

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.686 of 2017

ORDER:

The unsuccessful respondent/ husband filed this Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code') assailing the order, dated 01.02.2017, of the learned I Additional Sessions Judge, Ongole, Prakasam District, passed in Criminal Revision Petition No.74 of 2016.

2. I have heard the submissions of *Sri Rizwan Ali Shaik*, learned counsel for the petitioner, and of *Sri P.Rama Sharan Sharma*, learned counsel for the 2nd respondent. I have perused the material record.

2.1 The parties in this revision case shall hereinafter be referred to as the petitioners/ wife & sons and respondent as arrayed in the maintenance case for convenience and clarity.

3. The facts in a nutshell are as follows:

The 1st petitioner is the legally wedded wife of the respondent. The petitioners 2 and 3 are their minor sons. The petitioners while making various allegations in their petition also stated that they have no means and that the respondent neglected to maintain them and that, therefore, they are entitled to claim maintenance @ Rs.5,000/- each per month. The respondent while admitting the relationship resisted the claim of the petitioners on various grounds. At trial, the 1st petitioner was examined as PW1 and exhibit P1-office copy of notice was marked on her side. The respondent was examined as RW1 and exhibits R1 to R4 were marked on his side. Exhibits R1 & R2 are certified copies of registered sale deeds. R3 and R4 are fee certificates, dated 15.09.2016, related to school fee of the petitioners 2 and 3. The learned

Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Chirala, while disposing of the MC by order, dated 24.10.2016, granted monthly maintenance to the petitioners 1 to 3, @Rs.3,000/- each from the date of the order, i.e., 24.10.2016. The respondent has not challenged the said order of the learned Magistrate passed in the MC. Therefore, it can safely be concluded that the petitioners are entitled to maintenance @Rs.3,000/- each, per month and that the respondent cannot now dispute their entitlement to the said monthly allowances of maintenance. Nevertheless, not being satisfied with the quantum of maintenance awarded, the petitioners filed the Criminal Revision Petition No.74 of 2016 before the I Additional Sessions Court. The learned Additional Sessions Judge allowed the said the Criminal Revision Petition filed by the petitioners and enhanced the monthly maintenance amount payable to the petitioners 1 to 3 from Rs.3,000/- to Rs.5,000/- each and directed the respondent to pay the maintenance amounts at the said enhanced rate from 24.10.2016, the date of the order of the learned Magistrate passed in the MC. Aggrieved thereof, the respondent filed the present revision case.

4. Therefore the points for determination are –

- (i) Whether the impugned order enhancing the maintenance allowances payable to the petitioners from Rs.3,000/- to Rs.5,000/- each per month is unsustainable?
- (ii) Whether the said maintenance amounts awarded to the petitioners require downward revision in the facts and circumstances stated by the respondent?
- (iii) Whether, in the facts and circumstances stated by the respondent, the order impugned is liable to be set aside and the order of the learned Magistrate is liable to be restored?
- (iv) To what relief?

5. POINTS:

The case of the respondent and the submissions made on his behalf by his learned counsel, in brief, are as follows: “The trial Court, appreciated the facts correctly and in proper perspective and accordingly granted monthly

maintenance @ Rs.3,000/- each to the petitioners 1 to 3. Though it is the case of the respondent that the 1st petitioner is not entitled to any maintenance, he did not challenge the said order by filing a revision. Though the said monthly maintenance amounts awarded to the petitioners are just and fair, the petitioners unnecessarily filed the revision before the Additional Court of Session and over avariciously claimed more amounts towards their monthly maintenance allowances. The Court below, without any material much less additional material on record, erroneously enhanced the monthly maintenance amounts awarded by the trial Court to the petitioners. The Court below did not consider the fact that the respondent is regularly paying Rs.6,000/- to the petitioners 1 to 3 from the date of the order passed in the maintenance case. The Court below also did not consider the aspect that the respondent is also paying the school fee and meeting other expenses of the children. The maintenance amounts payable to the petitioners are erroneously enhanced. This respondent is getting a net salary of Rs.24,043/- per month. If the respondent is required to pay the maintenance of Rs.15,000/- in all to the petitioners every month, he will be left with a very small amount of less than Rs.10,000/-. And with that amount it is highly difficult for him to maintain himself and his old aged parents. The 1st petitioner/wife is having Ac.0.04 cents of site. She also owns Ac.2.00 cents of agricultural land. The said aspects are established by the respondent by producing exhibit R1, the certified copy of registered sale deed; and, exhibit R2, the certified copy of registered sale deed, dated 25.06.2007. The said land was given to her by her parents at the time of marriage. She is getting income from the agricultural land. The respondent also made a recurring deposit @ Rs.1,000/- in the name of the 1st petitioner in Gudur Post Office. She is having movable and immovable properties of her own. Her house site situated at Arumbakam village is a very valuable property. It was purchased by the respondent from out of his salary savings. Having lived happily with the respondent for ten

years and having given birth to two Sons under lawful wedlock, the 1st petitioner somehow developed aversion towards the respondent without any cause and deserted him in the year 2014 while they were staying in Railway Quarters at Gudur. The enhanced amounts of maintenance awarded to the petitioners are unjust and unfair in the facts and circumstances of the case.”

