

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.6999 of 2011

ORDER:

This criminal petition is filed, seeking for quash of the order in CRL.R.P.No.58 of 2010 dated 01.07.2011 on the file of the VI Additional Sessions Judge, (FTC), Anantapur at Gooty, by virtue of which the Court below set aside the orders passed in CRLMP.No.536 of 2008 in MC.No.1 of 1993 dated 17.05.2010 on the file of the Judicial Magistrate of First Class, Tadipatri, whereby the trial Court allowed the petition, enhancing the maintenance amount from Rs.400/- to Rs.2,500/-.

2. Heard the counsel for the petitioner and the learned Public Prosecutor, appearing for the second respondent. None appears for the first respondent, in spite of notice.

3. The facts of the case, briefly, are that the petitioner is the legally wedded wife of the first respondent, who deserted her, without providing maintenance, by developing intimacy with another woman. She filed MC.No.1 of 1993 on the file of the Judicial Magistrate of First Class, Tadipatri, in which maintenance was granted at Rs.400/- per month, by virtue of order dated 04.02.1994. As the said order was passed 14 years ago and as the maintenance granted therein was not sufficient to maintain herself, the petitioner filed the present petition seeking for enhancement of maintenance amount. The trial Court by considering the evidence and the documents filed by the parties, enhanced the maintenance amount, from Rs.400/- to Rs.2,500/-. The said order was set aside by virtue of the impugned order.

4. The contentious document is the receipt marked as Ex.R4. There was a settlement between the parties before the Lok Adalat whereby the respondent herein agreed to pay Rs.92,400/- to his wife, petitioner herein. The contention of the respondent herein, all through, has been that he paid the amount under Ex.R4 and that, hence, it being the full and final satisfaction of the claim of maintenance of the petitioner, he does not need to pay any maintenance to the petitioner. The Court below considered that Ex.R4, being a xerox copy, cannot be relied upon. Holding, as such, it, however, appreciated the contents of Ex.R4 and the endorsement made on the reverse of Ex.R4, but disbelieved it.

5. The case of the respondent before the Court below was that in pursuance of settlement before the Lok Adalat for Rs.92,000/-, he gave a DD for Rs.48,000/- and for the remaining amount, he passed a cheque. According to him, Ex.R4 was prepared by R.W.3, an Advocate Clerk. Subsequently, both the parties came to R.W.3 and as the petitioner requested for cash instead of cheque, on his advice, the respondent got DD for the remaining amount of Rs.44,500/- on the same day. R.W.3 handed over the DD to the petitioner by taking back the cheque. He also made an endorsement on Ex.R4. R.W.2 is an Advocate, who stated that R.W.3 is not his clerk and that R.W.3 scribed Ex.R4, which was prepared on the instructions of another Advocate, on 24.12.1996. R.W.2 knows both parties since 30 to 40 years. But none of them is his client. According to him, the respondent approached him for filing divorce petition, but he refused to take brief, on which he engaged another advocate. R.W.2 made endorsement on

Ex.R4, at the request of both parties. But the Court below found that the parties did not sign under the endorsement.

6. The revisional Court, however, relied on the evidence of R.Ws.2 and 3 and came to the conclusion that the petitioner received the amount as settled before the Lok Adalat. But a perusal of the judgment of the trial Court would show that Ex.R4 was appreciated vis-à-vis the evidence of R.Ws.2 and 3 and conclusion was drawn that the respondent failed to prove that he paid the amount as per the settlement made before the Lok Adalat. Several lapses were found in the evidence of R.Ws.2 and 3.

7. Though the respondent stated that he gave a DD for Rs.48,000/-, he did not make any effort to prove the payment of said amount under the DD. He did not render any explanation for his inability to produce the original of Ex.R4. The lapse of R.W.2 in not taking the signatures of the parties on the endorsement made on Ex.R4 was also rightly appreciated and rightly, his evidence was not relied upon. In the light of the above observations, the trial Court declined to attach any importance to the evidence of R.Ws.2 and 3. The evidence of R.W.3 that the receipt was handed over to the respondent was considered and on that ground, the failure of the respondent to produce the original of the said receipt was considered as affecting his credibility. The same cannot be found fault with. The approach of the trial Court went on appropriate lines. It also evaluated the evidence with regard to the income of the respondent meticulously and struck a balance, by restricting the claim of maintenance to Rs.2,500/- per month instead of Rs.4,800/- as

claimed. In arriving at the income of the respondent as Rs.9,000/- per month, the trial Court took into consideration the evidence of R.W.1, who stated that he was drawing Rs.9,000/- and odd as pension. Hence, in view of the above, this Court opines that the impugned order is liable to be set aside and is accordingly set aside.

In the light of the above, the criminal petition is allowed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

September 12, 2018
DSK

T. RAJANI, J

