

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2626 of 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), challenging the order, dated 31.07.2017, in M.C.No.1 of 2015 on the file of the Family Court-cum-IX Additional District and Sessions Court, East Godavari, Rajamahendravaram, dismissing the application filed under Section 125 Cr.P.C. claiming maintenance of Rs.15,000/- per month.

2. The petitioner was the legally wedded wife of the 2nd respondent herein. The first wife of the 2nd respondent died issueless about 25 years ago and the marriage between the petitioner, the 2nd respondent was consummated and lead marital life, but they are not blessed with any children. The 2nd respondent has retired from the service in the year 2003 while he was working as Secondary Grade Teacher at Pithapuram. The petitioner is the nominee to receive the retirement/death benefits of the 2nd respondent. The petitioner contended that she was not blessed with any children. The petitioner was subjected to harassment and due to unbearable harassment, she is living separately and the 2nd respondent refused to maintain her. Whereas, the petitioner is having no means to maintain herself and the 2nd respondent is having sufficient means to maintain the petitioner, therefore, claimed maintenance of Rs.15,000/- per month.

3. The 2nd respondent filed counter denying the material allegations *inter alia* while admitting the marriage performed between the petitioner and the 2nd respondent, but they are living separately from 16.03.2003 and

thereafter the petitioner remarried another person and leading happy conjugal life and also blessed with a son, who is aged six years now and filed the maintenance case suppressing the real fact of divorce between the petitioner and the 2nd respondent about twelve years back. It is mainly contended that she is living in adultery, therefore, she is disentitled to claim maintenance and requested the Court to dismiss the revision.

4. During enquiry before the trial Court, the petitioner-wife, herself examined as PW.1 and marked Exs.P.1 to P.4. On behalf of the husband i.e., 2nd respondent herein, RWs.1 to 5 were examined and Exs.R.1 to R.5 and Ex.X.1 were marked.

5. Upon hearing argument of both counsel, the Court below dismissed the maintenance petition holding that the petitioner is living in adultery continuously and living separately by mutual consent, she is disentitled to claim maintenance.

6. Aggrieved by the order passed by the Court below, the present revision is filed on the ground that there is no custom prevailing in the community to obtain customary divorce in the Scheduled Caste and the alleged divorce by mutual consent between the petitioner and the 2nd respondent is invalid and it would not amount to valid divorce and thereby the conclusion arrived by the Court below is erroneous.

7. During hearing, learned counsel for the petitioner reiterated the grounds urged.

8. The Court below dismissed the maintenance petition on two grounds. The first ground is that the petitioner is living in adultery and blessed with a

child and the second ground is that there was no customary divorce. But, there was customary divorce and the petitioner is living separately since the date of execution of Ex.R.1-Divorce deed. Even assuming for a moment that no customary divorce is prevailing in the community of the petitioner and the 2nd respondent, the petitioner gave birth to a child and it is supported by Ex.X.1. The other documentary evidence available on record established that the petitioner is not the wife of the 2nd respondent. However, the fact findings recorded by the Court below in summary proceedings cannot be disturbed by this Court since those fact findings are not perverse or erroneous, and on the other hand, based on substantial material i.e., documentary evidence. Therefore, I am not in a position to disturb the fact findings. However, the fact findings recorded in the proceedings under Section 125 Cr.P.C. (summary proceedings) are limited purpose to decide the present case, therefore, the parties may approach the appropriate Court to redress their claim disputing customary divorce and after obtaining necessary decree from the Court, the petitioner may renew her request by filing appropriate application, however, I find no merit in the contention of the petitioner to disturb the finding.

9. With the above observation, the criminal revision case is dismissed.

10. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

20th October 2017.

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