

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2486 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C questioning the propriety and legality of the order passed by the Judge, Family Court, Ranga Reddy District at L.B. Nagar in M.C.No.248 of 2014 dated 03.07.2017, awarding maintenance of Rs.5,000/- per month from the date of petition, holding that the first respondent herein refused and neglected to maintain the petitioner.

The petitioner filed M.C.No.248 of 2014 for grant of maintenance, alleging that her marriage with the first respondent was performed on 03.03.1976 as per Hindu customs and rites and during their wedlock, they were blessed with two children. It is stated that, from the beginning of the marriage, the first respondent was adamant and behaving highhandedly and ill-treating her as servant maid and used to criticize always for preparing food. The first respondent used to insult her that she hails from poor family. The petitioner bore all the ill-treatment with a hope that the first respondent would change his attitude one day or the other. But, the first respondent used to pick up quarrel for one reason or the other and beat the petitioner. Several efforts through elders and mediators were made for reconciliation, but in vain. It is stated that the sons are married and living separately and thereby, she is staying alone. It is averred that the first respondent has wilfully neglected to maintain her and she is living

on daily wages and due to advanced age, she is unable to attend any work. Further, it is stated that she has no source of income and that the first respondent is a Central Government Employee and working in postal department and getting monthly salary or about Rs.40,000/- per month. Apart from that, he possessed Ac.3-23 gts of land and getting Rs.50,000/- per annum from agriculture. As the first respondent refused and neglected to maintain the petitioner who is his wife, the petitioner claimed maintenance @ Rs.20,00/- per month.

The first respondent filed counter in M.C.No.248 of 2014 and denied material allegations. He denied the allegation that he abused and beat the petitioner and went away from the house, that he did not listen to the elders sent by the petitioner for reconciliation, denied that the petitioner is eking her livelihood by doing daily wage work and that due to old age she could not attend the work and denied the responsibility to maintain the petitioner as he did not neglect her wilfully. The first respondent submitted that he is working as a postman and earning Rs.18,000/- per month, out of which he is paying an amount of Rs.6,000/- per month towards his mess charges and also submitted that the sons of the petitioner are working as home guards and earning Rs.10,000/- per month. It is also submitted that the first respondent is suffering from ill-health and incurring expenses for treatment. Finally, it is averred that the petitioner voluntarily left his company, as such he is not liable to pay any maintenance. However, the first respondent has expressed his willingness to take

back the petitioner and maintain her and prayed to dismiss the M.C.No.248 of 2014.

During enquiry, the petitioner herself was examined as P.W-1 and got marked Exs.P-1 & P-2. On behalf of the respondent, he himself was examined as R.W-1 and also examined R.Ws.2 & 3 in support of his case.

Upon hearing argument of both the counsel, the Court below recorded a specific finding that the first respondent refused and neglected to maintain the petitioner wilfully and that he possessed sufficient means to get income. The Court below took note of the fact that the petitioner had no income to maintain herself and concluded that she is entitled for maintenance. By considering the status of both the parties and the economic conditions and the prices of essential commodities like food and shelter at the time of passing the order, the Court below awarded a sum of Rs.5,000/- per month towards maintenance to the petitioner and allowed M.C.No.248 of 2014. Dissatisfied with the quantum of maintenance awarded by the Court below, the petitioner preferred the present criminal revision case, on the ground that the Court below ought to have considered that the first respondent was drawing salary of Rs.28,000/- per month, besides possessing immovable property and getting rent. The petitioner contended in the grounds of revision that the conclusion arrived by the Trial Court in awarding Rs.5,000/- per month is erroneous and prayed to enhance the maintenance from Rs.5,000/- to Rs.20,000/-, while setting aside the order of the Trial Court in M.C.No.248 of 2014.

During hearing, learned counsel for the petitioner herein had neither appeared nor got the matter represented by any counsel and advance arguments, but this Court cannot dismiss the revision for default. However this Court can decide the revision on merits in view of the law declared in **Nisha Sharma and others v. Vinod Kumar Sharma**¹ wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his advocate did not appear before the Court, the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

Admittedly, the relationship between the petitioner and the first respondent is wife and husband. The first respondent himself admitted in the counter in M.C.No.248 of 2014 that he did not ill-treat the petitioner and he is incurring Rs.6,000/- towards mess charges. Moreover, the first respondent left the company of the petitioner, by picking up quarrel with her and he did not take any steps to restore family ties, though, he offered to restore the family ties with the petitioner. This offer is not genuine. Therefore, on this ground, the maintenance to the petitioner cannot be denied.

The other contention urged is that the conclusion arrived by the Trial Court that the first respondent was drawing salary of Rs.28,000/- is not based on any material. Even assuming for a moment that the first respondent is working as a postman, earning Rs.18,000/- per month, as per the averment in the counter, the first respondent is liable to pay maintenance to the petitioner and

¹ 1990 Cri.L.J. NOC 57 (Delhi)

he is under legal obligation to maintain her. While deciding quantum of maintenance awarded, the Court has to take into consideration various aspects like standard of living and the prices of essential commodities like food and shelter and the present cost of living, requirements and income of the petitioner. Here, the first respondent is aged 53 years as on today. As per the material available on record, the first respondent was drawing Rs.18,000/- per month and no iota of evidence is produced before the Court below to establish that he was drawing Rs.28,000/- per month, as a Central Government employee and possessed any immovable property, yielding annual income. In the absence of any material, granting maintenance @ Rs.5,000/- per month from the date of application is just and reasonable, depending on the cost of living, price index, necessities of the petitioner at the age of 50 years as on the date of filing petition. Therefore, I find no ground to interfere with the fact finding recorded by the Trial Court. Consequently, the criminal revision case is liable to be dismissed, as it is devoid of merits.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:10.10.2017

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