

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No. 597 of 2015

ORDER:

Heard the learned counsel for the petitioner and the second respondent.

The present criminal revision case is filed aggrieved by the orders dated 08.12.2014 passed in M.C.No.210 of 2011 on the file of the Court of the Judge, Family Court-cum-IV Additional District and Sessions Judge, at Vijayawada to the extent of dismissing the maintenance case against the petitioner herein.

The facts of the case are that the petitioner is the legally wedded wife of the second respondent. Their marriage was performed on 08.03.2000 at Vijayawada as per the rites and customs prevalent in their community. At the time of marriage, the petitioner's parents gave Rs.1,00,000/- towards pasupu kumkuma to the second respondent and also presented 20 sovereigns of gold. The second respondent sold away the gold ornaments of the petitioner after the marriage. He developed ill-will towards petitioner and used to beat her without any cause. The second respondent also demanded the petitioner to bring Rs.50,000/- from her father. In the month of December, 2010, second respondent drove her away from the matrimonial home. The petitioner filed a complaint and it was numbered as DVC No.18 of 2010. The second respondent is working in Kuwait in the past and now he is working in Vijayawada. He is earning Rs.25,000/- per month. The second respondent filed counter admitting the relationship with the petitioner but denied the material averments and contended that the petitioner and the second respondent lived

for one year in Vijayawada after the marriage and subsequently shifted the family to Hyderabad. Even in Hyderabad, they lived happily for one year. Thereafter, the petitioner used to demand to lead a luxurious life and expressed her disinterestedness towards the second respondent. She used to quarrel with the second respondent on each and every trivial issue. She used to leave to her parents' house leaving the children with the second respondent. In fact, the second respondent specifically stated in the counter that the petitioner is owning immovable property and she is getting income of Rs.1,00,000/- apart from doing a job in private organization and getting salary of Rs.5,000/- per month. The learned Family Judge, after enquiry allowed the maintenance case in part by orders dated 08.12.2014 directing the second respondent to pay a sum of Rs.2,000/- per month each to the petitioners 2 and 3 therein towards maintenance from the date of the order. However, the claim of the petitioner was dismissed. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel appearing for the petitioner would contend that the petitioner is not a worldlywise person; without knowing the implications, admitted that she is working in L.I.C. office, In fact, her father used to work in L.I.C. and she used to visit the office now and then. He also contended that the second respondent failed to prove that the petitioner is working in the L.I.C. office and how much she is earning per month. In the absence of proof from the second respondent, the Family Judge committed an error in declining to grant maintenance to the petitioner. Per contra, the learned counsel appearing for the second respondent submitted that in the counter filed by him in the maintenance case, he specifically stated that the petitioner is owning immovable property apart from doing a job in a

private organization and getting income of Rs.1,00,000/- per month on the agricultural land and Rs.5,000/- per month towards salary.

In the light of the above said pleadings, the issue that crops up for consideration is:

Whether the petitioner is entitled for maintenance?

The basic ingredient for grant of maintenance is that the petitioner is not in a position to maintain herself and without there being any source of income. Though in the maintenance case the petitioner has not pleaded that she is working in L.I.C., in the counter the second respondent has categorically pleaded that the petitioner is getting salary of Rs.5,000/- per month working in a private organization. It is relevant here to mention that in the cross examination, the petitioner has admitted that she has been working as part time employee in L.I.C. Office, Basant Road, Vijayawada. However, she failed to produce as to in which capacity she is working as an employee in the L.I.C. Office and what is the monthly salary. In the absence of the same, it cannot be said that the income whatever the petitioner is getting, is sufficient for her basic needs or not. That apart, when once the petitioner admits that she is working as an employee in L.I.C. office as part time, the initial onus lies on her to prove with regard to the salary she is drawing per month. However, she has not chosen to file the same in the Court below. In these circumstances, when the petitioner is having the best available evidence with her to prove with regard to her means and when the same is not filed, for obvious reasons, the Court has to presume that only for the purpose of maintenance case, she has withheld the relevant information and to that effect an adverse inference can be drawn against her. Unless

and until the petitioner proves before the Court that she is unable to maintain herself, the question of granting maintenance does not arise, more so, when she herself has admitted that she is working as part time employee in L.I.C. Office. Admittedly, she failed to narrate the same in the maintenance case, and though admitted in the cross examination, she has not placed on record any particulars with regard to the nature of the employment and the salary she is getting per month. When the petitioner admitted that she is working and as long as she establishes before the Court that the income which she is getting is not sufficient for her sustenance, she is not entitled for maintenance. Therefore, the finding arrived at by the learned Family Judge, by any stretch of imagination may not be said it is neither illegal nor any perversity. Since the scope of revision under Sections 397 and 401 Cr.P.C. is very limited, this Court is of the opinion that there is no irregularity or illegality in the orders passed by the lower appellate Court. Hence, there are no merits in the revision and it is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

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

P. KESHA VA RAO,J

Date:12.09.2018
ccm

HON'BLE SRI JUSTICE P. KESHA VA RAO



CRIMINAL REVISION CASE No. 597 of 2015

Date:12.09.2018

ccm