

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.715 of 2017

ORDER:

Impugning the maintenance order dated 02.12.2016 passed in M.C.No.11 of 2013 by the learned Judge Family Court-cum-VII Additional District & Sessions Judge, West Godavari District, Eluru, the revision is maintained by the respondent/husband.

The M.C. was filed by the petitioner/wife under Section 125 Cr.P.C. for grant of maintenance of Rs.10,000/- per month with the contention that their marriage was solemnized on 11.03.2012 at Sri Satya Kalyana Mandapam, Srikakulam according to Hindu rites and customs. At the time of marriage, Rs.6,00,000/- cash and gold ornaments weighing 5 sovereigns were given as dowry to the respondent/husband. After their marriage they lived happily for 5 days and from 6th day, the respondent used to suspect her fidelity by observing the messages and calls received by her and demanded additional dowry of Rs.3,00,000/- and used to instigate to commit suicide, so that he will marry another woman with more dowry. As there is no change in the attitude of the respondent/husband, she reported the matter to the Woman Police Station and they registered crime No.82/2012. It is also her case that the respondent/husband neglected her and she has no source of income to lead life and the respondent/husband is working as lecturer and getting monthly salary of Rs.15,000/- per month and having landed property and getting Rs.50,000/- per year in addition to that he is having fixed assets and properties of his own.

The respondent (husband) to the M.C. filed counter in opposing the same, with the contentions that from 11.03.2012 to 22.03.2012 she lived with him and thereafter she never visited his place and lead marital life. The parents of the petitioner performed the marriage against the will of her as she is having love affair with another person. After marriage she used to talk with him on telephone. She is working as Child Development Instructor at Sri Venkateswara Mahila Mandali, Denduluru and getting a salary of Rs.8,000/- per month and he is an un-employee and he is preparing for competitive exams to get the job and in evenings he is giving tuitions and getting Rs.2,000/- per month and when his parents approached the parents of the petitioner (wife) for re-union, they stated the petitioner is not interested in leading marital life and demanded Rs.30,00,000/- to settle all the cases. As the petitioner is able to maintain herself, she is not entitled for maintenance.

After considering the facts and circumstances and from evidence on record of PWs.1 & 2, RWs.1 & 2, Exs.P1 to P3, Exs.R1 to R6 and Exs.X1 & X2, the learned Family Court Judge awarded maintenance of Rs.4,000/- per month from the date of petition vide order dated 02.12.2016. Impugning the same, the present revision is maintained by the husband supra.

The grounds in revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/husband in impugning the same are that the order is per se illegal and unsustainable, the learned Judge failed to see that in the evidence of PW.1, she categorically admitted that she joined as

Child Development Instructor in Mahila Mandali, Denduluru on 03.04.2012 and getting Rs.8,000/- p.m. and subsequently she was appointed as Clinical Psychologist in the Head Quarters Hospital, Eluru on a monthly remuneration of Rs.20,000/- and Ex.R5 is the copy of proceedings of the Collector, West Godavari and till date she is working as Clinical Psychologist. The learned Judge failed to see that the 2nd respondent herein/wife filed Crl.M.P.No.60 of 2013 in MC.No.11 of 2013 to grant interim maintenance of Rs.3,000/- p.m. and learned Judge by order dated 28.02.2014 dismissed the same holding that she is having source of income to maintain herself. Therefore, the learned Judge ought to have dismissed M.C. on that ground. The learned Judge also failed to see that PW.1 stated she did not file any documentary proof to prove that her husband got landed property and his getting any amount. The lower Court ought to have seen that both lived only for 10 days, thereafter she left the marital life and she voluntarily deserted without any reasons, therefore, she is not entitled for maintenance and ought to have seen that the parents of the 2nd respondent herein forcibly performed the marriage against her will as she is having love affair with one G. Venkata Ramana @ Ajay who is her neighbour. Even after her marriage, she used to talk to him over telephone. It is also the contention that 2nd respondent herein/wife is earning Rs.20,000/- per month by working as Clinical Psychologist at District Hospital, Eluru, the granting of Rs.4,000/- per month is erroneous and is liable to set aside by allowing the revision.

Whereas it is the submission of the learned counsel for the revision 2nd respondent/wife that the order of the lower Court

holds good and for this Court while sitting in revision there is nothing to interfere hence to dismiss the revision.

Heard and perused the material on record.

During pendency of M.C., in Crl.M.P.60/2013 the wife sought for interim maintenance and by impugned order dated 28.02.2014 the learned trial Judge dismissed the same from Exs.R1 to R4 showing she was recruited and working as Child Development Instructor and drawing a salary of Rs.8,000/- per month from 03.02.2012 and even from contention of her husband as lecturer of Mitra Institute of Technology, Srikakulam, drawing salary of Rs.15,000/- for no other means she could establish of owning any landed property or income, she is not entitled to interim maintenance from her means supra. No doubt that interim maintenance order no way operates as obiter or estoppel much less to bind, but for any relevancy in the ultimate decision of the maintenance claim. However, the fact remains since prior to the date of maintenance case from that evidence covered by interim maintenance from that particularly Exs.R1 and R4 and she admitted that she is earning Rs.8,000/- as Child Development Instructor from April 2012. Leave about any disclosure or not in her petition including from any contention of him in that regard what she admitted in the cross-examination that no way ignored by the learned trial Judge. In fact in her cross-examination that is also covered by Para 21 of the impugned order of the learned trial Judge it is clear that earlier she was working as Child Development Instructor on salary of Rs.8,000/- per month, however subsequently she was appointed

in the District Headquarters, Hospital under Ex.X2 proceedings marked in the M.C. Ex.R6 shows her letter of resignation in February 2015 it is not even removal from service. As per Ex.R5 proceedings of the District Collector dated 14.02.2015 she is working as Clinical Psychologist in the District Headquarters Hospital. Once that is the proceeding and shows not even removed from service she got prospective earnings and even RW.2 in his evidence deposed with reference to Ex.X2 appointment letter of her showing she was appointed on 11.02.2015 and drawing of consolidated pay of Rs.20,000/- per month and what she claim of it was only for one year expired by 10.02.2016 there is no document filed and even in her evidence in chief she categorically admitted of she is still working. Once that is the case and there is no proceeding showing her termination and the appointment order clearly shows she is getting income of Rs.20,000/- per month as Clinical Psychologist in the District Headquarters Hospital she is not entitled to maintenance. From the husband even shown is getting equal income of Rs.20,000/- if not above Rs.15,000/- from the M.C. case of he is as lecturer getting salary of Rs.15,000/- per month for saying he is getting Rs.30,000/- per month by now there is no material neither his salary certificate sought for exhibiting nor filed, even he contends that he is un-employee and not even worked as part time lecturer and not having any properties and he is living by tuitions.

Having regard to the above, granting of maintenance of Rs.4,000/- per month by the learned trial Judge in favour of the wife and against the husband is unsustainable and is liable to be set aside.

Accordingly and in the result, the criminal revision case is allowed by setting aside the impugned order. However it is made clear that any amount so far paid is unrecoverable and further made clear that in the event of she has no source of living in future she can maintain fresh petition and the present one covered by the present order no way a bar for her future claim from showing changed circumstances.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 26.04.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

