that on the analysis of evidence, it becomes manifest that for the first time during course of trial, the petitioner got suggested to PW1 that she is having illicit intimacy with Amarnath Reddy and asserted the said aspect in his evidence also. However, in the counter he did not plead about the alleged intimacy between the 1st respondent and the said Amarnath Reddy. On the other hand, he pleaded in the counter that she used to be giddy with one Amarnath Reddy and that he checked her mobile phone and made enquiries and found that she was talking to some male persons and that he came to know about the occupations of said Amarnath Reddy and one Kumar and that he made three attempts to take back the respondents and even sent a mediator by name Muniraju who performed the marriage and made attempts to take back the respondents. Thus, without any basis in the

pleadings, he tried to contend for the first time during trial that the 1st respondent is having illicit intimacy with one Amarnath Reddy. Even though the petitioner during trial of the Maintenance Case advanced defence that the 1st respondent is living in adultery, the said defence cannot be countenanced as the said aspect is not pleaded in the counter. It is trite to note that he himself expressed his intention to live with the 1st respondent even after filing of the Maintenance Case. The said aspect is evident from the notice issued by the petitioner, the office copy of which is marked as exhibit A7. The orders impugned also reflect that he did not even pay interim maintenance of Rs.4,000/- awarded to the respondents. The very attitude of the petitioner in attributing illicit intimacy to the 1st respondent during trial without any foundation in the pleading is itself sufficient to come to a safe conclusion that he raised such a contention for the first time during trial to avoid payment of maintenance to the respondents, who are admittedly living separately. The evidence brought on record also shows that the petitioner failed to establish that the 1st respondent is having sources of income or income of her own for the sustenance of the respondents. Hence, this Court finds that the respondents made out valid and sufficient grounds and hence, it can safely be held that they are entitled to claim maintenance from the petitioner.

10. Coming to the quantum of maintenance, the case of the respondents is that the petitioner is working as a driver at Kuwait and earning Rs.10,000/- to Rs.12,000/- per month and that he is having properties stated in the petition of the respondents and evidence of PW1 and that he is earning rents from the properties besides Rs.15,000/- to Rs.20,000/- from his finance business. It is admitted by PW1 that she is residing in the house, which stands in her name and also having another house. The Family Court, having considered the evidence including the school fee receipts of the 2nd respondent and the further fact that the respondents are having shelter, determined the monthly maintenance payable by the petitioner to the respondents at the rate of

Rs.3,000/- and Rs.2,000/- per month respectively. In the present day cost of living the said maintenance which is awarded to the respondents cannot be said to be unjust or unreasonable by any standards. Hence, this Court finds that the said maintenance amounts awarded do not require downward revision. Be it noted that the respondents have not filed a cross revision seeking enhancement of maintenance allowances awarded to them.

11. On a careful examination of the facts and evidence, this Court is satisfied that there is no merit in the contentions of the petitioner and that the order impugned, which is justified, is sustainable under facts and in law. The points are accordingly answered against the petitioner herein and in favour of the respondents.

12. It is to be noted that the learned counsel for the petitioner contended that the learned Judge of the Court below ought to have awarded maintenance from the date of the order but not from the date of the petition. In the decision in *Jaiminiben Hirenghai Vyas & ANR. Vs. Hirenghai Rameshchandra Vyas & ANR*¹ the Supreme Court referred to the earlier decision in *Shail Kumari Devi v. Krishan Bhagwan Pathak*² wherein it was held as follows:

20. Again, there is no substantial change so far as the date of payment is concerned. Under Sub-section (2) as originally enacted, it was provided that such maintenance could be made payable from the date of the order or if so ordered, from the date of application. Even after the amendment of 2001, an order for payment of maintenance can be made by a Court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the amount of maintenance can be paid from that date, i.e. from the date of application.

In *Jaiminiben Hirenghai* case it was held as follows:

“ In *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 9 SCC 632; Para's 39-41 this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In *Shail Kumari Devi*, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and

¹ AIR 2015 SC 300

² (2008) 9 SCC 632

we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.”

“Section 125 of the Code of Criminal Procedure, therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply state that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Code of Criminal Procedure, the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.”

In the case on hand, considering the plight of the respondents and the facts and circumstances in which 1st respondent and her child are placed, this Court finds that it is just and fair to award maintenance from the date of the application. Accordingly this Court finds that the Court below was right in awarding maintenance allowances from the date of the petition.

13. On the above analysis, this Court holds that there is no infirmity or illegality or impropriety in the order of the Court below and that the impugned order brooks no interference and that the revision is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed confirming the impugned order of the Family Court. The petitioner herein shall pay to the 1st respondent or deposit to the credit of the MC the entire arrears of maintenance upto date within two months in two equal monthly instalments and shall continue to pay future allowances every month regularly.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

M. SEETHARAMA MURTI, J

11.09.2017
Vjl