

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.917 of 2009

ORDER:

This Criminal Revision Case is filed, under Sections 397 and 401 of the Code of Criminal Procedure, assailing the order dated 30.03.2009, in F.C.M.C.No.74 of 2008 (Old M.C.No.48 of 2006 on the file of Additional Judicial Magistrate of First Class, Karimnagar) on the file of Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar.

2. The parties will be referred to as they are arrayed before the trial Court to avoid confusion.

3. Learned counsel for the respondent (petitioner herein) submitted that the trial Court without taking into consideration the responsibility of the respondent, who has to look after the welfare his second wife and children, allowed the petition in-part by granting maintenance of Rs.1,200/- per month to the petitioner. He further submitted that the amount of maintenance granted by the trial Court is on higher side.

4. None appeared on behalf of the respondent.

5. The questions that arise for consideration, in this revision, are :

- (i) Whether the amount of maintenance granted by the trial Court is on higher side? and
- (ii) Whether there is any illegality, irregularity or impropriety in the order of the trial Court which warrants interference of this Court?

6. Both points are interlinked with each other; hence, this Court is inclined to address both points simultaneously in order to avoid recapitulation of facts and evidence.

7. To substantiate the case before the trial Court, the petitioner examined herself as PW.1 and got examined her brother as PW.2. Exs.X.1 to X.3 were marked through P.W.2. To demolish the case of the petitioner, the respondent examined himself as RW.1 and got marked Ex.R.1.

8. The marriage of the petitioner was performed with the respondent on 20.09.1999 at Shalimar Function Palace, Karimnagar according to Islamic rites and customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. It is the case of the petitioner that the respondent subjected her to cruelty for additional dowry; therefore, she has been residing separately from 2003 onwards.

9. A perusal of the record reveals that basing on the complaint lodged by the petitioner, the Station House Officer, Women Police Station, Karimnagar, registered a case in Crime No.43 of 2004 for the offences punishable under Sections 498-A and 494 IPC and Sections 3 and 4 of the Dowry Prohibition Act against the respondent. After full-fledged trial, the respondent was convicted and sentenced to undergo imprisonment in C.C.No.199 of 2005 on the file of Judicial Magistrate of Second Class, Karimnagar. The respondent preferred CrI.A.No.50 of 2007 on the file of V Additional Sessions Judge, Karimnagar and the same was allowed on 31.12.2008. The material placed before the Court *prima facie* reveals that the respondent subjected the petitioner to cruelty. A

perusal of the record further reveals that the respondent married another lady. The above two facts justified the act of the petitioner to leave the matrimonial home of the respondent. A perusal of the record reveals that the respondent intentionally and wilfully evaded to pay maintenance to the petitioner. Having regard to the facts and circumstances of the case, I am of the considered view that the petitioner is entitled to claim maintenance from the respondent.

10. It is needless to say that a person, who filed the petition under Section 125 of Cr.P.C., has to establish the source of income of the respondent so as to enable the court to grant fair and reasonable amount towards maintenance. Except the self served testimony of P.W.1, there is no other convincing evidence to prove that the respondent is one of the partners of Asra Electrical Shop in Adilabad District and earning Rs.30,000/- per month. Even as per the testimony of R.W.1, the respondent has been attending glass fitting work and earning Rs.250/- to Rs.300/- per day whenever the work is available. The fact remains that the respondent is an earning member. There is a social responsibility on the part of the respondent to provide maintenance to the petitioner. Absolutely there is no material on record to establish that the petitioner has any source of income. Taking into consideration the financial condition of both parties, the trial Court granted maintenance of Rs.1,200/- per month to the petitioner and the said amount is hardly sufficient for sustenance of an individual.

11. Viewed from any angle, I am unable to accede to the contention of learned counsel for the respondent that the amount of maintenance granted to the petitioner is on higher side. I am fully agreeing with the finding recorded by the trial Court with regard to granting of maintenance to the petitioner. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court while exercising the jurisdiction under Section 397 Cr.P.C.

12. Accordingly, the Criminal Revision Case is dismissed. Consequently Miscellaneous Petitions, if any, pending in this revision shall stand closed.

AUGUST 10, 2017
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T.SUNIL CHOWDARY, J



HON'BLE SRI JUSTICE T.SUNIL CHOWDARY



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Date:10.08.2017

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