

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.1724 OF 2011

AND

CRL.R.C. NO.2236 OF 2011

COMMON ORDER:

Crl.R.C.No.1724 of 2011 is filed by the petitioner (husband) under Sections 397 and 401 of Cr.P.C. challenging the order, dated 27.07.2011 in M.C.No.30 of 2010 passed by the Judge, Family Court, Secunderabad.

2. Crl.R.C.No.2236 of 2011 is filed by the petitioners (wife and two daughters) under Sections 397 and 401 of Cr.P.C. challenging the order, dated 27.07.2011 in M.C.No.30 of 2010 passed by the Judge, Family Court, Secunderabad.

3. These two revisions are filed by the husband and wife & two daughters only against one order. Hence, I find that it is expedient to decide both the revisions by a common order.

4. For sake of convenience, the parties will be hereinafter referred to 'as petitioners and respondent' as arrayed in M.C.No.30 of 2010.

5. The petitioners 1 to 3 filed M.C.No.30 of 2010 alleging that the marriage of the first petitioner was performed on 18.03.2002 at Secunderabad as per Christian rites and customs. At the time of marriage, the parents of the first petitioner presented 13 tolas of gold and other household articles, after the marriage, the first petitioner joined the matrimonial house, soon-after the marriage, the respondent and his family members started ill-treating the first petitioner for her failure to meet the illegal demand for payment of dowry and when the first respondent was carrying her pregnancy, she was sent back to her mother's house with condition to bring Rs.5 lakhs as additional dowry for running business

at Dubai and also motorcar, after delivery the respondent refused to take her back to the matrimonial house, and with great difficulty and much persuasion, she was allowed to join the respondent. When the first petitioner became pregnant second time, again the respondent demanded Rs.5 lakhs towards additional dowry and on failure to meet the illegal demand of additional dowry, she was again sent back to her parents house along with first child and she has been residing at her parents house and she gave birth to the second child on 9.9.2005. Thus, the petitioners were totally neglected and refused to maintain by the respondent though he is working as Senior Soft Engineer in Satyam Software Company, Medchal and drawing Rs.85,000/- per month, apart from that he owns house and also immovable properties. Whereas, the petitioners have no independent source of income to maintain themselves and that the children are prosecuting their studies in different schools and claimed maintenance.

6. The respondent field counter denying the material allegations while denying demand of additional dowry and subjecting the first petitioner to cruelty for payment of additional dowry etc. He also contended that he has taken every care of the petitioner No.1 during her pregnancy, that in the last week of November, 2002 when the respondent went to bring back the first petitioner to Hyderabad, he had taken a rented furnished house at Vizag and very much cooperative during that period on 18.12.2002 she delivered child, the mother of the first petitioner went to Vizag and she took all household articles, whereupon the respondent got issued legal notice requesting for restitution of conjugal rights, but no reply was given and continued to stay with her mother, the respondent shifted from Vizag to Hyderabad, instead of joining her husband, the first petitioner took up job at Genpact, Hyderabad in July, 2004 and after much persuasion and intervention of relatives, elders, she joined the

respondent and without any reason, the first petitioner deserted the respondent and thus, she is not entitled to claim maintenance as she voluntarily left the company of the respondent without any reason and prayed for dismissal.

7. During enquiry, on behalf of the petitioners, PW-1 was examined and got marked Exs.A-1 to A-3. On behalf of the respondent, RW-1 was examined and got marked Exs:B-1 to B-5.

8. Upon hearing argument of both the counsel, the trial Court recorded a finding that the respondent refused and neglected to maintain the petitioners, awarded maintenance of Rs.4,000/- to the first petitioner, Rs.2,500/- to each of petitioners 2 and 3 and directed the respondent to deposit the same in the bank to the credit of petitioner No.1 account on or before 10th of every month.

9. Aggrieved by the order, dt.27.07.2011 passed by the Judge, Family Court, Secunderabad, both the petitioners and respondent filed the present revisions on various grounds.

10. But, during hearing, learned counsel for the respondent limited his argument to the ground that the first petitioner left the company of the respondent without any just and reasonable cause and living separately, thereby she is not entitled to claim maintenance in view of Clause 4 of Section 125 Cr.P.C. and would draw the attention of this court to the letter in the handwriting of first petitioner at page 78 of Crl.R.C.No.1724 of 2011 stating as follows:

“I should have known what you had in your mind before jumping here with you,
when you actually don't want me,

happy life

I will come back some time later to get my stuff.”

11. He also drawn the attention of this court to certain sentences in the cross-examination of PW-1 regarding her unwillingness to join the respondent. Therefore, on the strength of these documents, disinterestedness shown by PW-1, she is disentitled to claim maintenance in view of sub-section 4 of Section 125 Cr.P.C.

12. As the counsel for the respondent, limited his contention to particular aspect, I need not advert to the other grounds raised in the grounds of revisions and I would like to limit my findings regarding entitlement of first petitioner to claim maintenance in view of bar under sub-section 4 of Section 125 Cr.P.C.

13. Though the jurisdiction of this court under Sections 397 and 401 Cr.P.C. is limited to interfere with the fact finding, this court still can exercise its power to interfere with the fact finding where the court finds that the findings of the court below are manifestly perverse or apparently erroneous.

