

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2238 of 2017

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed questioning the propriety and legality of the order, dated 05-07-2017 passed in CrI.M.P.No.212 of 2017 in M.C.No.262 of 2016 by the Judge, Family Court-cum-IV Additional District and Sessions Judge's Court, Vijayawada, granting maintenance of Rs.15,000/- per month and Rs.5,000/- per month respectively to petitioners 1 and 2 before it as interim maintenance.

The respondents 1 and 2 herein filed M.C.No.262 of 2016, under Section 125 of Cr.P.C., for grant of maintenance of Rs.35,000/- and Rs.25,000/- to each of them per month. The case of the respondents is that the 1st respondent marriage with the petitioner herein was performed on 10-12-2010 at Srisailam temple, Kurnool district according to Hindu rights, customs and ceremonies in the presence of elders and during wedlock the 2nd respondent was born. At the time of marriage, parents of the 1st respondent paid Rs.50,000/- towards Pasupukumkuma to the petitioner. The 1st respondent is the 2nd wife of the petitioner and he was blessed with two sons through his 1st wife. The petitioner was an agriculturist and the petitioner and 1st respondent lived happily for six (6) months only and thereafter he picked up

quarrel and subjected her to harassment for her no fault and suspected her fidelity whenever the 1st respondent had a talk with neighbours. He used to grow wild and beat her. He developed illicit intimacy with one lady by name Razia and used to harass the 1st respondent both physically and mentally and forced her to see blue films, sexy films and he used to lock her legs and hands and used to beat her with whip and used to burn her hands with cooker and roll her over the bed by sprinkling glass pieces and therefore, she attempted to commit suicide.

The parents of the petitioner, his brother and his brother's wife Anasuya used to beat the 1st respondent when her parents came to see her though she is kidney patient. The 1st respondent gave report to the police, which was registered in Crime No.250 of 2016 of Vijayawada II Town Police Station for the offence punishable under Section 498-A of IPC, on 12-06-2016. Thereafter the petitioner necked out the 1st respondent by beating her. Despite elders advice the petitioner did not pay heed to the words. The petitioner is a landlord, running dairy farm and earning Rs.70,000/- per month. He is also earning Rs.30,000/- per month from real estate business. In total he is earning more than Rs.1,00,000/- per month. The respondents 1 and 2 have no independent source of income for their livelihood and whereas the petitioner refused and neglected to maintain them,

therefore, both the respondents sought maintenance as stated above, as interim maintenance.

The petitioner admitted the relationship between himself and the respondents so also the 2nd marriage of the petitioner with the 1st respondent but denied payment of Rs.50,000/- towards Pasupukumkuma. The petitioner married one Lakshmi Prasanna @ Kotamma of Nandikotkuru of Kurnool district. She died after giving birth to the 2nd son on 07-11-2008. The parents of the 1st wife P. Venkata Subbamma and Subba Rao proposed the marriage with the 1st respondent, who studied up to B.Sc., and a woman of good character and belongs to poor family and thereby accepted the marriage proposal with the 1st respondent at the request of P. Venkata Subbamma and Subba Rao, his in-laws and the petitioner himself paid Rs.1,00,000/- on the date of marriage with the 1st respondent and she agreed to look after the children born through the 1st wife and thereafter marriage was consummated and 2nd respondent was born on 10-04-2014.

The petitioner made serious allegations against the 1st respondent touching her character mainly contending that she used to get up at 8.00 A.M. and she again sleeps at 11.00 A.M., after breakfast, used to consume sleeping pills on the pretext of suffering from headache and not looking after the children born to the 1st wife and therefore, he admitted his two sons born through 1st wife in the hostel and she was

also not taking care of aged mother of the petitioner. The 1st respondent used to consume Gutkha, Rajakhaini and used to sell food grains for low prices and purchase drugs and used to commit theft of money for purchasing drugs and she used to lead luxurious life and watch blue films and insist the petitioner to watch them. The petitioner reported the same to her parents on number of occasions and they also scolded the 1st respondent and advised her to set right her life. The 1st respondent did not change her attitude.

It is also contended that the petitioner enquired in the college of the 1st respondent and came to know that she used to lead vulgar life and used to move with antisocial elements. The 1st respondent is also squeezing money for fulfilling medical bills. She used to sell gold up to 50 grams and 500 grams silver etc. After birth of the 2nd respondent, she developed vulgar behavior and used to go with her parents without informing the petitioner. The 1st respondent and her parents demanded the petitioner to come to Vijayawada and he told them that he is an agriculturist. The petitioner used to give Rs.20,000/- or Rs.30,000/- by depositing in the account of the father of the 1st respondent and in total he gave Rs.3,00,000/-. The petitioner incurred debts of Rs.30,00,000/- as there were no crops. When the 1st respondent gave report to police, police enquired and deleted

the name of the petitioner. Therefore, she is not entitled to claim any maintenance.

