

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2067 of 2016

ORDER:

This Criminal Revision Case under Sections 397 and 401 Cr.P.C. is filed questioning the legality, propriety and regularity of order, dated 01.08.2013 passed by Judge, Family Court, Warangal, in M.C.No.32 of 2012 awarding maintenance to respondents 1 and 3 herein @ Rs.5,000/- and Rs.3,000/- per month respectively.

Respondents 1 to 3 filed M.C.No.32 of 2012 before Judge, Family Court, Warangal, under Section 125 Cr.P.C. alleging that respondent No.1 is the legally wedded wife of petitioner and respondent Nos.2 and 3 are children born during their wedlock. Respondents 2 and 3 are aged 18 and 17 years respectively, as on the date of filing M.C.No.32 of 2012. Petitioner refused and neglected to maintain respondents 1 to 3. Though he is drawing salary of Rs.30,000/- per month, he is not providing anything for their maintenance. Moreover, he is addicted to vices, used to beat respondent No.1, returning to house late in night and panchayats held proved futile and therefore, respondents 1 to 3 having no

means to maintain themselves, while respondents 2 and 3 are prosecuting their education, sought maintenance from petitioner.

Petitioner herein, who is respondent before the Court below, filed counter admitting the relationship between himself and respondents 1 to 3, while contending that respondent No.1 is working as an agricultural labourer and earning Rs.300/- per day and maintaining herself. He admitted that respondent No.2 is a major and a student prosecuting her studies. Therefore, she is not eligible to claim maintenance. Respondent No.3 is a minor and prosecuting his studies. Petitioner expressed his readiness and willingness to maintain respondent No.3, if respondent No.3 joins him. He further contended that respondent No.1 is an arrogant woman and he is an innocent teacher and she is participating in local politics leaving the house after he leaves house to attend the duty as a teacher and when he questioned her, she used to abuse him in filthy language, she bite his nose with teeth, he suffered grievous injury and lodged a complaint with Intezargunj Police Station. The same was registered as a case in Crime No.169 of 2012 and respondent No.1 was remanded to judicial custody and the case is pending for trial. She also made a complaint before I Additional Judicial First Class Magistrate, Warangal, against petitioner and his relatives in Crime No.70 of 2012 as a

counterblast to Crime No.169 of 2012 and it is pending. Thus, respondent No.1 is a woman of criminal nature and she is disentitled to claim maintenance and finally, prayed to dismiss M.C.No.32 of 2012.

During enquiry, on behalf of respondents 1 to 3, who are petitioners before the Court below, respondent No.1 herein was examined as P.W.1 and no documents were marked. On behalf of petitioner herein, R.Ws.1 to 4 were examined but no documents were marked. Upon hearing both counsel, the Court below awarded maintenance @ Rs.5,000/- to respondent No.1 and Rs.3,000/- to respondent No.3 while negating maintenance to respondent No.2, who attained majority by the date of filing M.C.No.32 of 2012.

Aggrieved by the order passed by the Court below, the present Criminal Revision Case is filed on various grounds, mainly contending that respondents 1 to 3 are having sufficient means to maintain themselves but the Court below on wrong appreciation of facts and law, awarded maintenance @ Rs.5,000/- and Rs.3,000/- to respondents 1 and 3. It is further contended that respondent No.1 necked petitioner out from the house rendering him shelter less and petitioner is staying in a rented house on payment of Rs.4,000/- towards monthly rent. It is also contended

that petitioner constructed house spending Rs.20,00,000/- but it is occupied by respondents 1 to 3 and that respondent No.1 was aggressive/violent, disabled the petitioner to reside in his own house and therefore, respondents 1 to 3 are not entitled to maintenance and thereby, prayed to set aside order, dated 01.08.2013 passed by the Court below.

During hearing, Sri K. Parameswara Rao, learned counsel for petitioner, did not represent the matter for one reason or the other. However, this Court cannot dismiss the Criminal Revision Case for default but without waiting for petitioner or his counsel, on verification of the record, this Court can decide the Criminal Revision Case as held by Delhi High Court in **Nisha Sharma and others v. Vinod Kumar Sharma**¹. Therefore, persuaded by the law declared by Delhi High Court, this Court can decide the present Criminal Revision Case based on the material available on record.

