

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.485 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'), is filed by the unsuccessful respondent-husband assailing the orders, dated 29.11.2016, of the learned Judge, Family Court-cum-IV Additional District & Sessions Judge, Adilabad, passed in FCOP.No.4 of 2015 filed by the respondents 1 & 2 herein, wife and child, under Section 125 of CrPC requesting to award maintenance @Rs.5,000/- each recoverable from the petitioner herein.

2. I have heard the submissions of Sri K.V.R.Prasad, learned counsel for the petitioner/ husband, and of Sri N. Hari Prasad, learned counsel appearing for the 1st respondent. I have carefully perused the material record.

2.1 The parties in this revision shall herein after be referred as arrayed in the FCOP for convenience and clarity.

3. To begin with, it is necessary to refer to the pleadings of the parties.

3.1 The case of the petitioners is this: - 'The 1st petitioner is the legally wedded wife of the respondent. Their marriage was solemnised on 11.03.2010 at Adilabad. Under lawful wedlock, the 1st petitioner gave birth to the 2nd petitioner, on 13.12.2012. The 1st petitioner and the respondent lead marital life for about three years. They were unhappy during the said period as the respondent was not satisfied with the presentations given during the marriage. The parents of the 1st petitioner are economically weak. The respondent used to raise demands for money or gold. On non fulfilment of the said demands, he used to beat, harass and torture the 1st petitioner. The 1st petitioner knowing very well about the financial conditions of her parents did not inform them

about the ill-treatment being meted to her and tolerated the same. After the 1st petitioner gave birth to the 2nd petitioner at her parents' house, the respondent demanded, at the time of naming ceremony of the boy, 4 tolas of gold, five lakhs cash and clothes, as presents. The father of the 1st petitioner pleaded that meeting the said demand is beyond his capacity. After two months of the birth of the 2nd petitioner, the respondent took the petitioners to his house. The marriage of the younger brother of the respondent was fixed to be performed on 25.04.2013. The respondent and his family members kept quiet till the marriage of the brother of the respondent. Thereafter they started ill-treating the 1st petitioner. On 07.05.2013, the respondent, his parents and other family members brutally beat the petitioner in the presence of her father and drove her out of the house. The attempt of the father of the 1st petitioner to persuade the respondent and his family members was of no avail. On 18.06.2013, the 1st petitioner lodged a complaint with the police. A case in crime no.26 of 2013 was registered under Section 498-A of IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961. The 1st petitioner came to know that the respondent married another lady. He owns three Lorries and one JCB. He carries on business in milk, curd and ghee. He earns rupees one lakh per month. He is under an obligation to maintain the petitioners. He is neglecting to maintain the petitioners. The 1st petitioner is a household lady and has no sources of income. She is now burdened with the maintenance of the 2nd petitioner.'

3.2 Per contra, the case of the respondent, in brief, is this: - 'The material allegations in the petition of the petitioners are false. After marriage, the 1st petitioner joined the respondent and they lived happily for three years. It is true that during the lawful wedlock the 1st petitioner gave birth to the 2nd petitioner. The 1st petitioner started harassing and teasing this respondent unnecessarily. She was not heeding the words of this respondent. She was careless and negligent towards the respondent and his parents. Therefore, he

was forced to give divorce to her. On 16.06.2013, the respondent pronounced final divorce and sent intimation to the 1st petitioner along with Iddat period amount by registered post with acknowledgment due. Since 16.06.2013, the 1st petitioner is not the wife of the respondent and their marital relationship has come to an end from that date. This respondent is paying maintenance by way of Money Orders to the 2nd petitioner, who is his son. The question of payment of further maintenance to the petitioners does not arise for consideration. The allegations that the respondent harassed the 1st petitioner and ill-treated her and that at the time of naming ceremony of the 2nd petitioner he demanded presents as stated in the petition of the petitioner are false. This respondent never meted out any ill treatment to her and never made any demands for presents in cash or kind. Out of created fears and apprehensions, a false complaint was lodged against the respondent by the 1st petitioner.'

3.3 At trial, the 1st petitioner and her father were examined as PWs1 & 2 and exhibits P1 to P4 were marked on her side. The respondent and his supporting witnesses were examined as RWs1 to 3 and exhibits R1 to R8 were marked on his side.

