

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.423 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C, questioning the propriety and legality of the order in M.C.No.3 of 2014 dated 31.08.2016 passed by the Judge, Family Court-cum-V Additional District Judge, Tirupati.

For the sake of convenience, the parties hereinafter will be referred, as arrayed before the Trial Court in M.C.No.3 of 2014.

The first petitioner Madaka Parameswari @ Setti Parameswari and the second petitioner, who is a minor, represented by natural guardian and mother-first petitioner, filed M.C.No.3 of 2014 under Section 125 Cr.P.C, claiming maintenance of Rs.10,000/- per month to each petitioner from the date of petition. The facts on case on hand in brief is that the marriage of the first petitioner with the respondent was performed on 29.02.2008 in Annavaram Temple as per Hindu rites and customs and at the time of marriage, the parents of the first petitioner gave Rs.2,00,000/- towards dowry apart from gold ornaments and spent Rs.1,00,000/- towards marriage expenses. During their wedlock, the second petitioner was born to them. Thereafter, the respondent suspected fidelity of the first petitioner and harassed her both physically and mentally by abusing the first petitioner in filthy language for additional dowry on the ground that, he would have got more money as dowry, if he had married another woman. Further, on the pretext that the respondent lost his job, he asked

the first petitioner to stay with her parents for some time and assured of taking her back to matrimonial house after he secures employment and settles financially well. As the first petitioner has no other alternative, she returned to her parents house. It is alleged that later, the first petitioner joined the respondent at Bangalore, where he physically and mentally harassed the first petitioner and insisted for divorce. Thus, the first petitioner was subjected to cruelty in different ways throughout her stay with the respondent. The petitioners 1 & 2 are having no means to maintain themselves, whereas, the respondent is having sufficient means to maintain himself as he is earning Rs.70,000/- per month, besides possessing several properties. Hence, claimed maintenance of Rs.10,000/- per month to each petitioner.

The respondent filed counter and admitted the relationship between the first petitioner and the respondent and contended that the respondent is only earning Rs.9,000/- per month and he is working as a private employee. It is further stated in the counter that the respondent did not possess any property for himself and that the first respondent herself deserted the respondent without any reasonable cause and therefore, he has no obligation to maintain the petitioners 1 & 2 and prayed for dismissal of the petition.

During enquiry before the Trial Court, on behalf of petitioners were examined as P.Ws.1 to 4, marked Exs.A-1 to A-13. On behalf of the respondent, R.Ws.1 to 3 were examined and Exs.B-1 to B-13 were marked.

Upon hearing argument of both the counsel, the Trial Court partly allowed M.C.No.3 of 2016, directing the respondent to pay maintenance of Rs.5,000/- per month to each petitioner from the date of petition.

Aggrieved by the order of the Trial Court, the respondent/husband/petitioner herein preferred the present criminal revision case, on the ground that the petitioner herein is working as a private employee, earning Rs.9,000/- per month, but granting maintenance of Rs.5,000/- per month to respondents 1 & 2 herein is exorbitant and illegal, in such case, both the respondents are disentitled to claim maintenance from the petitioner, as the first respondent herein is living away from her husband for unjustifiable reason or cause and prayed to set-aside the order passed by the Appellate Court.

During hearing, learned counsel Sri R. Shiva Kumar appearing for the petitioner herein i.e. the husband would contend that the petitioner was working as a private employee and earning Rs.9,000/- per month, and therefore, granting maintenance @ Rs.5,000/- per month to each of the respondent's is excessive and exorbitant. That apart, the properties owned and possessed by the parents of the petitioner herein cannot be taken into consideration to assess the quantum of maintenance to be paid and prayed to set-aside the order passed by the Trial Court.

The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C is limited and the High Court may exercise such power only when the Court found that there is manifest perversity in the order

or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or failure to take proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of Cr.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. This Court normally cannot interfere with concurrent fact findings recorded by the Courts below, only in exceptional circumstances when findings are manifestly perverse or apparently erroneous.

As seen from the material available on record, the first respondent herein is the wife of the petitioner and the second respondent is the son born to the petitioner and the first respondent herein. The marriage is not in dispute, but only the dispute is with regard to quantum of maintenance. The Trial Court after elaborate consideration of the material on record, concluded that P.W.1 herself admitted that she worked at Bangalore and earned Rs.40,000/- per month. It is the contention of P.W.1 that

she joined the marital life with the petitioner and she has not filed any petition for restitution of conjugal rights. Cross-examination of P.W.1 only shows that the first respondent/wife is able to work and maintain herself. Further, P.Ws.2 & 3, i.e. parents of P.W.1 spoke about the alleged cruelty that P.W.1 meted in the hands of the petitioner herein. P.W.2 admitted that the first respondent/wife is suffering from ill-health and she has to look after second respondent/child also, who is aged 7 years and studying VII standard. But, this evidence is consistent that the first respondent/wife is not employed anywhere, though she is eligible. Therefore, the plea of the first respondent/wife that she is not employed anywhere and that she did not possess any means, muchless sufficient means is accepted.

