

HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No.434 of 2017

AND

CRIMINAL REVISION CASE No.435 of 2017

COMMON ORDER:

Heard the learned counsel for the petitioners as well as the respondent in both the criminal revision cases which arose against the orders passed in M.C.No.46 of 2011 dated 26.04.2016 on the file of the Judge, Family Court at Hyderabad. Therefore, with the consent of both the counsel, both revision cases are heard together and common order is being passed.

For the sake of convenience, the parties will be referred to as 'petitioners and respondent' as arrayed before the lower Court.

Crl.R.C. No. 434 of 2017 is filed by the respondent/husband against the orders dated 26.04.2016 passed in M.C. No. 46 of 2011 on the file of the Court of the Judge, Family Court, Hyderabad to set aside the impugned orders to the extent of awarding a sum of Rs.5,000/- per month to the 2nd petitioner/minor daughter, towards maintenance.

Crl.R.C. No. 435 of 2017 is filed by the petitioners i.e. wife & daughter against the orders dated 26.04.2016 passed in M.C.No. 46 of 2011 on the file of the Court of the Judge, Family Court, Hyderabad to set aside the impugned orders to the extent of dismissing the claim of first petitioner and to direct the respondent/husband to pay a sum of Rs.10,000/- per month towards maintenance.

The brief facts of the case are that originally the petitioners have filed M.C.No.46 of 2011 against the respondents claiming a sum of Rs.5,000/- per month each towards maintenance from the respondent. It is their case that the marriage of the first petitioner was performed with the respondent on 24.02.2002 at Hyderabad as per Hindu Rites and Customs. Out of wedlock, they were blessed with second petitioner on 02.12.2008. At the time of marriage talks, the father of the respondent informed that he was working as an attender in the Hon'ble Supreme Court and was residing at Delhi and as such, the petitioners would reside at their own house at Banjara Hills and there being no interference to the marital life by the third person. After the marriage, the respondent, started harassing the first petitioner demanding additional dowry and started neglecting the conjugal life under the influence of family members. After the birth of the second petitioner, the harassment was increased from the respondent's side. Unable to bear the harassment and torture, the petitioners reported the matter to the Women Police Station on 06.08.2009 whereupon the authorities have reconciled the matter and directed the respondent to reside with the petitioners in a separate house. Accordingly, the respondent took a separate rented house on 19.09.2009 and lived happily for about 3½ years. However, on 26.11.2010 the respondent under the influence of his family members necked out the petitioners from the marital home and later, the first petitioner came to know that the parents of the respondents are trying to perform second marriage at Delhi with an employee of judicial department.

It is also averred that the respondent is earning a sum of Rs.25,000/- per month and he has house at Banjara Hills at Hyderabad.

The respondent filed counter denying all the averments made in the petition except the fact that his marriage with the first petitioner was solemnized on 24.02.2008 at Hyderabad. They were blessed with the second petitioner on 2.12.2008. The respondent specifically contended that he is drawing a monthly salary of Rs.9,000/- and he does not have any house of his own.

To prove her case, the petitioner examined herself as PW-1 apart from PWs.2 to 6 on her behalf and marked Exs:P-1 to P-3. On behalf of the respondent, he himself examined as RW-1 and marked Exs:R-1 and R-2. After trial, the learned Family Judge, partly allowed the maintenance case by orders dated 26.04.2016 whereunder the claim of maintenance for the first petitioner was dismissed while the claim of the second petitioner is allowed by awarding a sum of Rs.5,000/- per month from the date of filing of the maintenance case. Aggrieved by the said orders, the respondent filed CrI.R.C.No.434 of 2018 stating that the award of Rs.5,000/- per month towards maintenance of the second petitioner is excessive and the same is without any proper reasons. He also stated that he was paying interim maintenance @ Rs.3,000/- to the petitioners. However, the petitioners filed CrI.R.C.No.435 of 2017 challenging the rejection of maintenance to the first petitioner and enhancement of maintenance to the second petitioner.