3.4 On merits and by the order impugned in this revision case, the Family Court awarded maintenance at the rate of Rs.4,000/- and Rs.3,000/- respectively to the petitioners 1 & 2 and directed that the said maintenance amount shall be paid from the date of the petition, 20.02.2015; for payment of arrears of maintenance, a time of three months was granted to the respondent and he was directed to pay the arrears of maintenance in three instalments. Further, the 1st petitioner was directed to open a joint bank account in her name and in the name of the 2nd petitioner and furnish details of the same to the respondent to enable him to deposit monthly maintenance amounts on or before 5th of every calendar month into the said account. Aggrieved thereof, the respondent-husband filed this revision case.

4. Learned counsel for the respondent-husband while reiterating the pleaded case, which is already stated supra, would contend as follows: - 'The order of the Family Court which was passed on presumptions and surmises is unsustainable both under facts and in law. The finding of the Family Court that this respondent owns Lorries and is having sufficient income is incorrect as the respondent does not own any Lorries. He stated the said fact in his counter filed before the Family Court. The Family Court ought to have considered the fact that the respondent pronounced divorce and there was no marital relationship of man and wife between the respondent and the 1st petitioner since 16.06.2013. The Family Court ought to have seen that the respondent intimated about the pronouncement of final divorce and sent the Iddat period amount to the 1st petitioner by registered post with acknowledgment due and the said intimation was received by the 1st petitioner under an acknowledgment. The Family Court did not take into account the maintenance being paid by the respondent to the 2nd petitioner/ son. The Family court wrongly concluded that the petitioners 1 & 2 are entitled to monthly maintenance @ Rs.4,000/- and Rs.3,000/- respectively. The Family Court failed to consider exhibits R1 to R8 and the evidence adduced on behalf of the respondent from a correct stand point. The order impugned is unsustainable and is liable to be set aside.'

5. On the other hand, the learned counsel for the petitioners submitted that the evidence on record was properly appreciated by the Family Court and that the Family Court after taking into consideration all the relevant aspects awarded the maintenance and that the maintenance awarded in the present day cost of living is a meagre amount and that unless maintenance as awarded is confirmed, it is difficult for the petitioners to sustain and that the contentions urged by the respondent are devoid of merit and that the well reasoned order of the Family Court does not call for any interference.

6. Now the points for determination in the Criminal Revision Case are as under:

- 1) Whether the respondents 1 to 2 herein/petitioners have made out valid and sufficient grounds for award of maintenance to them?
- 2) Whether the quantum of maintenance awarded to them is on the higher side and is liable to be reduced in the facts and circumstances urged by the petitioner herein?
- 3) To what relief?

7. POINTS:

The relationship of husband and wife between the 1st petitioner and the respondent is admitted. The 2nd petitioner is their child is also admitted. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. The 1st petitioner and the respondent are living separately is also not in dispute. The 2nd petitioner is in the custody of the 1st petitioner. Whatever be the disputes between the spouses and the reasons for the said disputes, the respondent is legally obliged to maintain the 2nd petitioner, who is his son.

7.1 Dealing with the aspect as to whether the 1st petitioner, who is said to be a divorced wife, is entitled to claim maintenance from the respondent, it is necessary to examine the legal position obtaining. In the decision in *Shamima Farooqui Vs. Shahid Khan* [AIR 2015 SC 2025] the Supreme Court while answering similar question held as follows:

First of all, we intend to deal with the applicability of Section 125 Code of Criminal Procedure to a Muslim woman who has been divorced. In *Shamim Bano v. Asraf Khan* MANU/ SC/ 0332/ 2014 : (2014) 12 SCC 636, this Court after referring to the Constitution Bench decisions in *Danial Latifi v. Union of India* MANU/ SC/ 0595/ 2001 : (2001) 7 SCC 740 and *Khatoon Nisa v. State of U.P.* (2014) 12 SCC 646 had opined as follows:

13. The aforesaid principle clearly lays down that even after an application has been filed under the provisions of the Act, the Magistrate under the Act has the power to grant maintenance in favour of a divorced Muslim woman and the parameters and the

considerations are the same as stipulated in Section 125 of the Code. We may note that while taking note of the factual score to the effect that the plea of divorce was not accepted by the Magistrate which was upheld by the High Court, the Constitution Bench opined that as the Magistrate could exercise power Under Section 125 of the Code for grant of maintenance in favour of a divorced Muslim woman under the Act, the order did not warrant any interference. Thus, the emphasis was laid on the retention of the power by the Magistrate Under Section 125 of the Code and the effect of ultimate consequence.