14. Here the learned counsel for the respondent demonstrated that the first petitioner herself left the company of the respondent voluntarily and it was noted unsigned writing on a paper which was marked as Ex.B-4 which is allegedly in the handwriting of the first petitioner and according to the contents of Ex.B-4, she left the company of the respondent stating that *"she should have known what respondent had in his mind before jumping here with respondent, when respondent actually don't want her while asking that she would get back for her stuff."* Apart from that the cross-examination of PW-1 dt.09.03.2011, the first sentence she admitted that she expressed her disinclination to join the respondent as she lodged criminal complaint against the respondent and his family members in the year 2005 in Kushaiguda Police Station. Ex.B-5 is the judgment in C.C.No.51 of 2006 for the offence punishable under Section 498-A IPC and

on the strength of Exs.B-4 and B-5 and admissions referred supra, he contended that when the allegations made against the respondent regarding subjecting the first petitioner to cruelty is disbelieved, her separate stay is not justified and therefore, the court can presume that the first petitioner voluntarily left the company of the respondent which disentitles her to claim maintenance in view of sub-section 4 of Section 125 Cr.P.C. Curiously, a suggestion was put to her in her cross-examination, dt.9.3.2011 suggesting that she voluntarily left the company of the respondent to take care of her mother on account of her step father's death and got denial of the same. The suggestion put to the witness and getting denial is suffice to conclude that she did not accept her leaving the company of the respondent and living separately. Therefore, the contention that she left the company of the respondent voluntarily is improbable and more particularly, when she lodged a complaint against the respondent and his parents which is the subject matter of original of Ex.B-5 apprehending physical or mental harm to her, she is not supposed to live with the respondent despite the offer made by the respondent to restore his family life. Though he issued a notice calling upon her to join the respondent, he did not file any petition under Section 9 of Hindu Marriage Act claiming restitution of conjugal rights, but filed a petition for divorce. Ex.B-2 is the counter filed by the respondent in the divorce petition where she expressed her disinclination to live with the respondent. The basis for her separate living is that she made complaint against the respondent and his parents, which is the subject matter of original of Ex.B-5, but she failed to establish the alleged cruelty attributed against the respondent and his parents.

15. When the wife apprehends danger or physical harm to her, on account of conduct of husband or his relatives, there is any amount of justification for her separate living. Therefore, on account of reasonable

apprehension in the mind of the first petitioner due to lodging a complaint under the original of Ex.B-1, there is any amount of justification for her separate living and refusal to join the respondent. Merely because the first petitioner failed to prove the cruelty attributed to the respondent, and parents vide Ex.B-5 itself is not sufficient to conclude that the first petitioner deserted the respondent voluntarily and she is disentitled to claim maintenance under Section 125 Cr.P.C. for the reason that in a criminal case the respondent is required to establish the guilt of the accused beyond all reasonable doubt and if there is any doubt in the case of prosecution, such benefit shall be given to the accused and the accused is entitled for acquittal extending benefit of doubt. Therefore, in a summary proceedings under Section 125 Cr.P.C. based on original of Ex.B-5, it is difficult for me to hold that the petitioner voluntarily left the company of the respondent which disentitles her to claim maintenance under Section 125(4) Cr.P.C. Hence, I find no merit in the contention raised by the learned counsel for the respondent to conclude that the first petitioner left the company of the respondent voluntarily.

16. When the first petitioner established that the respondent is having sufficient means to maintain himself while working as Senior Software Engineer, he is bound to maintain his wife since it is a welfare legislation for the benefit of neglected wife and parents to avoid their vagrancy and when they did not possess independent source of income for their livelihood. Therefore, keeping in mind the object as welfare measure, in incorporating Section 125 Cr.P.C., these technicalities cannot be looked into at this stage. However, it is not the case of the respondent that the petitioners are having sufficient means to maintain themselves. In the absence of any proof that the petitioners are having sufficient means to maintain themselves and that the respondent refused and neglected to maintain the petitioners, the claim of the petitioners cannot be rejected.

17. The petitioners who are wife and children of the respondent filed Crl.R.C.No.2236 of 2011 before this Court for grant of maintenance as claimed before the court below by setting aside the order passed by the court below. But, taking into consideration, the income of the respondent-husband and other circumstances like price index, cost of living, the amount awarded by the court below towards monthly maintenance is just and reasonable and it cannot be interfered with by this Court.

18. Coming to the quantum of maintenance, the trial court awarded maintenance of Rs.4,000/- p.m. to the first petitioner, Rs.2,500/- p.m. to each of petitioners 2 and 3 and directed the respondent to deposit the same in the bank on or before 10th of every month. If the present price index and cost of living and hike in essential commodities including school fees in private schools are taken together, the amount awarded by the court below is just and reasonable. Therefore, I am not inclined to reduce the maintenance awarded by the trial court.

18. In view of my foregoing discussion, I find no merit in the revisions and the revisions are liable to be dismissed.

19. In the result, both the revision cases are dismissed. Miscellaneous petitions, if any, pending in both the revisions shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:06-09-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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