

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2287 OF 2017

JUDGMENT:

The present Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code') is preferred by the respondent (husband) viz., Poluri Brahma Sai in M.C. No.322 of 2014, aggrieved over the order dated 10.07.2017, passed by the learned XIV Additional District and Sessions Judge - cum - Additional Family Judge, Vijayawada, awarding a maintenance of Rs.8,000/- per month to the petitioner No.2 therein.

2. In fact, respondent Nos.1 and 2 herein, who are wife and infant baby, aged four months, on the date of filing the aforesaid Maintenance Case, sought a sum of Rs.20,000/- and Rs.15,000/- per month towards their respective monthly maintenance under Section 125 of the Code.

3. The marriage of the spouses has taken place on 29.08.2013 as per Hindu Customs and Rites and respondent No.2 was born on 07.07.2014 out of their wedlock. According to respondent No.1, the revision petitioner was addicted to vices and she could come to know about the same, a few months after the marriage as he used to come late in the nights in drunken condition and used to abuse her and beat her at the behest of his parents and other members. They used to demand her additional dowry. Her gold ornaments were taken away and sold away, and spent for his vices. On her enquiry, she learnt that

the revision petitioner has been suffering from Hepatitis and Ganeria diseases even prior to his marriage and the said fact was suppressed. When she went to her parents house for delivery in the month of April, 2014, and gave birth to respondent No.2, the revision petitioner, at the instigation of his parents, he refused to take them back to the matrimonial home and started demanding to bring additional amount of Rs.10,00,000/-, and, thus, she was constrained to remain at her parents house when neglected by the revision petitioner. According to her, even she lodged a complaint under Section 498-A of Indian Penal Code, 1860 (for short 'IPC'), which was registered as Crime No.118 of 2014 on 25.09.2014. She also states that she filed a Domestic Violence Case (DVC) against the revision petitioner and his parents.

4. She claims that the revision petitioner is working as Project Officer at Distract Water Yajamanyapu Sangham, Kanigiri, and drawing a monthly salary of Rs.50,000/- and he has no other persons dependant on him. Therefore, they sought Rs.20,000/- and Rs.15,000/- per month towards their maintenance.

5. The aforesaid allegations were denied by the revision petitioner in his counter. He claims that despite repeated demands and request of his parents and village elders, respondent No.1 did not choose to join his matrimonial society and voluntarily deserted him. He would also allege that his wife was harassing him mentally by alleging sexual diseases like Ganeria and Hepatitis-B, due to which he suffered mentally and she filed a false criminal case for the offence

punishable under Section 498-A of IPC and DVC case on the file of I Additional Chief Metropolitan Magistrate Court, Vijayawada. He filed O.P. No.5 of 2015 on the file of Senior Civil Judge's Court, Bapatla, for grant of decree of divorce. In her counter, she alleged that she has utmost love and affection towards him and always ready and willing to lead marital life with him, if he allows her unconditionally, but during counselling before the Protection Officer, she told him that she was not interested to lead marital life with him. He expressed his readiness to take her back to his society. According to him, she is working as a private teacher and leading luxurious life, and, therefore, they are not entitled to seek any maintenance from him and sought to dismiss the petition.

6. The Additional Judge, Family Court, formulated the following three (3) points for consideration;

- “1. Whether the 1st petitioner is justified in living separately?
2. Whether the 1st petitioner is unable to maintain herself and her child? If so, they are neglected by the respondent having sufficient income to maintain the petitioners?
3. Whether the petitioners are entitled to ask for maintenance as prayed for?”

7. During enquiry, the wife examined herself as PW.1 and one more witness as PW.2 and marked Exs.P-1 and P-2 wedding card and

marriage photo, respectively, whereas, on behalf of the revision petitioner, he examined himself as RW.1 and marked Exs.R-1 to R-4, which are certified copy of the counter in O.P. No.5 of 2015 on the file of Senior Civil Judge's Court, Bapatla, lab report, job resign letter with salary certificate and FDR in the name, Smt. Sridevi, who is the mother of respondent No.1.

