

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.17158 OF 2016

ORDER:

Questioning that portion of the order which stood adverse to the interest of the petitioner viz., Sripada Ramalingeswara Sarma, the present Criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.); precisely to say, as against the monthly maintenance of Rs.6,000/-, awarded by the learned IV Additional Junior Civil Judge, Rajahmundry, as against the claim of Rs.10,000/- by respondent No.1 herein Smt. Sripada Naga Kumari, while passing the common order in C.R.P. No.96 of 2016 and C.R.P. No.104 of 2016, preferred by the petitioner and respondent No.1, respectively, the Special Judge for trial of the cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - cum - X Additional Sessions Judge, East Godavari District, Rajahmundry, enhanced the same from Rs.6,000/- to Rs.9,000/-, which is, now, sought for quashment.

2. Heard Sri K. Gangi Reddy, learned counsel for the petitioner, and Sri K. Neela Kanteswara Rao, learned counsel for respondent No.1.

3. Before the learned Magistrate, respondent No.1 examined herself as PW.1 and one M. Satyanarayana as PW.2 and marked a photograph along with compact disk, and a photostat copy of the First

Information Report / authenticated copy in Crime No.253 of 2014 as Exs.P-1 and P-2, respectively. The petitioner examined himself as RW.1 and also exhibited a photograph along with compact disk as Ex.R-1.

4. The learned Magistrate placing reliance on the decision of the Hon'ble Supreme Court in **Pylamutyalamma alias Satyavathi v. Pyla Suri Demudu** [2012 (1) ALD (Crl.) 471 (SC)], drawn presumption based on the factual aspect occurring in the present case, and recorded that respondent No.1 is entitled to maintenance, more particularly, observing that the allegations levelled by the petitioner (RW.1) that respondent No.1 (PW.1) has got illicit intimacy with one Prabhakara Rao is self-serving statement without there being any supportive evidence, and, therefore, discarded it and thereby granted Rs.6,000/- monthly maintenance since even according to the petitioner himself, he used to draw Rs.39,000/- per month towards salary, but, on retirement, receiving a pension of Rs.19,000/- per month and, thus, opining that awarding Rs.6,000/- towards monthly maintenance would be reasonable, granted the said amount besides granting Rs.2,000/- towards costs of the petition.

5. In its common order, the revisional Court, following the principles laid down in **Badshah v. Urmila Badshah Godse** (2014 Crl.L.J. 1076)], **Chandra Shekhar Bharti v. State of Bihar** (2014 Crl.L.J. 2953), **Nagendrappa Natikar v. Neelamma** (2013 Crl.L.J. 2060), **Subrata Roy Sahara v. Union of India** (2014 Crl.L.J. 3437),

Bhuwan Mohan Singh v. Meena (2014 CrL.L.J. 3979), **Sunita Kachwaha v. Anil Kachwaha** (2015 CrL.L.J. 659), **Shamima Farooqui v. Shahid Khan** (2015 CrL.L.J. 2551), **K. Danjaiah Goud v. State of A.P.** [(2009 (3) ALT (Crl.) 16(A)], **Chaturbhuj v. Sita Bai** (2008 (1) ALD (Crl.) 97 (SC), and **G. Maraiah v. G. Vijayalakshmi** (1979 CrL.L.J. 1226), opining that the amount of Rs.6,000/- awarded by the learned Magistrate would not meet the present day cost of living, where prices of essential commodities are on hike, enhanced the monthly maintenance to that of Rs.9,000/-, which, in his opinion, would meet the ends of justice, approving the finding of the learned Magistrate that respondent No.1 is entitled to maintenance from the date of petition. The revisional Court also placed reliance on the ruling in **Shail Kumari Devi v. Krishan Bhagwan Pathak alias Kishun b. Pathak** [(2008 (3) ALT (Crl.) 171 (SC)] as to the law declared by the Hon'ble Supreme Court that the remedy provided by Section 125 of the Code of Criminal Procedure, 1973, is a summary remedy for securing reasonable sum by way of maintenance subject to the decree that may be passed by a competent Civil Court, and also the law declared that subsequent to Amendment Act, 2001, maintenance amount can be granted exceeding Rs.500/-.

6. Though, the very same grounds have been agitated in the present petition, but not pinpointed as to on which of the aspects the revisional Court went wrong and the orders passed by the Courts below are patently illegal. In fact, one of the main grounds agitated

by the petitioner is that the revisional Court ought not to have granted Rs.9,000/- per month by way of enhancement from Rs.6,000/-, without assigning any reasons, and, therefore, sought to set aside the same.

7. It is not as though, the revisional Court has enhanced the monthly maintenance from Rs.6,000/- to Rs.9,000/- without assigning any reason as the revisional Court did assign reasons which are convincing, mentioned in paragraph No.18 and also the law declared by the Hon'ble Supreme Court in **Shail Kumar Devi v. Krishan Bhagwan Pathak alias Kishun b. Pathak**.

8. The main grievance of the petitioner appears to be that respondent No.1 did not marry him, but has been living with paramour whose name he has mentioned, but a positive finding has been recorded by the trial Court that there is no proof to substantiate that allegation except the *ipse dixit* statement of the petitioner. That finding recorded by the trial Court stood undisturbed and confirmed by the revisional Court, and, therefore, in the present petition under Section 482 of Cr.P.C., this Court once again cannot re-open the said finding and even otherwise, there is no evidence worth the name let in by the petitioner to prove such a serious allegation levelled by him. Thus, there is, absolutely, no merit in the present petition.

