

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1370 OF 2011

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 29.03.2011 passed in M.C.No.251 of 2008 on the file of the Judge, Family Court, Ranga Reddy District at L.B.Nagar, Hyderabad.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the M.C. before the trial Court.

3. The facts leading to filing of the present criminal revision case are briefly as follows:

The marriage of the first petitioner was officiated with the respondent on 03.12.2003 at Sama Bhoopal Reddy Gardens, Upperpally 'X' Roads, Rajender Nagar Mandal, Greater Hyderabad, as per Christian Rites and Caste Custom. Immediately after the marriage, the first petitioner joined with the respondent to lead happy marital life. Out of their lawful wedlock, the first petitioner and the respondent were blessed with one daughter and son i.e., petitioner Nos.2 and 3. The first petitioner lodged a complaint to the Station House Officer, Vanasthalipuram Police Station, who in turn registered a case in Crime No.339 of 2008 against the respondent for the offence punishable under Section 498-A I.P.C. It is the case of the petitioners that the respondent has been running a travel agent business and earning Rs.1,00,000/-. Hence, the petitioners filed a petition under Section 125 Cr.P.C., claiming maintenance of Rs.5,000/- per month to the first petitioner and

Rs.6,000/- per month each to petitioner Nos.2 and 3. The respondent filed counter denying all the averments made in the petition *inter alia* contending that the first petitioner voluntarily left the matrimonial home of the respondent; therefore, she is not entitled to claim maintenance. Hence, the petition may be dismissed.

4. To substantiate the case, before the trial Court, the first petitioner examined herself as PW.1 and no documents were marked. To dislodge the case of the petitioners, the respondent examined himself as RW.1 and got marked Exs.R.1 to R.4.

5. After having a thoughtful consideration to the oral and documentary evidence available on record, the trial Court arrived at a conclusion that the respondent intentionally and willfully neglected to provide maintenance to the petitioners and allowed the petition by granting maintenance of Rs.5,000/- per month to the first petitioner and Rs.2,000/- per month each to petitioner Nos.2 and 3. Hence, the revision.

6. The contention of the learned counsel for the respondent (husband) is three fold: (1) the first petitioner herself left the matrimonial home of the respondent; therefore, she is not entitled to claim maintenance; (2) the finding of the trial Court that the respondent is earning Rs.20,000/- per month is not supported by oral and documentary evidence; and (3) the findings recorded by the trial Court are perverse; therefore it is a fit case to allow the revision.

7. *Per contra*, the learned counsel for the petitioners submitted that even as per the admission made by the respondent, he has been carrying on the travel agent business since six years. He further submitted that the respondent made bald allegations against the first petitioner, that itself is sufficient to leave the matrimonial home of the respondent by the first petitioner. He also submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

8. Now the points that arise for consideration are:

1. Whether the first petitioner herself left the matrimonial home of the respondent without any justifiable cause?

2. Whether the quantum of maintenance granted by the trial Court is on higher side or not?

3. Whether there is any illegality or irregularity in the order of the trial Court, which warrants interference of this Court or not?

POINT No.1:

9. As seen from the testimonies of PW.1 and RW.1, their marriage was performed on 03.12.2003, as per Christian Rites and Caste Custom. Out of their lawful wedlock, the first petitioner and the respondent were blessed with one daughter and son i.e., petitioner Nos.2 and 3. As seen from the testimony of RW.1, the first petitioner lodged a complaint to the Station House Officer, Vanasthalipuram Police Station, who in turn registered a case in Crime No.339 of 2008 against him for the offence punishable under Section 498-A I.P.C. Ex.R.1 is the copy of F.I.R. and Ex.R.2 is the final result in C.C.No.477 of 2008. A perusal of the record

clearly reveals that bad weather prevailed in the family life of the first petitioner and the respondent for the reasons best known to them. Each one is blaming the other for unrest in the family life. It is not uncommon to make allegations and counter allegations against each other in matrimonial cases in order to gain sympathy of the Court. The fact remains that the petitioner lodged a complaint against the respondent for the offence punishable under Section 498-A I.P.C. This itself is *prima facie* sufficient to leave the matrimonial home by the first petitioner. A perusal of the record further reveals that the respondent is suspecting the first petitioner. In such circumstances, leaving the matrimonial home of the respondent by the first petitioner is justifiable.

10. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the respondent that the first petitioner left the matrimonial home of the respondent without justifiable cause. I am fully agreeing with the finding of the trial Court that the respondent intentionally and willfully neglected to provide maintenance to the petitioners. Point No.1 is answered accordingly.

POINT Nos.2 and 3:

11. Point Nos.2 and 3 are interlinked with each other; hence, this Court is inclined to address both points simultaneously in order to avoid recapitulation the facts and evidence.

12. As per the testimony of PW.1, the respondent has been running a travel agent business. In the cross-examination, at one stage, the respondent admitted that he has been running a travel

agent business. He further deposed that he stopped the business. Absolutely, there is no material on record to establish that the respondent was not doing travel agent business as on the date of filing of the petition. It is not the case of the respondent that the first petitioner is having any source of income. It may not be possible for the first petitioner to look after the welfare of petitioner Nos.2 and 3 without financial assistance of the respondent. There is a moral and social obligation on the part of the respondent to look after the welfare of his wife and children i.e., the petitioners. The trial Court basing on the material available on record arrived at a conclusion that the respondent may earn Rs.20,000/- per month as a business man. The finding recorded by the trial court with regard to income of the respondent is supported by oral evidence of the parties. It appears that the trial Court taking into consideration the prevailing price index and other attending circumstances, granted an amount of Rs.5,000/- per month to the first petitioner and Rs.2,000/- per month each to petitioner Nos.2 and 3 towards maintenance. Since petitioner Nos.2 and 3 are minors, an amount of Rs.9,000/- per month is hardly sufficient for sustenance of the petitioners. The trial Court rightly considered the financial status of the respondent and granted maintenance of Rs.9,000/- per month to the petitioners.

13. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that the amount of maintenance granted by the trial Court is on higher side. If the findings recorded by the trial Court are not based on any evidence or based on evidence, which is not legally admissible, then those findings can be termed as perverse. Having regard to

the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the respondent that the findings recorded by the trial Court are perverse. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court, by exercising the revisional jurisdiction under Sections 397 and 401 of Cr.P.C. Hence, the revision lacks merits and *bona fides*. Point Nos.2 and 3 are answered accordingly.

14. In the result, the Criminal Revision Case is dismissed.

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

T.SUNIL CHOWDARY, J

Date: 04.01.2017
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