

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2681 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.') questioning the order passed by the IX Additional District and Sessions Judge-cum-Additional Family Judge, Vijayawada, in M.C.No.208 of 2013, dated 18.04.2017, granting maintenance of Rs.5,000/- to respondent No.1 and Rs.3,000/- to respondent No.2 herein per month from the date of petition.

2. Respondent Nos.1 and 2 herein filed a petition under Section 125 Cr.P.C. before the Court below alleging that the marriage of respondent No.1 with the petitioner herein was performed on 16.05.2009 as per Hindu rites and customs and the marriage was consummated and they blessed with a child i.e., respondent No.2 herein, who was 28 months at the time of filing of maintenance case in the year 2013. It is contended that the petitioner herein addicted to vices like drinking alcohol and used to come late in the late nights and the pasupukumkuma amount which was entrusted to the petitioner was swallowed by him and his family members and started harassing respondent No.1 demanding her to bring Rs.2,00,000/- towards additional dowry, when she expressed her inability to meet the illegal demand, she was subjected to cruelty.

3. Respondent Nos.1 and 2 further contended that after one month of their marriage, respondent No.1 was conceived and the petitioner did not provide even medicines during her pregnancy and they used to ill-treat her both physically and mentally. However, the mother of respondent No.1 spent Rs.50,000/- for cesarean at the time of delivery of child i.e., respondent No.2 herein. After birth of respondent No.2, the petitioner set up a separate family at the instance of his mother and started living at Bhavani Nagar, Hanumakonda. Later, the mother of the petitioner joined them in a short period. Within short time, the petitioner and respondent No.1 met with an accident in the month of March, 2013, and the petitioner sustained injury to his leg, whereas respondent No.1 sustained simple injuries in the accident. Later, the petitioner herein was admitted in Yashoda Hospital, Secunderabad, even then he continued his harassment to bring additional amount to meet the hospital expenses and when she expressed her inability she was ill-treated by all the family members and necked her out from the hospital. As there was no other go, respondent No.1 reached at the house of her mother at Vijayawada. Respondent No.1 joined the petitioner and his mother, aggravated their ill-treatment as she failed to meet their illegal demand. Ultimately on 15.08.2013, the petitioner brought respondent Nos.1 and 2 to Vijayawada during night time and left them in the office of her senior paternal uncle Pentapati Ranga Rao and insisted respondent No.1 to join him only after bringing Rs.2,00,000/- as demanded by him and later filed O.P.No.215 of 2013

for grant of divorce before the Family Court, Warangal, with false averments and she came to know about the evil intention, lodged a complaint with police, which is registered as Crime No.861 of 2013 on 20.09.2013 for the offence punishable under Section 498-A IPC.

4. It is further contended that respondent No.1 is not educated women and having no independent source of income for her maintenance. Whereas, the petitioner is having movable and immovable properties and working as Junior Inspector in C.S., D.R./OSD, DCCB, Hanumakonda, Warangal District and drawing Rs.30,000/- per month towards salary and requested to grant Rs.5,000/- per month each towards their maintenance.

5. The petitioner herein (respondent before the Court below) filed counter admitting the relationship while denying the material allegations, more particularly entrustment of Rs.4,00,000/- of stridhana amount. It is specifically contended that she had no interest to marry the petitioner, but at the inception of her mother she agreed to marry and she further informed him that she fell in love with her maternal uncle and when he advised respondent No.1 it is better to inform the same to elders to get divorce for which she stated that if the same is revealed her mother will died and asked him to pardon. Thus, she was not interested to marry.

6. The petitioner came to know that there is a problem in her uterus and there are no chances of giving birth to a child in future, as

such, he got treated respondent No.1 by a gynecologist at Warangal and gave birth to respondent No.2. At the instance of respondent No.1, he set up separate family at Indira Nagar, Hanumakonda. During the period of their stay at Hanumakonda, respondent No.1 used to call her mother to serve them and she also used to pick up quarrel with them. On 03.03.2013, the petitioner met with an accident when he was travelling along with respondent No.1 on two wheeler. He was shifted to Yashoda Hospital, Secunderabad, for better treatment. As he has no money he requested respondent No.1 to pledge her gold ornaments for his treatment and he promised to discharge said amount, but respondent No.1 went away from the hospital.

7. The petitioner herein specifically contended he is earning Rs.31,000/- per month and spending Rs.9,000/- towards medical expenses and he has to pay Rs.1,200/- towards discharge of debt of Rs.3,00,000/- which was availed from S.B.I., Vaddepalli Branch and he has also to pay Rs.2,700/- towards installment of his bike and Rs.5,000/- towards house rent and electricity charges and he is incurring Rs.2,000/- for other house hold provisions and Rs.2,000/- towards traveling expenses, totally, he is spending Rs.29,990/- and he is not in a position to provide to medicines to the respondents and he has been borrowing Rs.10,000/- per month and paying Rs.5,000/- to respondents towards interim maintenance and finally requested to dismiss the petition.

8. During enquiry before the Court below, on behalf of respondent Nos.1 and 2, PWs.1 and 2 were examined and Exs.P.1 to P.4 were marked. On behalf the petitioner herein, RW.1 is examined and Exs.R.1 to R.38 were marked.

