

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.1098 OF 2011

ORDER:

This criminal revision case is filed by the petitioner/accused, under Sections 397 and 401 of Cr.P.C., aggrieved by the order dated 21.02.2011 in O.P.No.412 of 2010, passed by learned Judge, Family Court, Visakhapatnam, granting maintenance of Rs.500/- per month to the 2nd respondent and Rs.1,500/- per month to the respondents 3 and 4, who are the wife and minor sons of the petitioner herein.

2. (a) O.P.No.412 of 2010 was filed by the respondents 2 and 4 herein under Section 125 Cr.P.C. claiming maintenance of Rs.5,000/- per month each. Their case is that they are the wife and children of the petitioner herein and after the 2nd respondent gave birth to respondents 3 and 4, on 01.03.2010, the petitioner herein bet the 2nd respondent severely and drove her out of the house. She gave a report to the police and against which, a compromise was effected, wherein, the petitioner/respondent agreed to look after his wife and children well, however, there was no change in his attitude. It is the further case that the petitioner/husband is running a school in the name and style of 'Vidyachal Public School' at Kakaninagar and earns Rs.15,000/- per month. He also earns Rs.10,000/- per month from his finance

business. On all these pleas, they claimed maintenance at the rate of Rs.5,000/- per month to each.

(b) The petitioner/respondent opposed the O.P. contending that the 2nd respondent herein, after marriage, demanded to live him as illatum son-in-law, which he refused and therefore, she grew wild and gave false report to the police and thereby, he lost his job and at present, he is not having any earnings. It is his further case that the 2nd respondent herein is a B.Sc., B.Ed., graduate and she is working in Amar Concept School, NAD, Visakhapatnam and draws a salary of Rs.8,000/- per month and they have a joint FDR for Rs.1,00,000/-.

(c) During trial, P.Ws.1 and 2 were examined. The petitioner/ respondent was examined as R.W.1 and on his behalf got marked as Ex.B1. The trial court, having regard to the evidence on record observed that petitioners were living with the mother of first petitioner and R.W.1 has no job and there was no evidence coming forth to show as to his earnings by way of receiving rents and also there was no evidence to show that he is carrying any other business whereby he gets some income. The trial court further observed that, at the same time, as long as petitioner lives separately from the respondent, it was the duty of the respondent to provide some maintenance to them. It also observed that there was no evidence coming forth from the side of the petitioner to say as

to what sort of harassment the respondent meted out to her. Though it was her complaint that her husband and his parents were beating her severely, but still she could live with R.W.1 till 2010. The trial court further observed that in the evidence of P.W.1, it was elicited that P.W.1 and R.W.1 were living separately from the parents of R.W.1 and that all the sisters of R.W.1 were married and living with their husbands and so, the allegation of P.W.1 that he was harassing her and all his family members were beating P.W.1, cannot be accepted. However, there were some differences between P.W.1 and R.W.1, which ultimately led to giving a report by P.W.1 to police and thereby, R.W.1 was in judicial custody for some period. The trial court observed that the relationship between P.W.1 and R.W.1 was strained and thereby, P.W.1 and her children were living with her mother. In that view, a reasonable amount towards maintenance has to be provided by the respondents. The trial court further observed that the first petitioner was a B.Sc., B.Ed., graduate and according to R.W.1, she was working as a teacher, however, no document was filed to substantiate the same and therefore, all the petitioners were entitled to maintenance. With the above observations, the trial court awarded Rs.500/- per month to the first petitioner i.e., wife and Rs.1,500/- to petitioners 2 and 3 i.e., minor sons.

Hence, the criminal revision case at the instance of the petitioner/respondent.

3. Though notice was served, there is no representation on behalf of respondents 2 to 4. Heard learned counsel for petitioner.

4. The point for consideration is whether there are merits in the criminal revision case to allow?

5. As can be seen from the record, the relationship between wife and husband was strained after the 2nd respondent gave birth to respondents 3 and 4. It is her case that the petitioner/respondent used to beat her mercilessly and drove away from home and therefore, she gave a report to the police and later, the matter was compromised and even thereafter, there was no change in the attitude of the petitioner/respondent. However, the contention of the petitioner/respondent is that the 2nd respondent insisted him to be an illatum son-in-law, which he refused, therefore, she filed a false complaint.

6. Be that it may, both parties are now living separately and marital relationship exists between them. Hence, as observed by the court below, the petitioner/respondent is liable to maintain the respondents 2 to 4. Though it is contended by him that the 2nd respondent is working as a teacher in Amar Concept School, NAD, Visakhapatnam and getting a salary of Rs.8,000/- per month and they have a joint FDR for Rs.1,00,000/- and he has no objection for withdrawal

of the monthly interest for the sustenance of the respondents 2 to 4, he has not produced any cogent evidence to show that the 2nd respondent is working as a teacher and they have joint FDR for Rs.1,00,000/-. Similarly, though it is contended that the 2nd respondent and her mother demanded the petitioner/respondent to encash the FDR and give the amount for doing money lending business, he has not produced any reliable evidence in that regard. In view of the backdrop of these facts and the circumstances, as rightly observed by the trial court, the respondents 2 to 4 deserve maintenance. Though in respect of quantum of compensation awarded by the trial court, there are some reservations, however, since it is not brought to the notice of this Court that the respondents 2 to 4 challenged the said order, that aspect cannot be discussed now. So, at the outset, the order passed by the trial court awarding maintenance to respondents 2 to 4 do not suffer vice of illegality or perversity to interfere.

7. Accordingly, this criminal revision case is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

22.10.2018

Note: Office is directed to communicate a copy of this order to the trial court.

B/o.SS