

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.2810 of 2016

ORDER:

This revision is preferred by the petitioner-husband impugning the order in M.C.No.85 of 2006 dated 08.08.2016, granting maintenance of Rs.10,000/- to the wife and Rs.9,000/- to the minor son aged about 10 years from the date of Maintenance Case(MC). Divorce petition in O.P.No.327 of 2007(old O.P.No.1391 of 2006) filed by him came for common disposal before the learned Judge, Family Court, Vijayawada. It is thus impugning the common order dated 08.08.2016 in O.P.No.327 of 2007(old O.P.No.1391 of 2006) supra so far as maintenance claim concerned.

2. For sake of convenience, the revision petitioner and the revision 1st respondent are hereinafter referred to as husband and wife respectively.

3. The brief facts of the case so far as relevant to the maintenance claim concerned is that the marriage of the couple was solemnized on 15.10.1994 at Railway Community Hall, Satyanarayanapuram Railway colony, Vijayawada. As per husband the wife on the very first day of matrimonial life insisted him to leave her at her parents house till he arranges a separate house at Chennai and the husband arranged a house at Chennai and still he found her as indisciplined, with no cleanliness and personal hygiene. She was with improper behavior towards others by unnecessarily commenting. Even he advised her to correct herself, she did not care him. While so they came to Vijayawada in the month of January, 1995 for pongal festival there was a counseling to her by his parents and relatives. She did not heed and even commented on him that an auto puller is better than her husband and her relatives also

insulted him saying their pet dog had given a litter of puppies. Thereafter she had conceived and had a miscarriage in March, 1995. During 1995, her parents doubted his virility and after a lot of insinuations, recommended for fertility test. Though it is a direct insult on the masculinity of him, he underwent necessary test at Vijayawada and Chennai and she also underwent similar checkup and was told that she had an inviluted uterus and she had to undergo cryo Surgery to enable her to conceive. But his mother after great difficulty and efforts found a professor who advised an alternative course of treatment through medicines without resorting to surgery though fault is on his wife he was forced to undergo an ordeal of avoidable numerous insinuations and mental trauma at the hands of her. She was in the habit of picking money from his purse without his knowledge. When he accompanied her to send off to Chennai Central Railway station, her father threatened him with dire consequences stating that he knows lorry drivers and anything could happen. Even her parents not performed functions associated with conceiving, like Seemantham, degrading his reputation and not even informed sex of the child when delivered except sending him a telegram of his wife and child are safe and Barasala-christening ceremony on 21st day of the child's birth even not performed. She also used to complain against him of he was drunkard, gambler and womanizer and her parents were also ill-treating, torturing and trying to separate them. In the month of June, 1997 at Chennai she joined him and the child is named as P.Suraj but herself and her parents named the child as Jayanth which was disclosed by herself only. When he went to Vijayawada during middle of 1999 to purchase site to construct a house, she, as a part of her strategy, dumped into her mouth with tablets like crocin, Analgin etc., and he with great difficulty

made vomited the tablets but she informed the incident to her parents as if he strangled her. She used to damage his reputation and cause humiliation and mental agony by discussing personal matters like potency, union, dissatisfaction and age difference between them with her friends and relatives. When he got transfer to Vijayawada from Chennai, she refused to come to Vijayawada which caused him mental agony that resulted cancellation of the transfer and she was also corrupting the mind of their child who is 9 years old. The conduct of his wife of abusing, insulting, threatening and quarrelling without any affection on him has become impossible to him to live with her.

4. On the other hand, the averments of the M.C.No.85 of 2006 are that at the time of marriage her parents presented an amount of 4 lakhs to meet the demand of the revision petitioner-husband and his parents and also gold ornaments worth one lakh and other customary formalities worth about Rs.50,000/- and immediately the marriage was consummated and both lived together while in Railway colony at Vijayawada. Since the beginning of separate family at Chennai his family members developed prejudice against her and used to instigate him to harass her and he used to harass her and also got terminated her pregnancy in the year 1995. Subsequently, she gave birth to a male child on 17.01.1997 named as Suraj. Further during the year 1998, he demanded her to get an amount of Rs.50,000/- from her parents for marriage of his younger sister. Finally he necked out her from the house and as there was no option, they went to Vijayawada to her parents house. He is working as Junior Accounts Assistant in HPCL, Chennai and drawing salary of Rs.32,000/- p.m. and having immovable property i.e. house bearing D.No.23-2/2-7 worth Rs.20lakhs at Rajaveedhi, Satyanarayanapuram, Vijayawada. Now the petitioners are unable to

maintain themselves and no means as such, the petitioners required an amount of Rs.10,000/- each for their maintenance, medical expenses and education of their son.

5. In both the cases, both the wife and husband filed counters with the almost self-same averments as in their respective petitions besides specific denial of opposite versions and as such the same no way require further repetition.

6. During the course of enquiry, the trial Court examined the husband as P.W.1 and three others by names P.Nataraj Kumar, A.Yarakayyakumar and Maddala Srinivasa Rao as P.Ws.2 to 4 and got marked Exs.A.1 to A.18 viz; Wedding card, photos, birth certificate, telegaram, legal notice, reply legal notice, dt. 21.07.2006, photo with door number, photo, copy of birth certificate, letter dated 27.07.2009, letter to Sr.R.M., dt.20.07.2012, photo, FIR in Cr.No.354, dt.30.06.2000, postal receipt, Order of the Apex Court in T.P.No.685 of 2000, railway research charts. On behalf of the wife, she was examined as R.W.1 and her father as R.W.2 and she got marked Ex.B.1 certificate of B.Com.