The learned counsel appearing for the petitioners contended that the learned Family Judge committed an error in not granting maintenance to the first petitioner solely relying on Exs:R-1 and R-2

which prove that the first petitioner was working in M/s. Ratnadeep Super Market by drawing a salary of Rs.7,822/- per month. It is also contended that the learned Family Judge ought not to have dismissed the relief since the respondent is under obligation to maintain his wife. Further, the respondent is getting salary of Rs.25,000/- per month apart from rental income of Rs.15,000/- and income from interest at Rs.10,000/-. Thus, in total the respondent is earning Rs.50,000/- per month. Therefore, the learned Family Judge ought to have awarded 1/3rd of his total monthly income towards maintenance of the petitioners. It is also contended that the learned Family Judge failed to appreciate the evidence that the first petitioner was forced to leave the company of the respondent and she did not leave the company of the respondent voluntarily.

Per contra, the counsel for the respondent contended that the respondents never harassed the first petitioner and in fact, to accommodate the first petitioner, he has separated himself from his family members and taken out a rental premises in MBT Nagar, Road No.12, Banjara Hills, Hyderabad. However, the petitioners left his rental premises on their own. Therefore, when the first petitioner left the conjugal society of the respondent voluntarily without any reason, she is not entitled for any maintenance. Apart from that, the first petitioner is employed and getting salary of Rs.7,822/- per month from 01.05.2012.

Having heard both the counsel and perusal of the material on record, the undisputed facts are that the first petitioner is the legally wedded wife of the respondent. Their marriage was performed on 24.02.2008 according to the Hindu rites and customs

at Hyderabad. Out of the wedlock, they were blessed with second petitioner. Since disputes arose between them, the matter was referred to the Women Police Station on 06.08.2009 and during the reconciliation, the respondent was influenced to take a separate house and live with the petitioners separately. Accordingly, the respondent has taken the premises at MBT Nagar, Road No.12, Banjara Hills, Hyderabad. Even there also, the parties led happy life for some time only and thereafter the first petitioner left the conjugal society of the respondent. Though the first petitioner was examined as PW-1, in her evidence she has not specifically pleaded anything as to when her in-laws demanded additional dowry, and no specific incident was given which forced her to file or lodge a complaint before the Women Police Station. On the other hand, the evidence of PW-1 itself establishes that she has the scant respect for the respondent and his parents and their feelings. To demonstrate the same, in the month of May or June, 2009, when the mother-in-law of the respondent planned to go to Vaishnavi Temple in Jammu, 2 or 3 days prior to departure, on the request of the relatives, first petitioner went to the wedding. Therefore, the mother-in-law went to Delhi all alone. Even on the advise during the counselling process, the respondent has taken a separate rental premises and stayed there. From there, the first petitioner went to her parental home voluntarily without any reason. In fact, the evidence of PW-1 is silent with regard to the fact that she was forced to leave her matrimonial home. Though the petitioner has categorically pleaded that the respondent is getting salary of Rs.25,000/- per month apart from Rs.15,000/- and Rs.10,000/-

towards rental income and interest, she has not produced any evidence. Per contra, the respondent, through Exs:R-1 and R-2, established that the first petitioner is getting salary of Rs.7,822/- per month from 1.05.2012 onwards working in M/s. Ratnadeep Super Market. Though the petitioner examined the other witnesses, except parrot type evidence, they have also not specifically pleaded with regard to the harassment said to have been meted out to the first petitioner or that she was forced to leave the matrimonial home. After appreciating the evidence, the learned Family Judge, was pleased to disallow the maintenance to the first petitioner and awarded a sum of Rs.5,000/- per month towards maintenance to the second petitioner.

From the conspectus of the entire material on record, as discussed supra, the first petitioner having left the conjugal society of the respondent on her own to her parental house and since she is also earning by working in a supermarket, she is not entitled to any maintenance. As far as the second petitioner is concerned, basing on the evidence let in by RW-1, this Court is of the opinion that the amount of maintenance awarded by the learned Family Judge at Rs.5,000/- per month towards maintenance, is just and proper. It is relevant to mention that the counsel appearing for the respondent during the course of arguments has informed the Court that as per the orders passed by the learned Family Judge, the respondent is paying a sum of Rs.3,000/- per month towards interim maintenance and he is willing to pay maintenance to the second petitioner. So taking this into consideration, this Court does not find any irregularity

or illegality in the orders passed by the learned Family Judge and both the revisions are liable to be dismissed.

Accordingly, both the criminal revision cases are dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA VA RAO, J

Date:18.06.2018.
ccm



HONOURABLE SRI JUSTICE P. KESHA VA RAO



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