One of the contention of the petitioner herein before the Trial Court is that, in the evidence of R.W.1, he stated that he executed gift deed in favour of his mother and also in favour of the second respondent herein prior to the present litigation and he has to maintain his old aged parents and he got properties worth Rs.11,27,899/- and he is ready to pay Rs.5,00,000/- as full and final settlement to the second respondent herein/child towards maintenance and he is willing to settle the marital dispute permanently. Thus, the petitioner herein is having sufficient means and did not provide maintenance to the respondents 1 & 2 herein. Coming to the means of the petitioner herein, the petitioner herein has categorically stated in his counter that he is earning salary of Rs.30,000/- per month and expressed his readiness to pay Rs.5,00,000/- as full and final settlement to the second

respondent herein/child towards maintenance. But, he did not produce any documentary evidence in support of his contention. Even otherwise, if the allegation made in the counter is taken into consideration, coupled with the evidence, the petitioner herein possessed sufficient means to pay maintenance to the respondents 1 & 2 herein, but he avoided to pay maintenance to the first respondent herein on the ground that she wilfully deserted the company of the petitioner herein without any reasonable cause. However, the petitioner is working as a Software Engineer and earning sufficient income and did not take any steps to restore the family ties, in view of the admission made in paragraph 19 of the counter that the petitioner herein is earning Rs.40,000/- per month, he is liable to pay maintenance to the respondents 1 & 2 herein, as the first respondent herein/wife was subjected to cruelty while she was staying with the petitioner herein and unless the petitioner herein establishes that the first respondent herein/wife wilfully deserted the company of the petitioner herein/husband, he is not entitled to raise any contention that the first respondent herein/wife is not willing to join with the husband. When wife was subjected to cruelty, there is any amount of justification for her separate living. Therefore, there is any amount of justification for her separate living and thereby, she is entitled to claim maintenance.

Coming to the quantum of maintenance, the amount awarded by the Trial Court is only Rs.10,000/- to both the respondents 1 & 2 herein per month i.e. @ Rs.5,000/- per month to each of the respondents 1 & 2. The petitioner herein is earning

Rs.30,000/- per month, as admitted in the counter, and he denied his liability to maintain the first respondent/wife, as she is also earning income. In view of the discussion, the first respondent herein/wife is also entitled to receive maintenance of Rs.5,000/- per month as she was refused and neglected by the petitioner herein to maintain, without any reasonable cause or justification. Therefore, the order passed by the Trial Court is free from any illegality, warranting interference of this Court, while exercising power under Sections 397 & 401 Cr.P.C. Moreover, the second respondent herein is the son of the petitioner and the petitioner is bound to maintain him, as father and natural guardian he did not take any steps to claim interim custody of the minor i.e. the second respondent herein till today. Therefore, the petitioner cannot deny maintenance to the second respondent.

Coming to the maintenance payable to the first respondent, the contention of the petitioner was that, the first respondent herself voluntarily deserted the company of the petitioner and he filed a petition for restitution of conjugal rights, but the first respondent did not join the company of the petitioner, thereby, the petitioner is not liable to pay maintenance to the first respondent. But, this contention was not accepted by the Court, for the reason that the first respondent was living separately, as she was subjected to physical and mental harassment for additional dowry. When she was subjected to harassment, both physically and mentally for her failure to meet the illegal demand of additional dowry, there is any amount of justification for her separate living. Hence, it is difficult to conclude at this stage, in a summary

proceeding that the first respondent voluntarily deserted the company of the petitioner. Hence, on this ground, maintenance to the first respondent cannot be denied.

Having considered the facts and circumstances of the case, including the evidentiary admissions, the Court below rightly came to conclusion that the petitioner herein is liable to pay maintenance and granted maintenance @ Rs.5,000/- per month to each, first respondent/wife and second respondent/child from the date of petition, taking into consideration of the present cost of living and escalation in price index, as the respondents 1 & 2 are expected to maintain the same standard of living, as they lead while staying with the petitioner who is software professional.

In view of my foregoing discussion, keeping in mind the power of this Court under Sections 397 & 401 Cr.P.C, I find no perversity or apparent error, thereby, the order passed by the Court below does not call for any interference by this Court, while exercising power under Sections 397 & 401 Cr.P.C. Hence, I find that the criminal revision case is devoid of merits and consequently, 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:04.10.2017

SP