8. The learned Additional Judge, Family Court, did not believe the resignation letter marked as Ex.R-3 filed by the revision petitioner and opined that the revision petitioner was doing job and getting sufficient income to maintain respondent No.2, and, observing that the revision petitioner has not made any efforts to pay any amount to the child towards maintenance, either prior to filing the maintenance case or subsequent thereto, and thereby, neglected to maintain her having sufficient income, but, came forward with a false plea with an intention to avoid his liability to pay maintenance to the child, recorded a finding that the child is entitled to monthly maintenance. Concerning quantum of maintenance, opining that the revision petitioner was earning sufficient income though, not Rs.50,000/- per month, as per the stand taken by respondent No.1, held that the child is entitled to Rs.8,000/- per month towards maintenance from the date of filing of the maintenance application.

9. Concerning maintenance claim of respondent No.1 - wife, the learned Judge, Additional Family Court, finding inconsistency in the evidence of PWs.1 and 2 as to the demand alleged to have made

by the revision petitioner and his parents, since she took the stand that demand was for payment of Rs.10,00,000/- (Rupees ten lakhs only), whereas, PW.2 stated that the demand was for additional amount of Rs.1,50,000/-, and also appreciating the answers given by PW.1 in her cross-examination that she denied the averments in the counter filed in divorce O.P. No.5 of 2015, and also considering the stand taken by her that she was not ready and willing to join the revision petitioner, arrived at the finding that she is not inclined to join him and voluntarily deserted him and thereby, held that she is not entitled to claim maintenance from the revision petitioner and accordingly recorded the finding.

10. Heard Sri Ramana Allu, learned counsel for the revision petitioner - husband, and Sri V.R. Reddy Kovvuri, learned counsel for respondent Nos.1 and 2, and perused the material on record.

11. So far as the order refusing to grant maintenance to wife is concerned, it is not known whether the wife has filed any criminal revision case questioning the very same order. In case, if she filed, the same would be dealt with independently without reference to any of the observations recorded by the trial Court narrated in the above or contextually, if any, to be made hereinafter.

12. So, the only short question that arises for consideration is whether the amount of Rs.8,000/- granted to the child by the learned

Judge, Additional Family Court, is on higher side and whether interference is warranted?

13. The learned Judge, Additional Family Court, has no-where mentioned what was the salary shown in Ex.R-3. He only mentions that the stand of the wife has been that the husband was drawing Rs.50,000/- monthly salary by working as Project Officer at District Yajamanyapu Sangham, Kanigiri.

14. The submission of the learned counsel for the revision petitioner is that the revision petitioner having resigned the job, not working and he has no means to pay even Rs.8,000/- awarded by the trial Court and Ex.R-3 would prove the resignation letter submitted by the revision petitioner. It is pertinent to mention that the revision petitioner has not chosen to examine his employer to prove the authenticity of Ex.R-3. Therefore, it is to be held that Ex.R-3 is of any significance in assessing the income of the husband.

15. It is, no doubt, true, the daughter of the spouses was four months old on the date of filing the application, certainly, an infant requires more amount compared to a child of 4 - 5 years old, for the reason that she will be so tender requiring complete medical care, nutritious feeding and other cosmetics which are absolutely essential and invariably expensive.

16. During the course of hearing, the learned counsel for the revision petitioner would make a request to reduce the maintenance

amount from Rs.8,000/- to Rs.5,000/-, whereas, learned counsel for respondent Nos.1 and 2, while requesting to maintain the maintenance amount awarded by the Courts below, would, however, submit to grant a minimum of Rs.7,000/-.

17. Keeping in view, the submissions made and keeping the aforesaid factors as to feeding of the infant, medical care required and other articles, which are absolutely necessary, a sum of Rs.6,500/- would be reasonable towards monthly maintenance of the infant.

18. Therefore, the order under challenge is modified reducing the monthly maintenance amount to the infant - respondent No.2 to Rs.6,500/- (Rupees six thousand five hundred only) from Rs.8,000/-, from the date of filing maintenance case, and, accordingly, the Criminal Revision Case is allowed in part, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision case stand closed.

A. SHANKAR NARAYANA, J

December 13, 2017.

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