7. From said evidence on record and after hearing both sides, the trial Court held that there is no clinching evidence on record to prove the so called acts of cruelty against her. However, it is material from the evidence on record that since beginning of their marital life, there are strained relations between them which are common even in any marital life. He made several allegations against her but failed to produce any evidence and examine any witness to prove them. Further, it is not his case that his wife herself disliked him and not willing to lead marital life and left him without his knowledge and consent. It is evident from her evidence as R.W.1 and Ex.A.5 telegram that he himself left the

matrimonial home by leaving her and their child to their fate which probablises the case of the wife that her husband used to harass her. He did not give any reply to the Ex.A.5 telegram denying the averments. Taking into consideration of all these facts, the trial Court held that he failed to establish the ground of cruelty for granting divorce and as such he is not entitled for divorce. When himself left the matrimonial home and after waiting for 40 days in the matrimonial home, she and her child reached to her parents house at Vijayawada and since then she has been living at her parents' house along with her child and got transferred the OP which was filed for divorce by him at Chennai, suffice to say she is entitled to maintenance for her and child from him for the admitted relationship.

8. Admittedly, he is an employee working at Chennai. There is no evidence on record to prove that she has got sufficient income to maintain herself. According to him, that she was doing Tupper wear business in Chennai, but he did not produce any evidence to that effect. So there is no clinching evidence on record to prove that she was doing any business and getting any income and nothing elicited in the cross of R.Ws. 1 and 2 that she is having any source of income to maintain herself. She categorically stated in her evidence that she is unable to maintain herself and she has no source of income and it requires to grant each Rs.10,000/- p.m. for herself and the minor son. As per her version he is getting more than Rs.1,07,000/- p.m. As per P.W.1, he stated in the cross-examination that his gross salary is one lakh and he is residing in his own house. Taking evidence of P.W.1 and R.W.1 into consideration, it was that the petitioner having sufficient income and she has no source of income to maintain herself. Hence, she is entitled for maintenance from the revision petitioner. With regard to entitlement

of their son, she stated that now her son has been studying B.Tech. II year and aged 19 years, a major. The MC petition is filed on 17.07.2006, the date of birth of her son is 17.01.1997. So, by the date of filing of maintenance case, their son was minor as aged 9 ½ years. It is not the case of the revision petitioner that their son having any source of income to maintain himself. Hence, their son also entitled to maintenance as on the date of filing of the petition till date of attaining majority. Thus, the revision 1st respondent-wife is able to establish that herself and her son are entitled for maintenance from the revision petitioner and allowed the M.C.No.85 of 2006 and keeping social status of both parties and income source of the revision petitioner in mind, the trial Court granted maintenance to wife of Rs.10,000/-p.m. and the son (B.Tech II year, aged 19 years) at Rs.9,000/- p.m. from the date of application till the son attains majority.

9. The grounds of the revision filed by the revision petitioner impugning the order of the trial Court supra vis-à-vis submissions of the learned counsel for the revision petitioner are that the order of the lower Court is incorrect and illegal, that the lower Court erred in granting maintenance to the respondents 1 and 2 and failed to see that the 1st respondent left the matrimonial house along with 2nd respondent and never filed any application for restitution of conjugal rights. That the lower Court failed to consider the admission made by the 1st respondent in the cross-examination stating that her husband is looking after the education and other needs of 2nd respondent. The lower Court ought to have considered that the 1st respondent did not allow the 2nd respondent to meet the petitioner till 2014 until an application filed for custody which was rejected by the Court below. That the lower Court failed to consider the amounts spent by the revision petitioner for the

education, mess charges, tuition fees, travel expenses from July, 2014 onwards which runs into lakhs of rupees and the same bills are now filing before this Hon'ble Court for consideration. The lower Court ought to have considered that the petitioner's gross salary in June, 2006 was only Rs.28,884/-p.m. and from that total deductions of Rs.14,750/- and the remaining net take home salary is Rs.14,133/- and the same was revised in December, 2012, and there is no further revision but wrongly granted abnormal amount totaling of Rs.19,000/- to the respondents which is contrary to well established principles of law.

10. Whereas, it is the submission of the learned counsel for the 1st and 2nd respondents and the learned Public Prosecutor for the 3rd respondent that the impugned order of the lower Court no way requires interference while sitting in revision and thereby sought for dismissal of the revision.

11. Heard and perused the material on record.

12. The relationship between the parties is not in dispute. From the evidence on record, there is a clear finding of there is neglect and refusal by the husband to maintain the wife and son, when they are unable to maintain themselves. Thus, there is nothing to interfere with the entitlement particularly so far as the son concerned as granted till he attains majority. Coming to the quantum, it is the gross salary that is the criteria and not the net salary which admittedly he is getting more than one lakh per month. Having regard to the above, Rs.10,000/- per month to the wife out of it from the date of Maintenance Case no way requires interference equally so far as the son till he attains majority at Rs.9,000/- per month.

13. Accordingly, the revision is dismissed as nothing to interfere but for to grant 4 months time to pay all arrears.

Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:18.04.2017
Vvr.