14. Slightly recently, in *Shabana Bano v. Imran Khan* MANU/ SC/ 1859/ 2009 : (2010) 1 SCC 666, a two-Judge Bench, placing reliance on *Danial Latifi* (supra), has ruled that: 21. The Appellant's petition Under Section 125 Code of Criminal Procedure would be maintainable before the Family Court as long as the Appellant does not remarry. The amount of maintenance to be awarded Under Section 125 Code of Criminal Procedure cannot be restricted for the iddat period only. Though the aforesaid decision was rendered interpreting Section 7 of the Family Courts Act, 1984, yet the principle stated therein would be applicable, for the same is in consonance with the principle stated by the Constitution Bench in *Khatoun Nisa* (supra).

In view of the aforesaid dictum, there can be no shadow of doubt that Section 125 Code of Criminal Procedure has been rightly held to be applicable by the learned Family Judge.

In view of the aforesaid legal position, the 1st petitioner, even if she is a divorced wife, is entitled to seek maintenance under Section 125 of CrPC as long as she remains unmarried. In the considered view of this court, there is no reason to deny award of maintenance to the 1st petitioner-wife unless it is sufficiently established that the income of the wife, if any, is sufficient for her sustenance. Unless the husband establishes that his wife has income of her own and needs no financial support from him, she cannot be denied maintenance from the husband, though she is a divorced wife. The maintenance awarded shall be adequate for sustenance, food, clothing, shelter and essential incidental expenses. In case of children, it takes in its compass the educational expenses and expenses on extra curricular activities of the children. The law is well settled that the maintenance has to be awarded

keeping in view the social status and the economic condition of the husband and the reasonable amount which the wife and children would require for their sustenance and upkeep. The provision for maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of maintenance under the Code of Criminal Procedure is subject to final determination of their rights in a civil Court. The provision provides for speedy remedy for maintenance to the wife and eligible children and the maintenance awarded shall be adequate for sustenance, food, clothing, shelter and essential incidental expenses besides educational and other expenses of the school going children, as already observed.

7.2 Now coming to the incomes of the 1st petitioner and the respondent, it is to be noted that the 1st petitioner contends that she is a house wife and she has no income and sources of income and that therefore, she is entitled to claim maintenance from the respondent. It is not the case of the respondent that the 1st petitioner is employed or is having income or sources of income. His only contention is that he divorced her and even sent the Iddat period amount to her and, therefore, he is no longer liable to pay any maintenance to her. Insofar as his liability to pay maintenance to the 2nd petitioner/ Son, the case of the respondent is that he is already paying maintenance by way of money orders. The 1st petitioner further pleaded that the respondent owns Lorries and one JCB and also carries on business in milk and milk products and is earning rupees one lakh per month and that he is financially well placed and is a substantial person. She reiterated her case in her evidence and examined her father as PW2 to corroborate her version. She filed exhibits P2 to P4, which are the vehicular documents of the vehicles of the respondent. It is the case of the respondent that he sold away the said vehicles and that he is not having sufficient income to pay maintenance to the petitioners. To prove his

contentions, he deposed as RW1 and further examined RWs2 & 3 to corroborate his version. It is apt to note that without any foundation in the pleadings the respondent contended that the 1st petitioner knows tailoring work and has been earning money; however, eventually failed to establish the said contention. Though he further tried to establish that he sold away the vehicles to his friends prior to his marriage, he did not produce any evidence in support thereof, and, in-fact, neither he nor RWs2 & 3 have spoken a word in their evidence about the alleged sale of the vehicles by him. He also failed to produce any evidence like money order coupons or any other reliable evidence to show that he is regularly and without fail paying a fixed adequate sum to the 2nd petitioner towards monthly maintenance. On a careful analysis of the pleadings and the evidence (both oral and documentary) the learned Judge, Family Court, awarded maintenance @ Rs.4,000/- & Rs.3,000/- to the petitioners 1 & 2 from the date of the petition while *inter alia* observing that though the petitioners pleaded that the respondent is earning one lakh per month they did not adduce any evidence except filing exhibits P2 to P4. Though the learned counsel for the petitioners contends that the said amounts awarded are meagre and insufficient, since no revision is filed assailing the quantum of maintenance there is no need to deal with the said aspect in this revision. Be that as it may, having regard to the fact that the petitioners established that the respondent owns Lorries and is an able bodied man capable of earning and the other circumstances like the economic condition of the respondent, the capacity of the respondent to earn, the basic needs of the petitioners and the present day cost of living, the Family Court awarded maintenance @ Rs.4,000/- & Rs.3,000/- per month respectively to the petitioners 1 & 2.

8. Having carefully considered the facts and the evidence on record, this Court finds that there is no infirmity or illegality or impropriety in the

impugned order of the Family Court and hence, the said order does not brook interference.

9. In the result, the Criminal Revision Case is dismissed confirming the order of the Family Court. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

28.06.2017
Vjl

