

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE Nos.284 and 1702 of 2018

COMMON ORDER:

Heard the learned counsel in both these revision cases.

The above said revision cases are filed against the orders passed in F.C.M.C.No.47 of 2015 dated 15.11.2017 on the file of the Judge, Family Court, Kurnool.

Crl.R.C.No.284 of 2018 is filed by the husband to set aside the impugned order, since it being an *ex parte* order. Crl.R.C.No.1702 of 2018 is filed by the wife seeking enhancement of maintenance. As both the revision cases are arising out of the same order, with the consent of both the counsel, this common order is being passed.

For the sake of convenience, the parties are arrayed as they are described in F.C.M.C.No.47 of 2015.

The facts in brief are that the petitioner (wife) is the legally wedded wife of the respondent. Their marriage was performed on 15.04.2012 at Kurnool. At the time of marriage, the respondent (husband) and his parents were given Rs.15 lakhs towards dowry besides gold jewelry and household articles. The respondent was working as Software Engineer in Arshiya International Limited, Bombay and drawing a salary of Rs.1,50,000/- per month. The respondent suspected the fidelity of the petitioner and he even took the photographs and videos of the night of nuptials ceremony and started blackmailing her. On 16.04.2012, the respondent's mother, brother, sisters and sisters-in-law also joined him and harassed the petitioner, as they want huge money to go to London and he would have fetched Rs.50 lakhs dowry if he had married to

another woman. They do not even provide food to the petitioner. The petitioner's father gave a sum of Rs.6,20,000/- in the month of June, 2012 to the respondent. In the month of July, 2012, the respondent sent the petitioner to her native place at Kurnool. During her stay with the respondent, he harassed her physically and mentally. On 14.09.2012, when the petitioner was brought to Hyderabad, the respondent, his mother, brother, sisters and sisters-in-law harassed her for additional dowry of Rs.50 lakhs and they kept her jewelry worth Rs.5 lakhs with the respondent. After mediations, the petitioner was brought back to Kurnool and since then she has been living in Kurnool. It is also stated that on 16.04.2014, due to the harassment of the respondent, the father of the petitioner died. The respondent is getting a monthly salary of Rs.1,50,000/- and also has a house worth Rs.2 crores at Dilsuknagar, Hyderabad, apart from having several houses in and around Hyderabad. When the petitioner was harassed, she was constrained to file a complaint under Section 498-A and Sections 4 and 6 of the Dowry Prohibition Act (for short, "the Act"). In those circumstances, she filed the above said F.C.M.C. claiming maintenance of Rs.75,000/- per month.

The respondent (husband) filed counter admitting the relationship with the petitioner, but contended *inter alia* that at the time of marriage, he has not taken any dowry. In fact, the petitioner and her family members suppressed her birth star and performed the marriage with him. The petitioner joined the respondent only for the purpose of converting the black money of her boy friend Mr. Praneeth Varma into white money. The petitioner is a highly qualified person and she developed

adulterous relationship with her boy friend in the year 2002 and her family members are also aware of that relationship. In fact, the petitioner spoiled his life. When the respondent refused to pay Rs.40 lakhs for one time settlement, at the instance of her boy friend, she filed a complaint under Section 498-A IPC against him. In fact, he was also kept in jail in that connection. The petitioner instigated her boy friend to assault the respondent in the premises of the Family Court, L.B. Nagar, Ranga Reddy District. The petitioner conspired with her boy friend and other family members and created fake documents as if the respondent has taken loan of Rs.25 lakhs from her boy friend and she was cited as one of the witnesses in the criminal complaint filed in that connection. Therefore, the respondent contended that the marriage itself is an organized crime apart from other aspects.

The learned Family Judge, after hearing the parties and analyzing the evidence brought on record, allowed the F.C.M.C. in part by orders dated 15.11.2017, directing the respondent to pay a sum of Rs.12,000/- per month towards maintenance from the date of the order. Aggrieved by the said orders, the respondent filed CrI.R.C.No.284 of 2018 and the petitioner filed CrI.R.C.No.1702 of 2018.

Learned counsel appearing for the petitioner/wife (petitioner in CrI.R.C.No.1702 of 2018) would contend that the learned Family Judge grievously erred in granting maintenance @ Rs.12,000/- per month without considering the fact that the respondent is getting a sum of Rs.1,50,000/- per month towards salary. The learned Family Judge also failed to follow the guidelines issued by this Court in 2000 (2) ALD (CrI.) 539 (AP) as to whether the

maintenance is to be paid from the date of the order or from the date of the petition. The amount of maintenance, as awarded by the learned Family Judge, is not enough for survival of the petitioner and she is entitled for enhancement of the same.

Per contra, the learned counsel appearing for the respondent/husband (petitioner in CrI.R.C.No.284 of 2018) would contend that after marriage, the respondent realized that the marriage itself was a conspiracy and he was cheated. The marriage with him was performed by showing wrong date of birth with an oblique motive to threaten him with false cases and in that process to extract more money from him. He also contended that the marriage itself is an organized crime and the petitioner, in active collusion with her family members and her boy friend Mr. Praneeth Varma, filed as many as 21 false cases against him. The respondent could not go to Kurnool since there was threat to his life and as such he could not give his evidence and contest the matter. Though his counsel's name is mentioned in the impugned order, but factually and in reality it is an ex parte order. The respondent could not go to Kurnool and lead his evidence. Learned counsel also submitted that since the petitioner is living separately from the respondent without any valid cause, she is not entitled for any maintenance. The learned counsel also submitted that the Court below ought to have appreciated that the desertion being *sine qua non* for grant of maintenance, there is no finding to that effect.

Having heard both the counsel and from a perusal of the material on record, the admitted facts are that the marriage of the petitioner was performed with the respondent on 15.04.2012 at

Kurnool. Out of wedlock, they were not blessed with any children. Within a short time from the marriage, it appears serious disputes arose between the petitioner and the respondent leading to filing of cases and counter cases against each other. In the said complaints, serious allegations are made which require adjudication to the extent as to whether the petitioner voluntarily deserted the respondent or whether there was any harassment for additional dowry by the respondent and his family members.

From a further perusal of the impugned order, it is revealed that the respondent/husband has not given an opportunity to lead his evidence. The reason given by him is that there was threat to his life, if he goes to Kurnool. In those circumstances, the impugned order has been passed without even recording his evidence, without ascertaining the factum of harassment and his capacity and means to pay maintenance. Though the scope of revision under Sections 397 and 401 Cr.P.C., is very limited vis-a-vis the perversity or patent irregularity or illegality on the face of the order, in the peculiar facts and circumstances of these cases, this Court, without making any observations on the merits of the case, is inclined to set aside the impugned order and remand the matter back to the Court below for fresh adjudication, after giving an opportunity to the respondent (husband).

In these circumstances, both the criminal revision cases are disposed of with the following directions:

- 1) The impugned order passed in F.C.M.C.No.47 of 2015 dated 15.11.2017 on the file of the Judge, Family Court, Kurnool, is set aside and the matter is remanded back to the Court below for fresh adjudication.

- 2) The learned Family Judge, Kurnool is directed to dispose of F.C.M.C.No.47 of 2015 within a period of two months from the date of receipt of a copy of this order.
- 3) The respondent/husband is directed to deposit a sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only) within two weeks from today.
- 4) Both the parties are directed to co-operate with the Court below in completion of trial without taking any adjournments.

It is needless to observe that the learned Family Judge, Kurnool, is directed to pass orders without being influenced by any of the observations made in this order.

Miscellaneous petitions, if any, shall also stand disposed of.

P. KESHA RAO, J

Date: 23.07.2018.
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