

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.499 OF 2011

ORDER:

Heard the learned counsel for the petitioners. Pursuant to the order dated 07.07.2011, the notice taken out on the first respondent has been returned unserved with an endorsement that the first respondent refused to receive the notice. The same has been filed through memo vide U.S.R.No.1469 of 2011. The same is made part of the record.

The present Criminal Revision Case is filed questioning the orders passed in F.C.O.P.No.21 of 2008, dated 31.12.2010 on the file of the Court of Judge, Family Court, Kurnool, in rejecting to grant maintenance to the first petitioner as well as awarding of Rs.1,500/- per month only to the second petitioner.

The facts, in brief, are that the first petitioner's marriage with the first respondent was performed on 05.09.2002 as per Hindu rites and customs. At the time of marriage, the first respondent was paid Rs.1,50,000/- and 5 tulas of gold towards dowry, on his demand. After marriage, they led happy marital life for four months. Out of the wedlock, they were blessed with the second petitioner. After the first respondent conceived, they shifted to Komireli village, which is the native place of the first respondent. At Komireli Village, the first petitioner was harassed by the first respondent and his family members demanding additional dowry and ultimately, she was necked out of the matrimonial home in the month of December, 2002. However, at the request of her parents and elders, the first respondent

promised to lead marital life with her and in those circumstances, the first petitioner joined his conjugal society. The first petitioner also assisted to the first respondent in the agricultural work. In the month of January, 2003, the first respondent made an attempt on the life of the first petitioner with the help of his family members by pouring pesticides poison into her mouth forcibly, but she could survive as she was taken to the hospital for treatment by one Rami Reddy of Jammalamadugu. Again, thereafter the family was shifted to Baba Brindavan Nagar, Kurnool, where they led their marital life till the month of May, 2003. In fact, the first respondent kicked on the abdomen of first petitioner resulting in abortion of pregnancy and the baby died in the womb itself. In those circumstances, she filed a complaint under Section 498-A, 307 and 315 r/w 34 I.P.C. Subsequent to the filing of the complaint, again there was compromise and they led marital life for some time. In fact, the first respondent was convicted for the offence under Section 498-A I.P.C. Again, when the first petitioner was subjected to harassment, she started living separately and filed the present M.C. The first respondent filed counter denying the material averments and contended that he never necked out the first petitioner from his matrimonial house nor he harassed her demanding any additional dowry. The learned Judge, after considering the material on record, allowed the M.C. in part by orders dated 31.12.2010 granting maintenance at the rate of Rs.1,500/- per month to the second petitioner from the date of the order. However, maintenance to the first petitioner was rejected. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel for the petitioners would contend that the learned Family Judge committed an error in rejecting the maintenance to the first petitioner and granting only Rs.1,500/- per month towards maintenance to the second petitioner. In the memorandum of grounds also, it is raised that the first respondent contracted second marriage with one woman by name Nageshwari and had children through her. In fact, a suggestion was put in the cross-examination of first respondent as R.W.1 that he married another woman and staying with her neglecting the petitioners herein. Since the relevant evidence was not available, nothing has been produced before the Court below in that regard. During the course of hearing, now, the proceedings issued by the Tahsildar, Mylavaram, dated 18.06.2010 in Ref.No.A/96/2010 have been placed before this Court, wherein the petitioner was informed that that the first respondent is married to one Ch.Nageshwari and had two children. Therefore, the learned counsel appearing for the petitioners prays this Court to remand the matter to the Court below for fresh adjudication of the matter granting liberty to the petitioners to agitate the said issue by filing relevant evidence.

Having heard both the counsel and from the perusal of the material on record, it is revealed that though the learned Family Judge rejected maintenance to the first petitioner, no specific finding has been given whether the first petitioner has voluntarily deserted the conjugal society of the first respondent. The impugned order in rejecting maintenance to the first petitioner, without there being any specific finding that she herself voluntarily deserted the first respondent, does not stand to the legal scrutiny. Coupled with the same, the proceedings dated 18.06.2010 issued

by the Tahsildar, Mylavaram would also establish that the first respondent has contracted second marriage and living with his second wife along with their children. In these circumstances, this Court is of the opinion that the matter deserves to be remitted back to the Court below for fresh adjudication in the light of the evidence produced before this Court and also for giving a specific finding whether or not the first petitioner has voluntarily deserted the conjugal society of the first respondent.

Accordingly, the impugned order dated 31.12.2010 in F.C.O.P.No.21 of 2008, is set aside and the matter is remitted to the Court below for fresh consideration granting liberty to the parties to lead their evidence.

With the above observations, the Criminal Revision Case is disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHAHA RAO,J

01st OCTOBER 2018.

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