

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.414 of 2017

ORDER:

This Criminal Revision Case by the petitioner, wife of respondent No.1, under Sections 397 and 401 Cr.P.C. is directed against the order dated 09.12.2016 in Criminal Revision Petition No.68 of 2016 on the file of the VI Additional District & Sessions Judge, Anantapuram at Gooty, whereby the learned Sessions Judge allowed the revision and set aside the order dated 15.06.2016 in M.C. No.3 of 2015 on the file of the Judicial Magistrate of First Class, Guntakal granting maintenance @ Rs.5,000/- per month to the petitioner.

2. Heard the learned counsel for petitioner and the learned counsel for respondent No.1 and perused the evidence on record.

3. Learned counsel for the petitioner would submit that the Court of Session ought not have denied maintenance granted in favour of the petitioner; that there is no evidence to believe that the petitioner is able to live separately on her own and she has sufficient source to make out her livelihood; that there is ample evidence to hold that the petitioner was subjected to physical and mental cruelty and forcibly driven away by respondent-husband; that there is reasonable cause for her to live separately from her husband; that she has no means to maintain herself; that the learned Magistrate, after appreciating the facts and circumstances of the case in right perspective, granted reasonable maintenance @ Rs.5,000/- per month, but the same is erroneously set aside by the learned Sessions

Judge, and ultimately prayed to set aside the order of the learned Sessions Judge and confirm the order of the learned Magistrate.

4. On the other hand, the learned counsel for respondent No.1-husband would submit that the learned Sessions Judge rightly set aside the order granting maintenance on the ground that the petitioner-wife left the matrimonial home without any sufficient reason and that the respondent-husband is ready to lead marital life with her, and that there is no infirmity in the said order, and ultimately prayed to dismiss the revision.

5. Now the point that arises for consideration is whether the impugned order passed by the learned Sessions Judge is liable to be set aside ?

6. There is evidence of P.Ws.1 to 3 to substantiate the contentions raised herein and also the averments in the maintenance application. R.Ws.1 and 2 are interested witnesses and it is not appropriate to consider their evidence. The learned Sessions Judge has relied on the question put to P.W.1 in cross-examination and the answer given by her, which read thus:

“Q. Are you willing to join respondent in his railway quarters at Guntakal for conjugal life without his mother and his family members except as illtam son-in-law ?

A. I am not ready to join respondent due to fear of threat and as he is demanding additional dowry of Rs.5,00,000/-.”

Admittedly, the petitioner filed O.P. No.387 of 2013 on the file of the Principal District Court, Anantapuram for restitution of conjugal rights against the respondent, but she did not pursue the same. The learned Sessions Judge held that if really the petitioner intended to live with respondent, she would have joined him atleast once, after leaving the matrimonial home before filing the maintenance application or during pendency of the maintenance application. It is further held that the petitioner did not join the company of respondent-husband and the answer given by her in cross-examination is not convincing, and that it is not her case that the respondent-husband caused physical hurt when she lived with him. Assigning the said reasons, the order of granting maintenance in favour of petitioner-wife was set aside by the learned Sessions Judge.

7. As seen from the evidence of P.Ws.1 and 2, the petitioner-wife was subjected to cruelty by way of demand of additional dowry. There is also evidence that when a request was made to the respondent on 05.05.2013, the respondent-husband did not allow her to join his company. Even after holding panchayats also, the request made to the respondent to take back the petitioner-wife to his company was not considered by the respondent. There is specific mention in the evidence of P.W.1 that there was demand of additional dowry of Rs.5,00,000/-.

8. P.W.2 is elder brother of petitioner-wife and P.W.3 is son of their paternal aunt. P.Ws.2 and 3 deposed about the panchayats. P.W.3 deposed that he acted as an elder in the panchayat and advised that the petitioner was unable to pay Rs.3,00,000/- as demanded. As seen from the evidence on record, there are number of instances

where the respondent-husband refused to take back the petitioner-wife to his company as his demand for additional dowry was not fulfilled either by the petitioner or relatives. It is also clear from the evidence on record that being afraid of threat in the hands of respondent-husband in the event of petitioner joining his company, she started living separately. Even in the answer given by her to the question put to her in cross-examination, she clearly stated the reasonable cause for not joining the respondent. There is justifiable cause for the petitioner for not joining the company of the respondent. Further, the petitioner-wife is unable to maintain herself. Therefore, the grounds assigned by the learned Sessions Judge for setting aside the maintenance granted by the learned Magistrate are not sustainable under law and facts and circumstances of the case. The learned Magistrate, after appreciating the evidence on record in right perspective, rightly granted maintenance and the same needs no interference.

9. In the result, the Criminal Revision Case is allowed. The order dated 09.12.2016 in Criminal Revision Petition No.68 of 2016 on the file of the VI Additional District & Sessions Judge, Anantapur at Gooty is set aside. The order dated 15.06.2016 in M.C. No.3 of 2015 on the file of the Judicial Magistrate of First Class, Guntakal is restored.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

(Dr. Shameem Akther, J)

.04.2018
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