

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.R.C.No.796 of 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and regularity of the order, dated 19.12.2016 in M.C.No.46 of 2012 passed by the Judge, Family Court, Secunderabad awarding maintenance of Rs.11,500/- to each of the respondents 1 and 2, in total Rs.23,000/- per month from the date of the petition.

2. The respondents 1 and 2, wife and daughter of the petitioner filed petition under Section 125 Cr.P.C. claiming maintenance at Rs.11,500/- per month each alleging that the petitioner without any reasonable cause deserted the first respondent, neglected and refused to maintain both respondents 1 and 2 who are wife and daughter and that they have no means or independent source of income for their maintenance; whereas the petitioner herein is working and earning more than Rs.70,000/- per month as salary. But, the petitioner having sufficient means to maintain the respondents 1 and 2, refused and neglected to maintain them. Hence, the respondents 1 and 2 claimed maintenance stated above.

3. The petitioner filed counter denying material allegations while admitting relationship between the petitioner and the respondents 1 and 2 and specifically contended that first respondent wilfully deserted the petitioner and that the petitioner is only receiving Rs.22,094/- p.m. as salary, after deductions. Therefore, he has no obligation to pay maintenance @ Rs.11,500/- per month to each of the respondents 1 and 2 and prayed for dismissal of the petition.

4. The trial court after recording common evidence in both FCOP No.231 of 2013, FCOP No.654 of 2013 and M.C.No.46 of 2012, one is filed by the petitioner for divorce under Section 13(1)(ib) of Hindu Marriage Act and other is filed by the wife, first respondent herein under Section 9 of Hindu Marriage Act, for restitution of conjugal rights. During common trial, first respondent was examined as PW-1 and got marked Exs:A-1 and A-2 and the petitioner-husband was examined as RW-1 and another witness as RW-2, marked Ex.B-1.

5. Upon considering evidence available on record, the trial Court while concluding that the petitioner herein wilfully deserted the first respondent without any reasonable cause and believed the contention of the respondents 1 and 2 herein that the petitioner refused and neglected to maintain his wife, first respondent herein and having concluded that he was drawing more than Rs.40,000/-, awarded maintenance of Rs.11,500/- p.m. to each of the respondents 1 and 2.

6. Aggrieved by the order awarding maintenance, the present revision is filed, mainly on the ground that the conclusions arrived at by the trial Court are erroneous and the trial court failed to consider Ex.B-1 salary certificate of the petitioner for the month of June, 2013 in proper perspective and net salary was only Rs.23,871.45 ps. Thus, the conclusion arrived at by the trial court regarding the income of the petitioner is erroneous.

7. It is also contended that the first respondent is highly qualified having good communication skills and able to earn decent income. But, the trial court failed to consider her capacity to earn income for her maintenance. He also contended that the first respondent is getting one lakh per month as rent. But, the trial court without

considering all these contentions, passed the erroneous order and prayed to set aside the same.

8. During hearing, Sri G.Tirupathi Reddy, learned counsel for the petitioner reiterated the contentions, more particularly, the error committed by the trial court in assessing the income of the petitioner based on Ex.B-1 salary certificate produced before this court for the month of June, 2013 which disclosed that he had drawn Rs.23,871.45 ps. as net salary. But, the trial court on erroneous appreciation, believing that he is earning Rs.70,826.85 ps. Apart from that, first respondent herself wilfully deserted the petitioner without any reasonable cause and thereby she is disentitled to claim maintenance under Section 125 Cr.P.C. in view of clause 4 of Section 125 Cr.P.C. and prayed to set aside the same.

9. Learned counsel for the respondents 1 and 2 Sri N.Krishna Sumanth argued totally in support of the findings recorded by the trial court, more particularly regarding the income and findings recorded in petitions filed under Section 9 of Hindu Marriage Act filed by the first respondent and Section 13 of Hindu Marriage Act filed by the petitioner and prayed for dismissal of the revision.

10. Considering rival contentions and perusing the material on record, the point that arises for consideration is:

“Whether the petitioner refused and neglected to maintain respondents 1 and 2, if so, whether they are entitled to claim maintenance and at what rate?”

11. Confining to the grounds urged before this court in the revision, I would like to decide the revision filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

12. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

14. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is

available in such cases. Of course, it may be subject to jurisdiction of this court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

15. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by Apex Court in *STATE OF WEST BENGAL v. TULSIDAS*¹. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in *PRAHLAD v. EMPORER*². Further, the High Court can, in exercise of its revisional powers, either suo motu on the basis of its

¹ (1964) 1 Cr.L.J. 443 (SC)

² 48, Cr.L.J 173, 174 (Pat)

own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

16. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

17. Thus, the powers of the High Court are limited, this Court cannot interfere with the findings recorded by the court below. As a

general rule, the High Court will not in revision interfere with a finding of fact.

18. In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in *BANSILAL v. LAXMAN*³.

19. Turning to the facts, the relationship between the petitioner and the respondents 1 and 2 is not in dispute. The petitioner is the husband of the first respondent and father of the second respondent.

