

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1964 OF 2011

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the order dated 28.08.2009 in M.C.No.108 of 2007 on the file of the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad, wherein and whereby the petition filed by the petitioners under Section 125 Cr.P.C. was allowed in part and granted maintenance of Rs.3,000/- per month to the first petitioner and Rs.2,000/- per month to the second petitioner.

2. In spite of service of notice, respondent Nos.2 and 3 did not choose to appear. Hence, this Court is inclined to pass orders on merits.

3. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed in the M.C. before the trial Court to avoid confusion.

4. The facts leading to filing of the present criminal revision case are briefly as follows:

The marriage of the first petitioner was officiated with the respondent on 10.02.2005, as per Muslim rites and caste customs. Immediately after the marriage, the first petitioner joined the respondent to lead marital life. Out of lawful wedlock, the first petitioner and respondent were blessed with one son i.e., petitioner No.2. It is the case of the petitioners that the respondent

intentionally and wilfully neglected to provide maintenance to them. The petitioners filed a petition claiming maintenance of Rs.6,000/- per month to the first petitioner and Rs.4,000/- per month to the second petitioner. The respondent filed counter *inter alia* contending that the first petitioner by suppressing the factum of her earlier marriage married him. It is further contended that the first petitioner used to go to Arab Nations to meet her first husband. The first petitioner married the respondent with an intention to grab his property. The first petitioner, being the wife of Arab National, is not entitled to claim maintenance. Hence, the petition may be dismissed.

5. To substantiate the case, before the trial Court, the first petitioner examined herself as PW.1 and no documents were marked. On behalf of the respondent, no oral or documentary evidence was adduced.

6. Basing on the oral evidence and other material available on record, the trial Court allowed the petition in part by granting maintenance of Rs.3,000/- per month to the first petitioner and Rs.2,000/- per month to the second petitioner. Hence, the revision.

7. The learned counsel for the respondent (petitioner herein) strenuously submitted that the trial Court allowed the petition without taking into consideration the averments made in the counter of the respondent. He further submitted that merely because the respondent did not choose to cross-examine PW.1 that itself is not a valid ground to allow the petition. He also submitted

that the order passed by the trial Court is not sustainable either on facts or in law.

8. Now the points that arise for consideration are:

1. Whether the petitioners are entitled to claim maintenance from the respondent or not? and

2. Whether there is any illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court or not?

9. Point Nos.1 and 2 are interlinked with each other; hence, this Court is inclined to address both points simultaneously in order to avoid recapitulation of facts and evidence.

10. As rightly pointed out by the learned counsel for the respondent, duty is cast on the first petitioner to establish that the respondent intentionally and wilfully neglected to provide maintenance to her and her son in order to claim maintenance under Section 125 Cr.P.C.

11. Let me consider the facts of the case on hand in the light of the submission of the learned counsel for the respondent. The respondent filed counter admitting the factum of marriage with the first petitioner. The respondent also admitting that the second petitioner is his natural son. It is the case of the respondent that the first petitioner by suppressing the factum of her earlier marriage married him with an intention to grab his property. As per the testimony of PW.1, the respondent intentionally and wilfully neglected to provide maintenance to her and her son. The

testimony of PW.1 further reveals that she is not having any source of income to look after the welfare of the second petitioner.

12. This Court carefully perused the counter filed by the respondent. Nowhere it is mentioned that the first petitioner is having any source of income and that the first petitioner herself left the matrimonial home of the respondent without any justifiable cause. The very purpose of the cross-examination of the witness is to elicit the truth or to elicit some information by way of suggestions so as to improbabilise the stand of the opposite party. The respondent having admitted the factum of marriage, the burden of proof lies on him to establish that he is the second husband of the first petitioner. For the reasons best known, the respondent did not choose to cross-examine PW.1 (first petitioner). Whatever deposed by PW.1 remains unchallenged. It is needless to say that the Court can place reliance on the testimony of witness not challenged by the opposite party. It is the duty of the respondent to establish that the first petitioner suppressed the factum of her earlier marriage. The respondent did not choose to come into witness box to substantiate the stand taken by him. If a party to the proceedings intentionally and wilfully abstains himself from entering into witness box, the Court can draw an adverse inference. In the instant case, for the reasons best known, the respondent did not choose to come into witness box.

13. The learned counsel for the respondent strenuously submitted that the trial Court failed to consider the averments made in the counter. An averment made in the counter is not substantial piece of evidence. It is the duty of the respondent to

substantiate the averments made in the counter. The trial Court taking into consideration the facts and circumstances of the case, allowed the petition. The respondent, being the husband of the first petitioner and father of the second petitioner, has to look after their welfare. For the reasons best known, the respondent intentionally and wilfully neglected to provide maintenance to the petitioners. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court, while exercising the revisional jurisdiction under Section 397 Cr.P.C. Hence, the revision lacks merits and *bona fides*.

14. Accordingly, the Criminal Revision Case is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

Date: 26.10.2017
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T.SUNIL CHOWDARY, J

