

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No. 2492 OF 2017

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') questioning the propriety and legality of the order dated 31-07-2017 in M.C.No. 9 of 2011 on the file of the learned Judge, Family Court – cum – VI Additional District Judge, Kadapa (for short, 'the Court below'), whereby it granted maintenance of Rs.6,000/- p.m. which is inclusive of the maintenance of Rs.1,500/- p.m. already granted under Section 20 (1) (d) of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act').

2. The parties will hereinafter be referred to as the petitioner and respondent No. 1 as arrayed in this revision for convenience.

3. Respondent No. 1 filed petition under Section 125 Cr.P.C. on the file of the Court below for grant of maintenance @ Rs.15,000/- p.m. contending that her marriage was performed on 15-12-2002 as per Muslim customs and rituals. She joined the petitioner at Anantapur to lead marital life. Accordingly, they lived together for a month. Subsequently, they set up separate family at Kadapa. Thereafter, the family members of the petitioner started harassing her for additional dowry. She lodged a complaint which is pending for trial in C.C.No. 24 of 2009 on the file of the Court of Special Judicial I Class Magistrate for Prohibition and Excise Offences, Kadapa. Respondent No. 1 also filed D.V.C.No. 27 of 2007 against the petitioner on the file of the Court of I Additional Judicial Magistrate of I Class, Kadapa, and the same was allowed by granting Rs.1,000/- p.m. as maintenance. It is further contended that the petitioner married another lady while his first marriage was subsisting and set up family at Hyderabad. The petitioner and his family members did not return the dowry *i.e.*

cash and gold ornaments which were presented at the time of marriage. It is finally contended that she is unemployed and not having any independent source of income. Thus, she has no independent source of income to maintain herself and totally depending upon her mother whereas the petitioner is working as Chief Photographer in Andhra Jyothi Daily Newspaper and drawing a salary of Rs.25,000/- p.m. and refused to maintain her.

4. Learned counsel for the petitioner filed counter affidavit admitting the relationship between the petitioner and respondent No. 1 besides admitting filing of various cases and granting of maintenance @ Rs.1,000/- p.m. initially in D.V.C.No. 27 of 2007 and enhancement of the same to Rs.1,500/- in Criminal Appeal No. 130 of 2008 and accordingly he is paying maintenance @ Rs.1,500/- p.m. to respondent No. 1. The petitioner is working as Photographer in Andhra Jyothi Daily Newspaper at Hyderabad and drawing a gross salary of Rs.14,281/- and net salary of Rs.13,118/-. With that meager amount, he is paying Rs.6,000/- to respondent No. 1 towards monthly maintenance besides incurring medical expenses of his old aged mother. As respondent No. 1 was already granted maintenance, she is disentitled to claim maintenance at any rate and prayed for dismissal of the petition.

5. During hearing, respondent No. 1 herself was examined as P.W.1 and got marked Exs.A1 to A4. The petitioner himself was examined as R.W.1 and got marked Exs.B1 to B4.

6. Upon hearing argument of both counsel, the Court below initially dismissed the petition negating the relief of maintenance. Aggrieved by the same, respondent No. 1 preferred criminal revision case No. 1579 of 2016 which was allowed by order dated 16-11-2016 directing the Court below to consider the financial status of both parties and decide the amount payable towards maintenance after affording reasonable opportunity and accordingly remanded

the matter. After remand of the matter, no additional evidence was adduced. The Court below passed the impugned order awarding maintenance of Rs.6,000/- which is inclusive of the maintenance already awarded in D.V.C. Aggrieved thereby, the present revision is filed.

7. Learned counsel for the petitioner would contend that the Court below did not adhere to the direction issued in criminal revision case No. 1579 of 2016, wherein this Court made it clear to afford an opportunity to both parties and consider the financial status of both parties while fixing maintenance and that the amount awarded by the Court below is contrary to the law laid down in ***Dr. Kulbhushan Kumar Vs. Raj Kumari and another***¹; and ***Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy***². Even if the financial status *i.e.* income of the petitioner is accepted as it is, the maintenance awarded by the Court below is excessive and prayed to set aside the same. Whereas learned counsel for respondent No. 1 supported the order in all respects.

8. It is an undisputed fact that the marriage of the petitioner and respondent No. 1 was performed and they lived together for sometime. Thereafter, respondent No. 1 left the company of the petitioner on account of alleged harassment she meted in the hands of family members of the petitioner. Therefore, there is any amount of justification for her separate living. The only point to be considered in this revision is the quantum of maintenance. Undisputedly, on the application filed by respondent No. 1 in D.V.C.No. 27 of 2007, Rs.1,000/- was awarded and later it was enhanced to Rs.1,500/- in Criminal Appeal No. 130 of 2008 which is marked as Ex.B2. Therefore, the amount awarded in D.V.C. shall also be taken into consideration while fixing maintenance under Section 125 Cr.P.C. Moreover, Section 20 (1) (d) of the Act

¹ (1970) 3 SCC 129

² 2017 (4) ALD 176 (SC)

permits to award maintenance in addition to the maintenance awarded in the proceedings under Section 125 Cr.P.C. or under any other law for the time being in force. Therefore, the proceedings under D.V.C. though different, the same have to be taken into consideration for fixing maintenance. Admittedly, the petitioner is drawing Rs.14,281/- as gross salary and after statutory deductions, he is drawing only Rs.13,118/-. Though respondent No. 1 contended that the petitioner is drawing Rs.25,000/- p.m., she did not produce any iota of evidence except the *ipse dixit* of respondent No. 1. On the other hand, the petitioner produced Ex.B3 salary certificate issued by competent authority and therefore his net income shall be taken as Rs.13,118/- p.m. as on the date of filing the petition. If the principle laid down in the above judgments is applied, respondent No. 1 is entitled to Rs.3,280/- but it pertains to grant of *interim* maintenance under Section 25 of Hindu Marriage Act, 1955. Therefore, it is difficult to apply the same principle to the present facts of the case. However, taking into consideration the present cost of living, price index and the age of respondent No. 1, I find that it is a fit case to award maintenance of Rs.4,000/- p.m. after giving credit of the amount awarded as maintenance in D.V.C.No. 27 of 2007. Consequently, the order dated 31-07-2017 is modified reducing the maintenance amount from Rs.6,000/- to Rs.4,000/- which is inclusive of the maintenance awarded in D.V.C.No. 27 of 2007.

9. The criminal revision case is accordingly allowed to the extent indicated above. Pending miscellaneous petitions in this criminal revision case, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 24-10-2017.

JSK