9. Upon hearing argument of both counsel, the Court below awarded maintenance at Rs.5,000/- to respondent No.1 and Rs.3,000/- to respondent No.2 (petitioners before the Court below) believing that the petitioner herein (respondent before the Court below) refused and neglected to maintain respondent Nos.1 and 2 having sufficient means to maintain and whereas the respondents have no independent source of income to maintain themselves.

10. Aggrieved by the order passed by the Court below, the present revision is filed under Sections 397 and 401 Cr.P.C raising several contentions about the expenses incurred by the petitioner and discharge of loans and medicines of his mother and maintenance of respondent Nos.1 and 2 herein etc., but the trial Court taking into consideration the financial capacity of the petitioner while assessing the maintenance, as such, he prayed to set aside the order.

11. During hearing, Sri Gana Shyam, learned counsel, representing on behalf of Sri Bankatlal Mandani, contended that granting of maintenance at Rs.5,000/- and Rs.3,000/- to respondent Nos.1 and 2 respectively is excessive and taking into consideration of the income and liabilities to discharge various including maintenance of his

mother, the maintenance amount has to be reduced to minimum extent and apart from that respondent No.2 was only 28 months by the date of filing of maintenance case and not a school going child, therefore, awarding maintenance to respondent No.2 at Rs.3,000/- per month is excessive and requested this Court to set aside the order at the state of admission.

12. There is no dispute regard to relationship between the parties. But, the only dispute is with regard to quantum of maintenance as contended by the petitioner. Respondent Nos.1 and 2 herein, who are petitioners in the maintenance case contended that the petitioner herein is earning Rs.30,000/- per month towards salary and requested to award maintenance at Rs.5,000/- each to them, but curiously in the counter filed by the petitioner/respondent before the Court below, he admitted that he was earning Rs.31,000/- per month while pleading that he has to incur different amounts towards discharge of loan, medicines, etc., Therefore, receiving of Rs.31,000/- as salary per month by the petitioner herein is an undisputed fact. He also produced the salary certificate, which is marked as Ex.R.1, evidently disclosed that he was drawing gross salary of Rs.31,000/-. When the petitioner is receiving Rs.31,000/- per month, wife is entitled to claim maintenance @ 25% out of it as per the judgment of the Apex Court in **Dr. Kulbhushan Kumar vs. Smt. Raj Kumari and another**¹ and

¹ AIR 1970 SC 234

Kalyan De Chowdhury v. Rita Dey Chowdhury Nee Nandy².

Though the order in the above two judgments pertains to grant of interim maintenance under Section 24 of the Hindu Marriage Act in a petition filed under Section 13 of the Hindu Marriage Act during pendency of the petition, the same principle can be applied to the present facts of the case, it pertains to interim maintenance in a petition under Section 125 Cr.P.C. The Apex Court in the year 1990 itself held that interim maintenance @ 25% out of the salary can be awarded to the wife though the present petition is not under Section 24 of the Hindu Marriage Act, the same principle can be applied to the maintenance proceedings under Section 125 Cr.P.C. also. If that principle is applied to maintenance payable to the wife would be not less than Rs.7,750/-, but the Court below granted only 5,000/- as maintenance. Therefore, maintenance awarded in favour of respondent No.1 is not in accordance with law and taking into consideration of the present cost of living, etc., the amount awarded by the trial Court cannot said to be excessive.

13. The maintenance awarded to the child i.e., respondent No.2 at Rs.3,000/-, who was aged 28 months by the date of filing petition, is excessive according to the contention of the petitioner. By the date of filing of petition, respondent No.2 was admittedly aged 28 months and at the age of two years the child may require both medical expenses and different food other than normal food and for that respondent

² AIR 2017 SUPREME COURT 2383

No.1 has to incur expenses including food, medicines, etc., therefore, the amount awarded at Rs.3,000/- per month to respondent No.2 cannot be held to be excessive taking into consideration of the cost of living, requirements for shelter, etc.

14. The other contention raised by counsel for the petitioner is that the Court below awarded maintenance from the date of petition and it is contrary to rule under Section 125(2) Cr.P.C. According to Section 125(2) Cr.P.C. grant of maintenance from the date of order is a rule and exception is to grant maintenance from the date of petition. Time and against this Court and Apex Court held that for granting maintenance from the date of petition, the Court is not required to refer reasons satisfying the payment of maintenance from the date of petition. But, here in this case, the Court below made it specific that interim maintenance shall be from the date of the order not from the date of petition. Therefore, the Court below strictly adhering to requirement under sub-section 2 of Section 125 Cr.P.C. and passed order awarding interim maintenance from the date of order. Hence, I find no ground to interfere with the fact findings recorded by the Court exercising the issue under Sections 397 and 401 Cr.P.C. since the order is in consonance with the law. Consequently, the criminal revision case is liable to be dismissed.

15. It is also contended that during pendency of this revision, Rs.5,000/- was awarded towards to both respondents and that amount has to be deducted from the amount payable from the arrears.

16. In the result, the criminal revision case is dismissed. However, respondent Nos.1 and 2 are directed to deduct the amount already awarded towards interim maintenance @ Rs.5,000/- towards interim maintenance out of the arrears payable to respondent Nos.1 and 2 @ Rs.8,000/- to both respondent Nos.1 and 2 i.e., Rs.5,000/- to respondent No.1 and Rs.3,000/- to respondent No.2. The petitioner is directed to pay the arrears of maintenance after deducting the interim maintenance already paid within four months in two installments.

Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

25th October 2017.

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