

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRL.R.C.NO.2616 OF 2014

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order, dated 09.12.2014 in FCOPNo.93 of 2013 passed by the Judge, Family Court-cum-III Addl. District and Sessions Judge, at Vizianagaram awarding maintenance of Rs.10,000/- p.m. to the first respondent from the date of filing of the petition i.e. 01.08.2013 directing him to pay on or before 10th of every calendar month while directing the respondent herein to open savings bank account and intimate the same within 15 days from the date of the order.

2. The first respondent herein filed petition under Section 125 Cr.P.C. claiming maintenance of Rs.15,000/- per month to maintain herself and her children who are prosecuting their education alleging that the marriage of the petitioner with the first respondent was performed and their marriage was consummated and during the wedlock, they were blessed with female child named as Dasari Krishna Kumari and a male child Dasari Keshav Kumar. After the birth of the second child, the petitioner herein started harassing her both physically and mentally and neglected both the children and first respondent herein and used to pick up quarrel and beat her without any reasonable cause. The petitioner used to return home consuming liquor and misbehaved with the children abusing them in filthy language. He also developed illicit contacts with the woman at Visakhapatnam and due to unbearable harassment and torture etc. after the birth of the female child Dasari Krishna Kumari at Vizianagaram, she was not permitted to perform her obligations as she gave birth to a female child and he did not visit Vizianagaram for three years and neglected the welfare of the first respondent and children and despite mediation, no purpose was served.

3. The petitioner is government employee working in Andhra University earning substantial amount as salary besides income from other sources, drawing salary of Rs.26,500/- per month, possessing a house at Thotada village of Srikakulam District and agricultural land, he is in a position to maintain the first respondent and children, but, wantonly refused and neglected to maintain her.

4. The petitioner herein filed counter admitting marital relationship between the parties to the petition while denying the alleged refusal and neglect to maintain the first respondent and children, admitting his employment and contended that the petitioner deposited Rs.50,000/- in her postal account and that he also purchased cell phones worth Rs.14,000/- for use of the first respondent and therefore, the alleged neglect or refusal to maintain the first respondent is false. It is also contended that the petitioner's salary is low as he obtained loans and discharging the loans and now drawing Rs.1286/- as salary. Therefore, he has no capacity to maintain himself and the allegations that he is drawing Rs.26,500/- is false and prayed to dismiss the petition.

5. During the enquiry before the trial court, the first respondent examined herself as PW-1 and marked Exs.A-1 to A-8 and the petitioner herein himself was examined as RW-1 and marked no documents.

6. Upon hearing argument of both the counsel, considering the material on record, the trial Court awarded Rs.10,000/- per month as maintenance with other conditions in favour of the first respondent.

7. Aggrieved by the impugned order, the present revision is filed on various grounds, mainly on the ground that the maintenance of Rs.10,000/- p.m. is excessive and when the petitioner has no financial capacity to pay such huge amount while receiving meager amount as

salary, the trial court ought to have dismissed the petition, but the trial court also did not consider the applications of the petitioner to discharge the loans etc., in such a case the order passed by the trial court is illegal and irregular and without any material and prayed to set aside the same.

8. As seen from the material on record, the relationship between the petitioner and respondent is not in dispute as husband and wife. But, whether he refused or neglected to maintain or not is the question to be decided by the court. As per the material on record including the evidence on record, the first respondent was subjected to harassment after she gave birth to female child named Dasari Krishna Kumari and such refusal or neglect are sufficient and apart from that the trial court based on evidence recorded a clear finding that the first respondent and children were neglected by the petitioner. Therefore, the fact finding recorded by the trial court cannot be interfered while exercising power under Section 397 and 401 Cr.P.C. in view of the limited powers conferred on this Court by those two sections and that unless it is shown that the order of the trial court is suffering from manifest perversity or patently erroneous. But, in the present case the only contention before this court is that the petitioner is unable to maintain himself and discharging loans as he is receiving Rs.1200/- and odd as salary. But, a fact finding was recorded by the trial Court that the petitioner refused and neglected the first respondent and the children to maintain. Therefore, the fact finding cannot be disturbed while exercising powers under Sections 397 and 401 Cr.P.C. since I find no manifest error in the finding of the trial Court. The trial Judge also placed reliance on a decision in CHATURBHUJI v. SITA BAI¹ wherein the Apex Court held “*that the provision in Criminal Procedure Code is not intended to punish for past neglect, but to prevent vagrancy, to those who can provide support for those unable to maintain themselves. Unable to*

¹ AIR 2008 SC 530

maintain means inability of wife to maintain herself in a way she can used in her husband's place. She has a moral claim to support. This Section 125 Cr.P.C. is a measure of social justice specifically enacted for the maintenance of wife and children. The burden is on the wife in the first instance to show that the means of husband are sufficient and second she is unable to maintain herself and her husband neglected and refused to maintain his wife. Thirdly, then the husband must establish that with the income she earned, she is able to maintain herself. If the wife is making efforts to survive after desertion cannot be taken into consideration. These are the factors which are to be borne in mind by the Court. The test is 'whether the wife should be in a position to a standard of living, whether it is luxurious nor penurious consistent with the status of the family.'"

Therefore, from the law declared by the Apex Court, it is clear that firstly the burden is on the wife to establish that the husband possessed sufficient means to maintain himself and secondly she is unable to maintain herself and her husband neglected and refused to maintain her. In the present case, no further proof is required to substantiate the contention of the petitioner to prove his means as he is government employee working in Andhra University. The first respondent substantiated that she has no means to maintain herself and she has no source of independent income. In such a case, the evidence of PW-1 suffice to conclude that she has no means to maintain herself. Whereas, her husband has sufficient means to maintain both the wife and children, consequently the burden will automatically shift on to the petitioner herein to establish that he did not neglect or refuse to maintain his wife and children when he is not only under moral obligation but also legal obligation cast on the husband to maintain wife and children. But, here the petitioner did not adduce any evidence to discharge burden of proof that shifted on to him and even did not produce the salary certificate to establish that he is receiving Rs.1200/- and odd. In the absence of any evidence, while admitting his employment, it is difficult to accept his contention that he is not drawing

Rs.26,500/- per month towards salary besides possessing a house and landed property at various places. Therefore, the first respondent herself established that the petitioner is receiving Rs.26,500/- per month. Granting maintenance of Rs.10,000/- per month is onerous. But, keeping in mind the first respondent is living with child, the court has to grant appropriate maintenance to meet both ends of justice for living both the wife and children. Considering the fact that the child is in the custody of the first respondent at her parents' house, the trial Court has rightly granted maintenance at Rs.10,000/- per month as the first respondent is required to meet expenses for clothing, food, and education of the child, medical etc. Therefore, taking into consideration of the present price index, cost of living, I am of the opinion that the amount awarded by the trial Court is just and sufficient and I find no ground to reduce the maintenance awarded by the trial Court. Consequently, the order passed by the trial Court needs no interference by this Court as it is free from legal infirmity warranting interference of this Court by exercising powers under Section 397 and 401 Cr.P.C. and the revision is liable to be dismissed.

9. In the result, the criminal revision case is dismissed. Miscellaneous petitions, if any, pending in this case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:03-08-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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