

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.11778 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the order, dated 21.06.2017 passed in Crl.R.P.No.40 of 2016 by II Additional Sessions Judge, Hindupur, confirming the order, dated 13.01.2016 passed by Judicial Magistrate of First Class, Madakasira, Anantapur District, in M.C.No.1 of 2013 directing petitioner herein/husband to pay maintenance of Rs.3,000/- per month to respondent No.1 herein/wife, from the date of order i.e., 13.01.2016.

Respondent No.1 filed M.C.No.1 of 2013 under Section 125 Cr.P.C. claiming maintenance alleging that the marriage between herself and petitioner was performed about 26 years ago as per Hindu rites and customs prevailing in their caste at K. Nagepalli. During their wedlock, they blessed with a son. Petitioner developed illicit intimacy with Kamamma and ill-treated respondent No.1. Several panchayats were held but they did not yield fruitful results. Thus, petitioner failed to provide food, shelter, clothing and medicines for the last 3½ years, and thereby, she is suffering physically and mentally. She has no independent source of income whereas petitioner is having

sufficient income but refused to maintain her. Hence, she claimed maintenance @ Rs.5,000/- per month.

Petitioner/husband filed counter in M.C.No.1 of 2013 denying the material allegations *inter alia* contending that respondent No.1 is not his legally wedded wife and he married one Kamalamma on 20.05.1987 and during wedlock, they were blessed with three children, who are majors. He stated that he is an agricultural coolie and APREGS job cardholder and earning Rs.150/- per day, whereas respondent No.1 is residing at Electronic city at Santhapuram. She is working in Garments factory, earning salary of Rs.7,000/- per month. Her son Narase Gowd, aged 26 years, is working as driver and maintaining a four-wheeler vehicle and she possessed sufficient means to maintain her, prayed to dismiss the petition.

During enquiry, P.Ws.1 to 3 were examined and Exs.P.1 to P.6 were marked on behalf of respondent No.1 and on behalf of petitioner, R.Ws.1 to 3 were examined and Exs.R.1 to R.4 were marked.

Upon hearing argument of both counsel, Magistrate by his order, dated 13.01.2016, awarded maintenance of Rs.3,000/- per month to respondent No.1 from the date of order holding that

petitioner married respondent No.1 and he refused and neglected to maintain her. Aggrieved by the said order, Crl.R.P.No.40 of 2016 was filed by petitioner under Section 397 Cr.P.C. before II Additional Sessions Judge, Hindupur, and same was ended in dismissal vide order, dated 21.06.2017 confirming the order, dated 13.01.2016 passed in M.C.No.1 of 2013.

The present petition under Section 482 Cr.P.C. is filed reiterating the grounds urged before the revisional Court in Crl.R.P.No.40 of 2016.

During hearing, learned counsel for petitioner raised a specific contention that respondent No.1 is not the legally wedded wife of petitioner and thereby, she is not entitled to claim maintenance under Section 125 Cr.P.C. That apart, the material produced on record, Aadhaar Card and photo identity card, Exs.P.5 and P.6, are not sufficient to prove the marital relationship between petitioner and respondent No.1. But, both Magistrate and revisional Court did not consider Exs.P.5 and P.6 in right perspective and committed an error. It is contended that petitioner is an agricultural coolie, a cardholder of APREGS and earning Rs.150/- per day whereas respondent No.1 was working in a garment factory and earning Rs.7,000/- per month, thereby, she is disentitled to claim maintenance from petitioner and

requested to set aside the concurrent findings of fact recorded by both Magistrate and revisional Court while allowing the present Criminal Petition.

The jurisdiction of this Court under Section 482 Cr.P.C. is limited and the Court can exercise such power in rarest of rare cases only to give effect to the orders passed under the Code to prevent abuse of process of the Court and to secure ends of justice. But, such power cannot be exercised in a routine manner since this Court is not sitting over an appeal to re-appraise the entire evidence on record.

The contention of respondent No.1 before Magistrate was that she is the legally wedded wife of petitioner whose marriage was performed about 26 years ago and blessed with a son, who is now aged 26 years, working as a driver, as stated by respondent No.1. But, the marriage was denied by petitioner while contending that he married one Kamalamma on 20.05.1987 and blessed with three children. To establish the relationship of husband and wife between petitioner and respondent No.1, respondent No.1 herself was examined as P.W.1 besides examining two other witnesses, Nagamma and Satyanarayana Reddy, whose evidence is consistent that petitioner married respondent No.1 and thereby, marital relationship between them

is subsisting but the petitioner was also examined himself as R.W.1 besides examining one P. Lingappa and Narasimhappa as R.Ws.2 and 3. The oral evidence is only oath against an oath. But, based on such *ipse dixit*, the Court cannot disbelieve the marital relationship between petitioner and respondent No.1. However, Exs.P.5 and P.6 clearly disclose the name of petitioner as husband of respondent No.1. But, petitioner also produced Ex.R.1 - voter ID card of respondent No.1 to establish that she is not the legally wedded wife of petitioner. Ex.R.1 is dated 02.07.2015. It was issued during pendency of M.C.No.1 of 2013 before Magistrate. Therefore, no evidentiary value can be attached to Ex.R.1. Consequently, based on Ex.R.1, it is difficult for this Court to disbelieve the relationship of husband and wife between petitioner and respondent No.1. On the other hand, Exs.P.5 and P.6, which are anterior to the filing of M.C.No.1 of 2013, disclose the name of husband of respondent No.1 as Rajasekhar Reddy @ Rajappa. However, both Magistrate and revisional Court in M.C. and Crl.R.P. recorded a fact finding regarding relationship of husband and wife between petitioner and respondent No.1 after appreciation of evidence. Therefore, such fact finding cannot be disturbed by this Court while exercising power under Section 482 Cr.P.C. since no extraordinary circumstances are brought to the notice of this

Court to disbelieve such relationship and to re-appraise the evidence on record while deciding an application under Section 482 Cr.P.C. Therefore, I am afraid to disturb the concurrent findings of fact recorded by both Magistrate and revisional Court regarding marital relationship between petitioner and respondent No.1.

The other ground argued before this Court is that petitioner is only an agricultural coolie whereas respondent No.1 is working in a garment factory, earning Rs.7,000/-. But, this fact is not substantiated by any evidence except *ipse dixit* of petitioner as R.W.1. Petitioner being an able bodied man is under legal obligation to maintain his wife and any amount of intolerance of his duty to maintain his wife entitles respondent No.1 to claim maintenance. Therefore, both Magistrate and revisional Court recorded a fact finding that petitioner refused and neglected to maintain respondent No.1 and thereby, awarded maintenance. Such finding cannot be disturbed, while exercising power under Section 482 Cr.P.C.

Counsel for petitioner contended that respondent No.1 is earning sufficient income and her son, who is also working as a driver, earning sufficiently. But, this fact is not substantiated by any iota of evidence and on the basis of such bald plea, without

disclosing at least the details of garment factory and producing any material evidence to establish that she is working in a garment factory and earning Rs.7,000/-, it is difficult for this Court to accept this contention to disentitle respondent No.1 to claim maintenance under Section 125 Cr.P.C.

In view of my foregoing discussion, the revisional Court recorded concurrent findings of fact which warrants no interference by this Court while exercising power under Section 482 Cr.P.C. Consequently, the findings recorded by both Magistrate and revisional Court in M.C.No.1 of 2013 and Crl.R.P.No.40 of 2016 respectively, are hereby confirmed. Thereby, the present Criminal Petition is liable to be dismissed as it lacks merit.

In the result, Criminal Petition is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

30th NOVEMBER, 2017.

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