

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.226 OF 2006

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C questioning the legality and propriety of the order in O.P.No.98 of 2004 dated 24.10.2005 passed by the Judge, Family Court, Kurnool.

For the sake of convenience, the parties will hereinafter be referred as they are arrayed in O.P.No.98 of 2004.

Petitioners 1 & 2, being minor daughters are represented by their natural guardian-mother. It is the case that petitioners are the daughters of the respondent born during the wedlock between their mother and the respondent. The respondent pronounced Talaq to the mother of the petitioners and since then, the petitioners are living with their mother. It is alleged that the respondent has not made any provisions for the maintenance of his daughters i.e. the petitioners and after repeated requests, the respondent is contributing Rs.500/- to each of the petitioners, irregularly. The first petitioner is residing with the respondent and prosecuting her studies in Gowtham Junior College, Mehdipatnam at Hyderabad and the second petitioner is residing with her mother at Kurnool. Though the respondent pronounced Talaq, he has not filed the written divorce and the relationship between wife and husband between the mother of the petitioners and respondent is still subsisting, but the respondent is not taking care of the

children i.e. petitioners. Therefore, the petitioners claimed maintenance @ 3,000/- per month each from the date of petition.

The respondent filed counter in O.P.No.95 of 2004, denying material allegations, while admitting the relationship between the mother of the petitioners and respondent and contended that he never ignored the interest and welfare of the petitioners and he has been taking care of his daughters with paternal love and affection meeting all their needs. It is stated that the first petitioner was in fact staying with the respondent initially, but, after divorce she chose to study at Kurnool along with the second petitioner and joined at Kurnool. It is stated in the counter that the allegations that the respondent mercilessly left her at Kurnool is in correct. It is stated that the respondent is receiving an amount of Rs.3,474/- per month and he has no further capacity to pay the enhanced amount of maintenance.

During enquiry, the first petitioner was examined as P.W.1 and the mother of the petitioners was examined as P.W.2 and Ex.A-1 to Ex.A-17 were marked. On behalf of the respondent, he himself was examined as R.W.1 and Exs.B-1 to B-3 were marked.

Upon hearing argument of both the counsel, the Judge, Family Court, Kurnool concluded that the respondent/father refused and neglected to maintain the legitimate children born during wedlock with his legally wedded wife and awarded monthly maintenance of Rs.2,000/- each from the date of petition. Aggrieved by the same, the present criminal revision case is

preferred on various grounds, mainly contending that awarding maintenance of Rs.2,000/- to each of the petitioners is excessive.

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

Undisputedly, petitioners 1 & 2 are the daughters of the respondent aged 17 & 16 years respectively as on the date of filing O.P.No.95 of 2004. When the petitioners are residing with their mother, prosecuting their studies at Kurnool, it is the duty of the respondent/father to provide maintenance, including education, clothing and shelter, depending upon the standard of living which they used to lead. But the contention of the respondent/father is that he is sending Rs.1,000/- per month to the petitioners 1 & 2 towards maintenance. But this is not supported by any material. However, the respondent/father did not take any steps to claim custody of the minor children during their minority and as long as

¹ 1990 Cri.L.J. NOC 57 (Delhi)

they are living separately from the respondent/father, father is under legal obligation to maintain his daughters i.e. petitioners 1 & 2 during minority and no other defense is available to the respondent/father. The voluminous documentary evidence would clinchingly establish that the petitioners 1 & 2 are prosecuting their studies in different colleges. Therefore, the respondent/father is bound to provide necessary maintenance for food, clothing, shelter and education, keeping in mind the standard of living which they used to maintain while they were staying with their father i.e. respondent. Therefore, granting maintenance @ Rs.2,000/- per month to the petitioners is just and reasonable. Since the petitioners 1 & 2 have attained majority by now, they are not entitled to claim maintenance, since the date of attaining majority. Therefore, the respondent/father is directed to pay maintenance till the petitioners 1 & 2 attained majority.

In view of the limited jurisdiction of this Court in revision under Sections 397 & 401 Cr.P.C, this Court shall not interfere with the fact findings recorded by the Court below, unless such finding is manifestly perverse or apparently erroneous. But, no error or perversity is brought on record by the learned counsel for the petitioner herein for the reasons best known to him and he did not advance any arguments. In those circumstances, this Court has no other option except to concur with the fact findings recorded by the Courts below, holding that the respondents 2 & 3 herein/petitioners 1 & 2 are entitled to claim maintenance as awarded by the Court below. Therefore, I find no ground to

interfere with the fact findings recorded by the Court below and consequently, 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 also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:05.10.2017

SP

