

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.1203 of 2016

ORDER:

The revision petitioner-husband is the respondent in M.C.No.248 of 2012 on the file of the learned Judge, Family Court, Vijayawada, maintained against him by his wife u/ sec.125Cr.P.C. on the file of the learned Judge, Family Court, who awarded maintenance of Rs.8,000/- p.m. to the MC petitioner-wife from the date of petition 06.11.2012 by order dated 28.03.2016. It is impugning the said order, present revision is maintained by him.

2. The grounds of revision vis-à-vis oral submission of the learned counsel for the revision petitioner are that the order of the lower Court is contrary to law and the Court below ought to have seen that she voluntarily left the matrimonial home after taking articles belongs to the revision petitioner and also ought to have seen that his wife admitted in her deposition that she filed the Maintenance Case after he filed divorce O.P. as a counterblast. The lower Court failed to appreciate that the respondent/wife is in a position to maintain herself basing on her educational qualifications and she is not entitled to maintenance. The lower Court erroneously ordered Rs.8,000/- including maintenance in other proceedings and the petitioner/ husband has already paid more than Rs.1,00,000/- towards maintenance and sought for allowing the revision by setting aside the order of the lower Court.

3. Whereas it is the submission of the learned counsel for the revision 2nd respondent/wife that the order of the lower Court holds good and for this Court while sitting in revision within limited scope there is nothing to interfere, hence to dismiss the revision.

4. Heard and perused the material on record.

5. The husband earlier married one Venkatalakshmi and after obtained divorce from said first wife, he married the M.C.petitioner for second time is also borne by record. Thus, the relationship between the parties is not in dispute. It is the claim of the wife that she was thrown out of the matrimonial home on 01.06.2009 i.e. about 10 years after the marriage, dt.26.06.1999. In the divorce petition filed by him against her before the Additional Family Court, Hyderabad, she filed I.A.No.580 of 2010 where interim maintenance at Rs.2500/-p.m.,was awarded and said divorce petition it appears was dismissed for default on 04.09.2012. According to him, it is she that left his company and it is false to say he necked her out. She filed DVC No.179 of 2011 which is pending before III Metropolitan Magistrate, Hyderabad. She also filed a private complainant case for the offence punishable under Section 498-A IPC against him on 3.05.2010.

6. There is a flat No.106 at Mallapuram, Hyderabad in their name and they are also having joint bank account in Andhra Bank in their name and till May and June, 2009 they were staying together at Chikkadapalli, Hyderabad, which are also the facts borne by record and not in dispute. The M.C. Petitioner got 511/3rd cents of property under original of Ex.R.1 gift deed dated 14.09.2009 from her mother also borne by record. She admitted in the cross-examination that she is owning a Maruti car bearing No.AP 09 AN 5213 and doing typing work and imparting tuitions to students. It is also borne by record that in DVC No.145 of 2012, there is a maintenance order of Rs.5,000/- p.m. in her favour passed on 24.04.2015 and he preferred appeal impugning the same. The evidence further shows what the land given to her by her mother as gift referred supra was sold away by her in discharge of some debts or for her necessities, as the case may be. Though he claimed in

his evidence as R.W.1 of she is getting from tuitions of Rs.7000/- p.m. there is no proof of her income from tuitions at such rate. According to her he is doing Pourohitham, the caste profession and getting Rs.60,000/- p.m. and for that also there is no basis much less proof.

7. The record from the above discussion clearly speaks that she is running tuition classes and getting some income apart from otherwise also qualified and was maintaining car and he is doing his caste profession of Pourohitham. In DVC case, by considering the same and means of both, including her owning a car and owning of the landed property supra alienated later, awarded at Rs.5,000/- p.m. Thus the award of Rs.8,000/- p.m. in the Maintenance Case from the date of petition is highly excessive to reduce to Rs.5,000/- p.m. which includes the maintenance payable in the DVC No.145 of 2015 pursuant to the order dated 24.04.2015. Any maintenance paid towards interim maintenance for any period from the date of filing of the present MC No.248 of 2012, till dismissal of the divorce petition can include the above to deduct other than sum awarded towards legal expenses. Thus any payment made for the period from the date of filing of the M.C. entitles adjustment so to pay all remaining arrears within three months from today at Rs.5,000/- p.m. from the date of filing M.C.248 of 2012.

8. In the result and having regard to the above, the revision is partly allowed. No order as to costs.

Consequently, miscellaneous petitions, if any shall stand closed.
No costs.

Date:18.04.2017.

Dr. B.SIVA SANKARA RAO J,