The Court below upon hearing both the parties recorded a finding that the petitioner neglected and refused to maintain both the respondents and further when the petitioner earning substantial amount awarded maintenance of Rs.15,000/- and Rs.5,000/- per month respectively to each of respondents 1 and 2.

The present revision is filed challenging the same interim order passed by the Court below on the ground that the respondents 1 and 2 did not produce any evidence to establish that the petitioner is earning not less than Rs.1,00,000/- per month and in absence of any material grant of interim maintenance of Rs.15,000/- and Rs.5,000/- per month respectively to the respondents 1 and 2 is excessive and prayed to set aside the order passed by the Court.

During hearing, learned counsel for the petitioner, at the stage of admission, would contend that the interim maintenance of Rs.15,000/- and Rs.5,000/- per month respectively to the respondents 1 and 2, awarded by the Court below is excessive, in the absence of any material to establish that he was earning more than Rs.1,00,000/- per month and prayed to set aside the order.

As seen from the allegations made in the petition and the counter, the undisputed fact is that the respondents 1 and 2 are the legally wedded wife and daughter of the petitioner respectively. The 2nd respondent is aged about 2 years by the date of filing the petition and when the petitioner refused to maintain and neglect his daughter, who is legally bound to maintain his daughter, the 2nd respondent is entitled to claim maintenance. Therefore, the maintenance awarded by the Court below in favour of the 2nd respondent cannot be disturbed.

Admittedly, the 1st respondent is the legally wedded wife of the petitioner and allegations made against the petitioner by the 1st respondent is that he subjected her to cruelty in different ways, which she explain in various paragraphs, referred supra and whereas the petitioner also made identical counter allegations against the 1st respondent. It appears from the record that both parties are blaming the other for their acts. More over, when the petitioner married the 1st respondent, as wife, the petitioner is bound to maintain her unless he establish any of the exemptions contained under Section 125 (4) of Cr.P.C.

On the other hand, the present petition is only an interlocutory application for grant of interim maintenance, during pendency of the main petition since disposal of the main petition would take some time. But at this stage the

parties did not adduce any evidence in support of the allegations made against the parties by one another. But one thing is clear that 1st respondent lodged complaint against the petitioner subjecting her to cruelty for the offence punishable under Section 498-A of IPC in Crime No.250 of 2016 when she was subjected to cruelty for one reason or the other, which is pending for investigation.

The Apex Court in **Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and another**¹ held that if the wife is tortured by her husband for demand of dowry or the wife has a reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demands of dowry from her husband's parents or relations, such an apprehension also would be manifestly a reasonable justification for the wife's refusal to live with her husband.

In view of the reasonable apprehension in her mind and the other allegations made against one another cannot be decided at this stage since those findings can be recorded only after recoding evidence, therefore, the evidence on record would *prima facie* shows that the petitioner refused and neglected to maintain her. But both parties made serious allegations against one another and the petitioner also did not take any steps to restore his family ties with the 1st

¹ AIR 1981 SC 1972

respondent, there is any amount of justification for her separate living with the petitioner on account of her apprehension in her mind.

The respondents 1 and 2 would contend that the petitioner is earning more than Rs.1,00,000/- per month both from agriculture and real estate business. But this fact is not substantiated by any material. However, he admitted that he is earning substantial amount but did not disclose about his earnings while contending that her father is paying not less than Rs.20,000/- per month and credited to account and that she is able to earn not less than Rs.30,000/- per month being a graduate in Computers. But as on today no piece of evidence is brought on record that she is earning anything or her father depositing any amount to the credit of her account for her maintenance. Merely because she is a graduate in Computers she is not supposed to secure employment immediately. Till she secures employment, the petitioner being husband is under legal obligation to maintain her, he cannot disown his responsibility to maintain his wife and children. Since the petitioner did not deny his earning capacity, the Court below awarded maintenance of Rs.15,000/- and Rs.5,000/- per month respectively to respondents 1 and 2. This finding of the trial Court cannot be disturbed at this stage, in absence of any material to establish that the petitioner was not earning as contended by

the respondents, therefore, there is absolutely no ground to interfere with the findings recorded by the court below, warranting interference by this Court, while exercising power under Sections 397 and 401 of Cr.P.C., since the powers of this Court are limited and this Court cannot interfere normally in the findings recorded by the court below, unless, those findings are manifestly perverse or apparently erroneous or that the findings are without any basis or without any evidence. Hence, the revision is devoid of merits and is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed at the admission stage. However, in view of granting maintenance to the respondents, as interim maintenance, it may be burden to the petitioner. Therefore, the court below is directed to decide the Maintenance Case at the earliest, in any event, not later than six (6) months, from the date of receipt of a copy of this order.

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

JUSTICE M. SATYANARAYANA MURTHY

September 04, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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