

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.3341 OF 2016

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C challenging the order passed by the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge-cum-III Additional Family Court, Ranga Reddy District at Malkajgiri in M.C.No.53 of 2013 dated 21.09.2016, whereby, the Court below awarded Rs.10,000/- per month to each of the petitioner towards maintenance.

For the sake of convenience, the parties will hereinafter be referred as arrayed before the Court below in M.C.No.53 of 2013.

The petitioners filed M.C.No.53 of 2013 before the Court below alleging that that the first petitioner and the respondent are wife and husband. Their marriage was performed on 23.04.2004 and they were blessed with petitioners 2 & 3 during their wedlock. It is the case that the respondent/husband used to beat the first respondent/wife and used to abuse her in filthy language and subjected her to mental and physical cruelty. Due to harassment of the respondent, the first petitioner lodged a complaint on 12.08.2007 against the respondent with the police. The police conducted reconciliation and warned the respondent to look after the petitioners properly and the respondent agreed for the same. Later, the respondent increased the harassment and the respondent tried to kill the first petitioner in the presence of her children. After coming to know about the incident, the parents of the first petitioner took the petitioners to their house and the

respondent never accepted the petitioners. It is stated that the petitioners have no means to maintain themselves and the first petitioner requires Rs.20,000/- per month and the petitioners 2 & 3 requires Rs.10,000/- each, per month towards their maintenance. It is averred that the respondent is barber by profession and he is having three shops at Sikh Village, Secunderabad under the name and style (1) Leion Tatoo Studio, (2) Mahraja Hair and Beauty Saloon A/C and (3) New Look Hair Beauty Saloon. The respondent leased out shops 1 & 2 and he is doing profession in shop no.3. Therefore, requested to pass appropriate order by granting maintenance of Rs.20,000/- to the first petitioner and Rs.10,000/- to petitioners 2 & 3 per month.

The respondent/husband filed counter in M.C.No.53 of 2013, denying the allegations mentioned in the petition, alleging that the police who are under the influence of the first petitioner and her parents assaulted the respondent at police station and the police harassed the respondent physically and mentally. It is stated in the counter that the respondent attempted to commit suicide, but, keeping in view of his children's future, he dropped the idea. It is averred that the first petitioner left the company of the respondent willingly by taking money from the house and utilized the said amount for the marriage of her younger sister. Further, it is stated that the respondent is not earning Rs.30,000/- per month. On 21.10.2012 and on 13.11.2012, father of the first petitioner along with his brother and anti-social elements went to the house of the elder sister of the respondent and threatened her with dire consequences and misbehaved with her. The same

persons attacked the house of the parents of the respondent and damaged the main door of the house and manhandled the parents of the respondent. When the locality people intervened, the said persons went away from the scene and they also attacked the respondent at his house on 20.10.2012 during night time. Though the respondent informed the same to the police, the police did not take any action. It is also stated that the respondent never neglected to maintain the first petitioner and the first petitioner herself along with children left the house without any reasonable cause. Finally it was contended that the petitioners are disentitled to claim maintenance from the respondent, as the first petitioner herself left the house of the respondent. Hence, the respondent requested the Court for dismissal of the petition.

During enquiry, the petitioners got examined P.Ws 1 &2 and got marked Exs.P-1 to P-5. On behalf of the respondent, no documents were marked.

Upon hearing arguments of both the counsel, the Court below awarded maintenance of Rs.10,000/- per month to each of the petitioner from the date of petition, while directing the respondent to pay a sum of Rs.20,000/- to the petitioners towards costs for litigation. Aggrieved by the order of the Court below, the present criminal revision case is preferred, raising several contentions.

The main contention urged in the revision is that the Court below did not take into consideration of the financial capacity of the petitioner/respondent and Ex.P-2 was not considered properly. It is also contended that, based on vague allegations that the

petitioner is the owner of three shops, the Court below awarded maintenance of Rs.10,000/- to each petitioner, which is at exorbitant rate and prayed to set-aside the order of the Court below.

During hearing, learned counsel for the petitioner herein/respondent 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.

The Court below recorded a finding that the petitioners and respondent are living separately and the only allegation made against the first petitioner is that she voluntarily left the company of the respondent/husband i.e. the petitioner herein and thereby, she is disentitled to claim maintenance. No specific ground is raised to deny maintenance to the petitioners 2 & 3 i.e the children born to the first petitioner and the respondent. Therefore, the petitioners 2 & 3 being the legitimate children of the respondent are entitled for maintenance, since the respondent/petitioner herein refused and neglected them, though he is under legal

¹ 1990 Cri.L.J. NOC 57 (Delhi)

obligation to maintain the children and the respondent/petitioner herein is not entitled to take the benefit of Subsection (4) of Section 125 Cr.P.C, since it applies only to the wife/first petitioner. Therefore, the respondent/petitioner herein is liable to maintain the petitioners 2 & 3 i.e. children also.

Coming to the application of the first petitioner/wife to maintain the petitioners, it is her specific case from the beginning that she was subjected to cruelty and lodged a complaint. But, the police after holding conciliation directed the respondent/husband to take care of the petitioners. But, the respondent increased harassment in different ways. Therefore, unable to bear with the harassment, the first petitioner is living with her parents. Hence, the question of the first petitioner living separately without any reason with the respondent is not based on any material and it is only on account of her inability to bear regular harassment. Therefore, the first petitioner is facing harassment everyday, separate living is justifiable. Hence, on the said ground that she is voluntarily living separately, the claim of the first petitioner cannot be dismissed.

The other contention raised before the Court in the criminal revision case is that, the respondent is earning meagre income and grant of maintenance @ Rs.10,000/- per month to each of the petitioners is excessive and exorbitant. No doubt, the photographs marked as Exs.P-3,4 & 5 disclosed that the respondent/petitioner herein is the owner of the three shops mentioned supra. In the evidence of R.W-1, he admitted that he is collecting Rs.50,000/- from tattoo business. When the respondent is collecting such huge

amount, the respondent would be earning more income from his business also. In the examination-in-chief, in the affidavit, he contended that he is earning Rs.8,000/- per month, without disclosing the details of shops that he is maintaining at different places. He did not even deny running and maintaining of shops, as alleged in the petition, but contended that he closed his shops presently and working in another shop. But, this fact is not substantiated by any material. Moreover, in the cross-examination, a suggestion was put to him that he was earning Rs.3,00,000/- per month, got denial of it. Therefore, there is no documentary evidence either in support of the income of the respondent that he is earning Rs.3,00,000/- per month or Rs.8,000/- per month as contend by him. But, taking into consideration of the evidence of P.Ws.1 & 2, it can be concluded that the petitioner was collecting not less than Rs.500/- for each tattoo and earning sufficient income from the tattoo business and income from three shops. Obviously, for different reasons, the petitioner herein withhold the evidence in possession with regard to income he is earning from three different shops, but avoided to produce any material to substantiate his contention conveniently. Therefore, taking into consideration of the evidence on record, the Trial Court awarded maintenance @ Rs.10,000/- per month to each of the petitioners 1 to 3; based on the present price index and hike of price of essential commodities and also taking into consideration the requirement of amount for both the children, including expenses for food, clothing, medical and education, expecting that the petitioners 1 to 3 are entitled to lead the same standard of life, as they lead with

the respondent/petitioner herein. Therefore, I find that the amount awarded by the Court below towards maintenance is not excessive and it is on par with the present cost of living. Hence, the criminal revision case is liable to be dismissed.

In the result, the criminal revision case is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:24.10.2017

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