The relationship between petitioner and respondents 1 to 3 is not in dispute and dismissal of the claim of respondent No.2 is the subject matter of Crl.R.C.(SR).No.48568 of 2013, which is disposed of today itself upholding the order passed by the Court below declining to grant maintenance to respondent No.2.

¹ 1990 Cri.L.J. NOC 57 Delhi

Therefore, respondents 1 and 3, who are wife and minor son of petitioner, are entitled to maintenance.

Petitioner made an admission that he is bound to maintain respondent No.3, by name, S. Karthik, but contended that if respondent No.3 joins him, he is willing to maintain his son. Respondent No.3 is a minor and he is in the custody of respondent No.1, mother of respondent No.3. Petitioner did not take any step to claim custody of minor son, respondent No.3 herein, but he is insisting respondent No.3 to join him. Except that no other contention was raised. As long as his son is a minor, petitioner is bound to maintain minor children in view of clause (b) of Section 125(1) Cr.P.C. When petitioner did not take steps to claim custody of respondent No.3, the offer made by him is not *bona fide*. Therefore, this Court cannot refuse maintenance to respondent No.3, minor son of petitioner and respondent No.1.

Admittedly, respondent No.1 is the wife of petitioner but reason for petitioner refusing and neglecting to maintain her is that she is a woman of criminal nature and allegedly foisted a case against petitioner and others which is the subject matter of Crime No.70 of 2012 and she bite the nose of petitioner and caused grievous injury which is the subject matter of Crime No.169 of 2012. Therefore, two crimes are pending against one

another. The crime registered against petitioner is earlier to the crime registered against respondent No.1. Therefore, it is difficult to hold that respondent No.1 foisted a false case against petitioner in Crime No.70 of 2012 as a counterblast to Crime No.169 of 2012 registered based on the complaint lodged by petitioner. As respondent No.1 is apprehending danger to her life in the hands of petitioner or his relatives, she cannot be faulted for her separate living from petitioner. It is the case of petitioner that if respondent No.1 works as a labourer, she would get not less than Rs.300/- per day. It is only a contingency and admittedly, she is not working anywhere either as a labourer or in any other capacity and earning anything. She may or may not work as a labourer. It depends upon her physical and mental condition. Therefore, such contingency is not sufficient to disentitle respondent No.1 to claim maintenance.

Admittedly, petitioner and respondents 1 to 3 are living separately and there is any amount of justification for their separate living in view of discussion in earlier paragraphs with regard to registration of crimes against one another. Therefore, petitioner being the husband and while working as a teacher in Government school, he is bound to maintain respondents 1 to 3, who did not possess any independent source of income to

maintain themselves, to meet their daily necessities like food, clothing, shelter and medical expenses.

With regard to the quantum of compensation, petitioner is working as a teacher in Government school. Even according to his admission, he is drawing not less than Rs.28,000/- per month, thereby, 1/4th of it can be awarded as maintenance as per judgment of Apex Court in **Kulbhushan Kumar v. Raj Kumari and another**² wherein the Apex Court held that 1/4th of the salary of the husband can be awarded as maintenance. Therefore, respondent No.1 is entitled to claim maintenance not less than 1/4th of salary of petitioner which comes to Rs.7,000/- but the Court below awarded only Rs.5,000/- towards maintenance which is far below the maintenance awarded by the Apex Court in **Kulbhushan Kumar** (2 supra). Similarly, respondent No.3 is a student prosecuting studies and requires shelter, food, clothing, medicines besides education expenses. Taking into consideration the present price index, cost of living and expenses for education, awarding maintenance to respondent No.3 @ Rs.3,000/- is just and reasonable. Therefore, I find no ground to interfere with the order passed by the Court below, while exercising jurisdiction under Sections 397 and 401 Cr.P.C. as the jurisdiction of this Court is limited and this Court can interfere with the fact findings

² AIR 1971 SC 234

only when the findings are manifestly perverse or apparently erroneous but no such apparent error or perversity is brought to the notice of this Court in the present Criminal Revision Case, thereby, the Criminal Revision Case is liable to be dismissed as it lacks merits.

In the result, Criminal Revision Case is dismissed at the stage of admission itself.

Consequently, pending Miscellaneous Petitions, if any, shall stand dismissed.

M. SATYANARAYANA MURTHY, J
5th SEPTEMBER, 2017.

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