

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2506 OF 2016

ORDER:

This revision is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 11-09-2016 in M.C.No.16 of 2014 on the file of the Judge, Family Court-cum-V Additional District Judge, Tirupathi.

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

3. It is the case of the petitioner (wife) that she is the legally wedded wife of the respondent and their marriage was performed as per Hindu rites and caste customs and later consummated. After marriage, she returned to her matrimonial home and lived with her parents for one reason or the other. The respondent also joined with the petitioner and both of them lived together in the parents house of the petitioner for three years. Thereafter, she was allegedly subjected to cruelty and she filed a case against the respondent for the offence punishable under Section 498-A IPC and other provisions. It is the further case of the petitioner that she has no means to maintain herself. The respondent completed Diploma course in Civil Engineering and working as Site Engineer and earning sufficient income. Therefore, she filed the above M.C. under Section 125 Cr.P.C. claiming maintenance at the rate of Rs.20,000/- per month and Rs.50,000/- per annum towards medical expenses and shelter.

4. The respondent (husband) filed counter admitting the marriage between himself and the petitioner and consummation of marriage etc., He raised a specific

contention that after marriage on 31-12-2008 they both went to native village of the petitioner's parents, where the petitioner received a phone call from one Venkata Subbaiah, who is resident of Sai Nagar Tirupati and after that, he came to know that the petitioner is having illicit intimacy with said Venkata Subbaiah even prior to their marriage. On 01-01-2009, they both came to petitioner's parents house and after that on 05-01-2009 when he was proceeding on a road near Leelamahal center, Tirupathi, two persons came and threatened him that the petitioner already married and he has to leave the petitioner. He informed the said incident to the petitioner, but she has not cared the same. After that, they both went to native village of petitioner's parents in the month of January, 2009 for Sankranthi festival and resided in the petitioner's parents house up to January, 2009. She used to talk to Venkata Subbiah, whose house is near to the house of the petitioner's parents house and she behaved in an adamant manner. In the month of June, 2009, the petitioner picked up quarrel with him and removed her 'Thali' and thrown the same on his face and scolded him in vulgar language, for which her mother also supported and caught hold of his shirt and necked him out from the house. Thereafter, the petitioner is residing with her parents at their house and lodged a police report and later a case was registered and investigated into and after completion of investigation, police filed charge sheet, which ended in dismissal. The petitioner has sufficient means to maintain herself and hence, he prayed for dismissal.

5. During the course of hearing, on behalf of the petitioner, P.Ws. 1 to 3 were examined and Exs.A1 to A5 were marked. On behalf of the respondent, no oral evidence was adduced, but marked Exs.B1 to B7.

6. Upon hearing argument of both counsel, the Judge, Family Court, Tirupathi, disbelieved the illicit contact attributed to the petitioner with Venkata Subbaiah and awarded maintenance at the rate of Rs.3,000/- per month and also Rs.10,000/- per annum towards her clothing and medical expenses. Challenging the said order, the respondent (husband) preferred this revision on various grounds.

7. During the course of hearing, Mr.Narikal Prabhakar, learned counsel appearing for the respondent (husband) confined his argument only to the plea of adultery. In view of sub-section (4) of Section 125 Cr.P.C., when the wife is living in adultery, she is dis-entitled to claim maintenance and apart from that, the respondent (husband) was subjected to cruelty by the petitioner (wife) and therefore, she is dis-entitled to claim maintenance and prays to allow the revision.

8. On the other hand, Mr.I.Gopal Reddy, learned counsel appearing for the petitioner (wife) supported the order in all respects while contending that the alleged illicit contact is not supported by any evidence as observed by the trial Court in paras 19 and 20 of the order. In the absence of any evidence and in view of limited jurisdiction of this Court under Sections 397 and 401 Cr.P.C., this Court cannot interfere with the order passed by the trial Court and prayed for dismissal of the revision.

9. Jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is limited and the powers of revision can be exercised only when the Court finds that there is manifest perversity or apparent error in the order passed by the trial Court. This Court cannot interfere with the findings of fact

recorded by the trial Court except in the circumstances pointed out above.

10. In the present case, the petitioner filed the petition under Section 125 Cr.P.C. alleging that the respondent refused and neglected to maintain her and she has no means to maintain herself and the respondent is earning sufficient income. But, the respondent attributed illicit contact to the petitioner with one Venkata Subbaiah, but ultimately he failed to establish her living in adultery and therefore, the Judge, Family Court did not accept the contention that she is living in adultery. The Judge, Family Court passed the order basing on the judgment of this Court in **SUNITHA KACHWAHA AND OTHERS V ANIL KACHVWAHA** (Crl.M.P.No.2310 of 2014, dated 28-10-2014).

11. It was held in the order of the trial Court that when the respondent wants to avoid payment of maintenance to the wife that she is living in adultery, he has to prove the same. The expression living in 'adultery' in the clause explained under Section 125 Cr.P.C. is a course of conduct and means something more than a single lapse from virtue, if the lapse is continued and followed by further adulterous life, the woman can be said to be living in adultery. In many number of judicial pronouncement alleged that his wife is living in adultery, the husband should prove that there is continued adulterous conduct. The spouse living in adultery reference to course guilty conduct and no single lapse from virtue. The term 'adultery' has to be understood in the light of social ideas of the community as being a serious breach of the matrimonial tie. "Living in adultery' more friendship with a man does not amount to adultery within the meaning of Section 125 (4) Cr.P.C. 'Living in adultery' means the following of a course of continuous

adulterous conduct . While determining the factum of living in adultery, the court must consider the evidence on record to ascertain whether the wife is living in quasi permanent union with a man with whom adultery, committing adultery it is for the husband to prove that the wife is continuously committing violation marital bond indulging in adulterous life. By living in adultery means a outright adulterous conduct where a wife lives in a quasi permanent union with a man with whom she is committing adultery, shortly before or after the petition for maintenance.

12. From the view expressed by this Court and followed by the trial Court, mere act of her indulging in adultery is not a ground to deny the maintenance invoking the powers under sub-section (4) of Section 125 Cr.P.C. The word used in the provision is 'Living in adultery', which is a continuous act of adultery. Though the allegation is made that the petitioner is living in adultery with one Venkata Subbaiah, the respondent miserably failed to establish the said fact and continuously living in adultery with Venkata Subbiah. On the other hand, the Judge while appreciating the evidence, adverted to the examination in chief i.e., affidavit filed, which is silent regarding illicit intimacy with Venkata Subbaiah and also with one Hari and Siva Sankar. He has not justified anything about the alleged illicit intimacy of the petitioner with any other male persons. Therefore, the Judge, Family Court after appreciation of entire evidence, recorded a fact finding that the respondent miserably failed to establish living of the petitioner in adultery with Venkata Subbaiah and two others. Such fact finding is based on the evidence available on record and there is no manifest perversity or apparent error warranting interference of this Court while exercising powers under

Sections 397 and 401 Cr.P.C. in view of limited powers conferred upon this Court.

13. Learned counsel for the respondent (husband) did not raise any other grounds across the bench to modify or set aside the order passed by the trial Court except the grounds discussed herein above. Therefore, my finding is limited to the point urged before this Court and I need not decide other aspects.

14. In view of my foregoing discussion, I find no grounds to set aside the order passed by the Judge, Family Court, Tirupati and hence, the revision is devoid of merits and is liable to be dismissed.

15. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

DATED: 02-08-2017.
Hsd

M.SATYANARAYANA MURTHY, J