20. The first grievance of the petitioner is that the first respondent wilfully deserted the company of the petitioner, the said contention was refuted by the first respondent in her evidence. The petitioner filed petition under Section 13 of Hindu Marriage Act to dissolve the marriage by granting decree of divorce on various grounds. Whereas, the first respondent filed petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights alleging that the petitioner herein deserted her without any reasonable or justifiable cause. The trial court upon appreciation of evidence on record, recorded its clear findings that the petitioner herein deserted the first respondent without any reasonable cause, while disbelieving the grounds raised in petition under Section 13 of Hindu Marriage Act filed for dissolution of marriage. But, these two decrees are subject matters of appeals before this Court in FCA Nos.175 of 2017 and 298 of 2017. Therefore, the findings recorded by the trial Court are subject to the orders of this court. However, when the petitioner alleged that the first respondent wilfully deserted the petitioner without any reasonable cause, the petitioner would have resorted to

³ (1986) 3 SCC 445

file an application under Section 9 of Hindu Marriage Act, instead of filing of petition under Section 9 of Hindu Marriage Act, he resorted to file petition under Section 13 of Hindu Marriage Act for dissolution of marriage by granting decree of divorce. This itself prima facie shows that the petitioner intends to avoid the company of first respondent for one reason or the other. Since the appeals are pending before this Court in FCA Nos.175 of 2017 and 298 of 2017, I am not inclined to record any finding except to record prima facie finding of refusal and neglect of the respondents 1 and 2.

21. When the petitioner alleged that the first respondent deserted him, he did not take any steps to restore the marital relationship by issuing any notice or at least by petition under Section 9 of Hindu Marriage Act. This itself suffice to conclude that the petitioner himself refused and neglected to maintain the first respondent, the trial court based on findings recorded in FCOP Nos.231 and 654 of 2013 concluded that the petitioner refused and neglected to maintain the first respondent-wife and the second respondent-daughter.

22. Though the appeals are pending, the findings recorded by the trial court are not yet disturbed by the appellate Court and as long as the findings of the trial court are not disturbed, they are binding on this court in a summary proceedings filed under Section 125 Cr.P.C. Therefore, I find that the first respondent established that the petitioner refused and neglected to maintain both the respondents 1 and 2.

23. The second contention urged before this Court is that the first respondent is highly qualified, possessing good communication skills, able to earn sufficient income for her maintenance, but this fact was not considered by the trial Court. Curiously, the petitioner did not

produce any piece of paper to establish that the first respondent is highly qualified and merely because she is highly qualified, she is not supposed to secure employment immediately, till securing employment she cannot be starved to death on account of neglect and refusal to maintain her by the petitioner. Therefore, in the absence of any material to establish that she is highly qualified woman and in a position to earn, it is difficult to accept this contention. Moreover, it is for the petitioner being husband to provide necessary maintenance to the wife as long as she is not in a position to earn anything to maintain herself. Therefore, mere possessing educational qualifications would not disentitle her to claim maintenance under Section 125 Cr.P.C.

24. The third contention raised before this court is with regard to quantum of maintenance.

25. According to the respondents 1 and 2, the petitioner was earning Rs.70,000/- per month. To substantiate their contention, they produced Ex.B-1 salary certificate for the month of June, 2013. As per Ex.B-1 salary certificate, the total earnings of the petitioner was Rs.41,973.75 ps. and after deducting an amount of Rs.18,102.30 ps., the net salary was Rs.23,871.45 ps.

26. Even according to the petitioner, as per salary certificate for the month of April, 2017, he had drawn Rs.77,748.91 ps. and the total deductions were Rs.41,733.03 and net salary was Rs.36,015.88 ps. and similarly for other months he was drawing substantial amount as salary. Thus, by the date of filing petition, he was drawing gross salary of more than Rs.40,000/- per month, but arranged several deductions at his convenience for different reasons. Even according to the salary slips produced by the petitioner, he was drawing more than

Rs.70,000/- per month. Therefore, granting maintenance @ Rs.11,500/- per month to each of the respondents 1 and 2 is not excessive since the respondents 1 and 2 being the wife and daughter are expected to lead same standard of life as they led while staying with the petitioner. At best, this court while deciding such application is required to decide quantum of maintenance only, which shall be based on the standard of living of husband and price index.

27. In *Shamima Farooqui Vs. Shahid Khan*⁴, the Apex Court considered the factors to be taken into consideration for assessing the maintenance payable to the wife and children.

28. The observations of the Apex Court in *Shamima Farooqui Vs. Shahid Khan* 4th supra, the Apex Court considered the jurisdiction of Family Court and observed that “the Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions Under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family

⁴ (2005) 5 SCC 705

Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.

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 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 proactive 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.

Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sta Bai* MANU/SC/8141/2007 : (2008) 2 SCC 316, it has been ruled that:

Section 125 Code of Criminal Procedure 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* MANU/SC/0067/1978 : (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 MANU/SC/0193/2005 : (2005) 3 SCC 636.

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.

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* MANU/DE/0028/1968 : AIR 1968 Delhi 174 wherein it has been opined thus:

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.

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.”

29. If the principles laid down by the Apex Court are applied to the present facts of the case, the maintenance awarded by the court below is just and reasonable based on the earnings of the petitioner who is working as Manager in Bank, as the respondents 1 and 2 are expected to lead the same standard of life which they led while staying with the petitioner.

30. Taking into consideration of the evidence on record and the law laid down by the Apex Court referred supra, I find no illegality in the finding recorded by the court below warranting interference by this Court by exercising power under Section 397 and 401 Cr.P.C. Consequently, the revision is devoid of merits and it is liable to be dismissed.

31. In the result, the criminal revision case is dismissed.

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

M.SATYANARAYANA MURTHY,J

DATE:28-08-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



Crl.R.C.No.796 of 2017

Date:28.08.2017

ccm