

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.1416 of 2017

ORDER:

This revision is filed under Sections 397 and 401 Cr.P.C questioning the propriety and legality of the order dated 30.03.2017 in Crl.M.P.No.171 of 2017 in FCMC.No.51 of 2016 passed by the Judge, Family Court-cum-III Additional District Judge, Vizianagaram, whereby the learned Judge awarded maintenance of Rs.10,000/- to the 2nd respondent and R.5,000/- to the 3rd respondent per month from the date of petition as interim measure.

2. Respondents 2 and 3 filed petition under Section 125 Cr.P.C. for grant of interim maintenance of Rs.30,000/- to the 2nd respondent and Rs.20,000/- to the 3rd respondent per month alleging that the 2nd respondent is the wife and the 3rd respondent is the son of the petitioner herein and that they lived happily for some time and thereafter disputes arose while living together, on 08.02.2016 at about 11.30 PM the petitioner throttled the neck of the 2nd respondent, to put an end to her life. Father of the petitioner called the mother of the 2nd respondent to come to Hyderabad to take back her saying that he would beat the 2nd respondent with a slipper. Accordingly, mother of the 2nd respondent went to Hyderabad to the house of petitioner on 10.02.2016 and she was also assaulted by the petitioner and his family members and asked to leave the house, otherwise, the petitioner would not stay in the house. Accordingly, she left the house on 11.02.2016. Thereafter, the petitioner and his family members instead of extending love and affection used to abuse the 2nd respondent in filthy language and subjected her to mental harassment and compelled her to leave the matrimonial home in the month of March, 2016 and since then she has been residing with her mother at Vizianagaram. The petitioner also demanded additional dowry

of Rs.10 lakhs from the mother of the 2nd respondent and thereby refused and neglected to maintain respondents 2 and 3 unless she fulfills his illegal demand of payment of additional dowry.

3. Yet, no means to maintain themselves, the 2nd respondent requested to award Rs.30,000/- to her and Rs.20,000/- to the 3rd respondent per month as interim maintenance, as the petitioner is working as Software Engineer and earning Rs.50,000/- per month and also earning Rs.1,00,000/- by carrying on business.

4. The petitioner herein, who is the respondent before the trial Court, filed detailed counter denying the material allegations of the 2nd respondent more particularly the allegation relating to demand of additional dowry contending that he is ready and willing to take back respondents 2 and 3 and maintain them. He also contended that the 2nd respondent herself left his conjugal society, as she was not interested to stay with him though he is ready and willing to take back her, but she did not accept the said proposal. It is also contended that the 2nd respondent herein is having her independent source of income as she is regularly practicing as an advocate in the District Court, Vizianagaram. Therefore, the petitioner herein is not liable to pay any maintenance to respondents 2 and 3.

5. No oral and documentary evidence is brought on record before the trial Court by both parties during enquiry. Upon hearing argument of both counsel, the trial Court passed the impugned order awarding maintenance of Rs.10,000/- to the 2nd respondent and Rs.5,000/- to the 3rd respondent.

6. Aggrieved by the said order, the petitioner preferred this revision on various grounds mainly contending that when he is ready and willing to maintain respondents 2 and 3, the Court below ought not to have granted maintenance and that apart, though the 2nd respondent is

having independent source of income, without considering the same, the Court below passed the impugned order erroneously.

7. During hearing, learned counsel for the petitioner would contend that the petitioner is managing an auto garage and earning not less than Rs.1,00,000/- and Rs.50,000/- towards salary as contended by the 2nd respondent and that when the 2nd respondent is having independent source of income, award of maintenance against the petitioner is not sustainable. Apart from that as the petitioner is ready and willing to maintain respondents 2 and 3, granting maintenance is an apparent error and prayed to set aside the same.

8. Learned counsel for respondents 2 and 3 supported the order passed by the Court below and prayed for dismissal of the present revision case.

9. The scope of revision is limited and normally this Court cannot go into the findings of the trial Court or any subordinate Court while deciding an application under Sections 397 and 401 Cr.P.C and if the findings of the trial Court are manifestly perverse or apparently erroneous, the Court can exercise its power under Sections 397 and 401 Cr.P.C and pass appropriate orders. Keeping in view the scope of revision, I would like to examine the facts of this case on hand.

10. There is no dispute regarding the relationship between the parties to the petition and the contentions raised by the petitioner are two fold.

11. The first contention is that when the petitioner is ready and willing to maintain respondents 2 and 3 and she herself left the matrimonial home, the 2nd respondent is disentitled to claim maintenance in view of Sub-section (4) of Section 125 Cr.P.C. Even though the 2nd respondent was subjected to cruelty and she was throttled neck on 08.02.2016 to put an end to her life, she continued with her husband thereafter. However, in the month of March, 2016, she was allegedly subjected to

cruelty and necked out from the house while demanding additional dowry of Rs.10 lakhs, since, then she is staying with her parents at Vizianagaram. When the 2nd respondent wife was subjected to cruelty and apprehending danger, the offer made by the petitioner cannot be accepted as a ground not to grant maintenance.

12. In **Sirajmohmedkhan v Hafizunnisa Yasinkhan**¹ and **Mithlesh Kumari vs Bindhawasani and another**² it was held by both Supreme Court and Allahabad High Court that if the wife has a reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demands of dowry from her husband's parents or relations, such apprehension also would be manifestly a reasonable justification for the wife's refusal to live with her husband.

13. Here no evidence was adduced by both parties. A serious allegation is made in para 3 and 4 of the affidavit filed by the 2nd respondent claiming maintenance that she was subjected to cruelty while demanding additional dowry. This incident though denied at this stage, it cannot be decided whether the incident is true or not if the allegations made in the petition are taken as if she has reasonable apprehension that she would be physically harmed on account of the conduct of the petitioner, in such a case, her separate living is justifiable and basing on such offer made by the husband to take care of her, the Court cannot deny maintenance of respondents 2 and 3. Therefore, on the ground that the petitioner is ready and willing to take back respondents 2 and 3, the order passed by the trial Court cannot be reversed.

14. The petitioner is working as a Software Engineer at Hyderabad and respondents 2 and 3, being wife and child also expect to lead same standard of life they lead while they were with the petitioner at

¹ AIR 1981 SC 1972

² 1990 Cr.L.J 830

Hyderabad. Therefore, taking into consideration the cost of living and price index grant of Rs.10,000/- to the 2nd respondent and Rs.5,000/- to the 3rd respondent is just and reasonable as an interim measure and the order of the trial Court does not suffer from any legal infirmities warranting interference of this Court while exercising power under Section 397 and 401 Cr.P.C. Therefore, I find no grounds in the revision case.

15. Accordingly, the criminal revision Case is dismissed directing the Judge, Family Court, Vizianagaram to decide FCMC as expeditiously as possible in any event not later than six months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

Date: 04.08.2017
kvrn

M. SATYANARAYANA MURTHY J