9. The learned counsel for the petitioner, no doubt, placed reliance on the decision of the Hon'ble Supreme Court in **Shail Kumar Devi v. Krishan Bhagwan Pathak alias Kishun b. Pathak**¹, for the proposition that the Courts are required to record reasons for granting or refusing maintenance to the wife and parents and for awarding maintenance from the date of application, express order is necessary and there is nothing which requires recording 'special reasons' though he must record reasons as envisaged by sub-section (6) of Section 354 Cr.P.C. in support of the order passed by him. In the discussion hereinbefore, it is mentioned that both the Courts below have recorded reasons for awarding monthly maintenance at Rs.6,000/- and for enhancing the same to Rs.9,000/-, and, therefore, the said decision would not render any assistance.

10. The ruling of the Hon'ble Supreme Court in **Shamima Farooqui v. Shahid Khan**², relied on by the learned counsel for the petitioner, referring to paragraph Nos.13 to 21, is inapplicable as the respondent therein (husband) did not appear and contest the matter. The expression of Hon'ble Supreme Court contained in paragraph Nos.13 to 21 is thus:

“13. When the aforesaid anguish was expressed, the predicament was not expected to be removed with any kind of magic. However, the fact remains, these litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the

¹ 2008 (3) ALT (Crl.) 171 (SC)

² (2015) 5 SCC 705

potentiality to take a toll on the society. It occurs either due to the uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the Courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the Court. As regards the second facet, it is the duty of the Court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands "still" on some unknown bank of the river. It cannot allow it to sing the song of the brook. "Men may come and men may go, but I go on for ever." This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs. There has to be a pro-active approach in this regard and the said approach should be instilled in the Family Court Judges by the Judicial Academies functioning under the High Courts. For the present, we say no more.

14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs.17,654/-. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs.2,000/-. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind [Section 125 CrPC](#) is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there

has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of [Section 125 CrPC](#), it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under [Section 125 CrPC](#) can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under [Section 125 CrPC](#), unless disqualified, is an absolute right.

15. While determining the quantum of maintenance, this Court in *Jabsir Kaur Sehgal v. District Judge Dehradun* [(1997) 7 SCC 7] has held as follows: (SCC P.12, PARA 8):-

"8. ... The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under

the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In [Chaturbhuj v. Sita Bai](#) [(2008) 2 SCC 316)], it has been ruled that: (SCC P.320, para 6)

"6. ... [Section 125](#) CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in [Captain Ramesh Chander Kaushal v. Veena Kaushal](#)[(1978) 4 SCC 70)] falls within constitutional sweep of [Article 15\(3\)](#) reinforced by [Article 39](#) of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in [Savitaben Somabhai Bhatiya v. State of Gujarat](#)[(2005) 3 SCC 636)]."

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in [Chander Prakash Bodhraj v. Shila Rani Chander Prakash](#)[1968 SCC OnLine Del 52] wherein it has been opined thus: (SCC OnLine Del para 7)

7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.

20. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs.4,000/- to Rs.2,000/-. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the

order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no revisional court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order.

21. Having stated the principle, we would have proceeded to record our consequential conclusion. But, a significant one, we cannot be oblivious of the asseverations made by the appellant. It has been asserted that the respondent had taken voluntary retirement after the judgment dated 17.2.2012 with the purpose of escaping the liability to pay the maintenance amount as directed to the petitioner; that the last drawn salary of respondent taken into account by the learned Family Judge was Rs.17,564/- as per salary slip of May, 2009 and after deduction of AFPP Fund and AGI, the salary of the respondent was Rs.12,564/- and hence, even on the basis of the last basic pay (i.e. Rs.9,830/-) of the respondent the total pension would come to Rs.14,611/- and if 40% of commutation is taken into account then the pension of the respondent amounts to Rs.11,535/-; and that the respondent, in addition to his pension, hand received encashment of commutation to the extent of 40% i.e. Rs.3,84,500/- and other retiral dues i.e. AFPP, AFGI, Gratuity and leave encashment to the tune of Rs.16,01,455/-. The aforesaid aspects have gone uncontroverted as the respondent- husband has not appeared and contested the matter. Therefore, we are disposed to

accept the assertions. This exposition of facts further impels us to set aside the order of the High Court.”

11. The ruling of the Hon’ble Supreme Court, relied on by the learned counsel for the petitioner, in **Ramkaran v. Gyarsi**³, on facts, would not aid the petitioner to advance his grounds in the present petition for the reason, the Courts below have adverted to the evidence on record and appreciated the evidence in accordance with the evidentiary rule and assigned reasons in tendering positive findings, and, therefore, it cannot be said that the order rendered by the revisional Court is perverse or patently illegal.

12. Even the learned counsel for the petitioner has placed reliance on the decision of the Hon’ble Supreme Court in **Deepti alias Arati Rai v. Akhil Rai**⁴, for the principle that second revision after dismissal of the first one by the Sessions Court is not maintainable and inherent power cannot be utilized for exercising the powers expressly barred by the Code. The aforesaid decision was rendered in the context of quashing of charge under Section 498-A IPC against parents-in-law of the complainant therein by the High Court on the basis of concession made by the learned counsel without going through the record, was held improper.

13. Thus, there is no merit in the present Criminal Petition and the same is accordingly dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

March 20, 2017.

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³ (2005) 12 SCC 341

⁴ (1995) 5 SCC 751