5.1 Per contra, learned counsel appearing for the petitioners, while supporting the orders of the Court below, would submit as follows: “The 1st petitioner has no source of income. Hence, the learned Magistrate awarded maintenance to her. However, since a meagre amount was awarded to her and her sons, she was constrained to file a revision before the Court of Session. In the present day cost of living, Rs.3,000/- per month is not enough for a woman to lead a decent and dignified life. Petitioners 2 and 3 are students aged 14 years 12 years respectively as on the date of the deposition of PW1 in September, 2016. They are now pursuing higher education. Considering the present day cost of living and the educational expenses, the maintenance awarded @ Rs.3,000/- each per month to the minor Sons is hardly sufficient. The respondent is an able bodied person. The respondent suppressed his actual income. He falsely pleaded that his net monthly salary is Rs.24,043/-. In his evidence, he stated that his gross salary in the month of August, 2013 was Rs.50,000/-. His salary might have increased manifold by now. He must be drawing more than Rs.50,000/- per month as on today. He did not file his salary certificate showing the actual salary and the deductions, if any. Therefore, an adverse inference can be drawn so far as his monthly income is concerned. The well considered order of the Court below needs no interference.

5.2 I have given earnest consideration to the facts and submissions. I have perused the copies of depositions filed along with the pleadings.

5.3 The case of the respondent is that the 1st petitioner/wife is having Ac.0.04 cents of site which he purchased in her name out of love and affection and that she also owns Ac.2.00 cents of agricultural land conveyed to her by her parents by means of a sale deed, dated 25.06.2007 and that she is getting income from the said land and that he made a recurring deposit @ Rs.1,000/- per month in the name of the 1st petitioner in the post office at Gudur. The respondent/ husband filed exhibits R1 and R2, certified copies of registered sale deeds in respect of the above said site and land. There is no dispute with the fact that the site is not fetching any income. However, when it was suggested to her that she is having Ac.2.00 cent of lands, she stated in her cross-examination that the said land was sold away and stated that she is not aware of any recurring deposit in the post office and denied the suggestion that she received the matured RD amount during the pendency of the case. No specific suggestion was given to her regarding the income, if any, she is receiving from the land. Therefore, there is no evidence on record regarding the income from the land. During her cross-examination, when it was suggested to her that the respondent is not having any illicit intimacy with one Vijaya, she denied the said suggestion as 'not true'. Thus, there is no evidence of the required standard to show that the 1st petitioner is having means/ income and sources of income to deny her the enhanced allowance of maintenance awarded to her or to reduce the same. So far as the children, the maintenance awarded @ Rs.5,000/- per month is just and fair considering the fact that they are now aged 15 and 13 years and are pursuing high school education. It is apt to note that the respondent did not produce his salary certificate before the trial Court. The trial Court in its order noted that the respondent has no responsibilities and properties except the salary. The respondent is an employee of Railway Protection Force. The Court below noted that, on 28.09.2016, the date of his examination, he stated that, his salary was Rs.50,000/- in the month of August, 2013. If that be so, as rightly contended,

his salary might have increased considerably by now. However, he produced a copy of his pay slip for the month of January 2017 along with material papers. He did not file any application to receive the same as additional evidence. Be that as it may. A perusal of the same shows that his gross salary is Rs.41,022/- and that after deductions, his net salary is Rs.24,043/-. The said document also shows that he has a balance of Rs.2,88,475/- in his provident fund account. The amounts deducted from his gross salary included an amount of Rs.2,819/- towards LIC besides contribution towards PF and VPF in a total sum of Rs.7,775/-, which can be considered as a saving. Viewed thus, this Court finds that the respondent is a substantial person and that the family is having good social status.

6. On the above analysis and for the reasons assigned, this Court finds that the order impugned awarding enhanced maintenance @ Rs.5,000/- each to the 1st petitioner/ wife and petitioners 2 and 3/ sons, is just and fair in the facts and circumstances of the case and hence, the contentions of the respondent do not merit consideration.

7. Viewed thus, this Court finds that there is no merit in the revision and the revision is liable to be dismissed. Points are accordingly answered in favour of the petitioners/ wife & sons of the respondent.

8. Accordingly, the Criminal Revision Case is dismissed. The respondent shall pay to the petitioners or deposit to the credit of the MC the entire arrears of maintenance, in two equal monthly instalments, within two months from the date of receipt of a copy of this order and continue to pay to the petitioners the future monthly maintenance allowances on or before the 5th day of every calendar month or deposit the same to the credit of the MC. It is needless to state that the interim maintenance amounts or maintenance amounts, if any, already paid or deposited shall be given credit while calculating the arrears to be paid or deposited.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

12th September, 2017
RAR

M. SEETHARAMA MURTI, J

