

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.926 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as respondent Nos.2 and 3.

The present revision case is filed questioning the orders passed in M.C.No.234 of 2014 dated 29.12.2017 on the file of the Court of the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX AMSJ, Hyderabad, granting monthly maintenance of Rs.10,000/- and Rs.5,000/- per month to respondent Nos.2 and 3 respectively payable from the date of the petition i.e., 22.08.2014.

The facts of the case are that respondent Nos.2 and 3 filed M.C.No.234 of 2014 before the Court below against the petitioner claiming a sum of Rs.15,000/- each per month as maintenance and Rs.50,000/- towards medical expenses. It is their case that respondent No.2 was married to the petitioner in accordance with the Sunni Muslim Law Caste on 12.08.2013 on deferred Meher of Rs.21,000/- at Masjid-E-Almas, Aliabad Hyderabad. At the time of marriage, the parents of the 2nd respondent paid a sum of Rs.5,00,000/- in cash, 13 tulas of gold ornaments, 100 tulas of silver ornaments, Bajaj Avenger 220 CC and other house hold articles worth more than Rs.5,00,000/- as Jahaz, Joda ghoda

dowry. Out of wedlock, they were blessed with the 3rd respondent. They lead happy marital life for a short period and thereafter the family members of the petitioner misbehaved and caused mental and physical torture to the 2nd respondent for additional dowry. The petitioner and his parents never allowed the 2nd respondent to attend functions, to see her relatives and she was kept in a room without providing meals and other necessities. On 30.12.2013, the petitioner and his parents have brutally beaten up the 2nd respondent and dragged her from first floor to ground floor and necked her out of the house with wearing apparels, snatched her gold and silver ornaments. Therefore, she was constrained to file the maintenance case. The petitioner filed a counter admitting the marriage between himself and the 2nd respondent, but denied demanding and receiving of dowry and subjecting the 2nd respondent to cruelty. In fact, the 2nd respondent was showing disinterest in the marriage right from the inception and she used to leave her matrimonial house without informing anybody. In spite of repeated conciliations and meetings, the 2nd respondent could not mend her ways and therefore he was forced to pronounce divorce on 01.02.2014 by depositing Meher and Iddat period maintenance with Qazi.

The 2nd respondent to prove her case examined herself as PW.1 and the petitioner examined himself as RW.1 and got marked Exs.R1 to R4.

After hearing the parties, the learned Additional Metropolitan Sessions Judge, allowed the maintenance case in part by awarding maintenance @ Rs.10,000/- and Rs.5,000/- per month to respondent Nos.2 and 3 respectively payable by the petitioner from the date of petition i.e., 22.08.2014 by orders dated 29.12.2017. Aggrieved by the same, the present revision case is fled.

Learned counsel appearing for the petitioner contended that the Court below, without considering the material evidence on record, awarded maintenance @ Rs.10,000/- and Rs.5,000/- per month to respondent Nos.2 and 3 respectively. In fact, it is beyond the financial capacity of the petitioner as he is only a fruit vendor. The Court below also failed to consider Ex.R2 i.e., Hawkers identity card and the income certificate issued by the Mandal Revenue Officer. He also contended that respondent No.2 is running a textile business in the name and style of Wajiya Textiles and to prove the same, he filed two purchase bills which clearly show that the 2nd respondent is having sufficient means of income to meet herself as well as the 3rd respondent. Therefore, he requested the Court to allow the revision case.

Per contra, the learned counsel appearing for respondent Nos.2 and 3 would submit that the petitioner is having a big house at Charminar apart from a shopping complex of mobile phone shops and also another shop at Charminar bus stand. The petitioner is financially well-off

and he can afford to pay more than the amount awarded by the Court below. In fact, the learned counsel brought to the notice of the Court the photographs filed along with the counter affidavit evidencing that the petitioner is having substantial properties and is doing fruit business. Therefore, he sought dismissal of the revision case.

Having heard both the counsel and a perusal of the material on record would indicate that the petitioner has not disclosed his occupation i.e., nature of business in his counter. In fact, he simply pleaded that he can afford to pay Rs.500/- per month for the child. The petitioner also relied on the Hawker's identity card issued in the year 2006, but he deposed that he is selling fruits from about 3 ½ years. Therefore, the petitioner was not coming out with true version with regard to his nature of business and financial capacity. On the other hand, the 2nd respondent denied that she is having any business of her own. It is also relevant to note that the petitioner has not even given the house particulars in his evidence. In the divorce certificate (Ex.R1) the petitioner has shown his occupation as business. In the hawker's identity card he has shown his house number as 20-4-33. Even in the income certificate the same door number has been mentioned. Though the petitioner produced the purchase bills said to have been issued by the Wajiya Textiles, they do not stand in the name of the 2nd respondent. When the petitioner is not coming forward with true facts, an

adverse inference has to be drawn against him with regard to the nature of the business he is carrying on and the financial capacity to maintain respondent Nos.2 and 3. But, at the same time, it is settled law that unless the 2nd respondent establishes the financial capacity of the petitioner, the monthly maintenance cannot be awarded.

In the case on hand, it is the specific case of the 2nd respondent that the petitioner is doing fruit business with two commercial shops and a big house at Charminar. The photos filed along with the counter affidavit also disclose the same. It is pertinent to note that though the same have been served on the counsel for the petitioner, they are not denied. In these circumstances, this Court is of the opinion that the petitioner voluntarily is not coming out with true facts only for the purpose of this maintenance case.

Be that as it may, keeping in view the submissions made by both the counsel and also the evidence let in with regard to the financial capacity of the petitioner, this Court deems it appropriate to modify the orders passed by the Court below in reducing the maintenance from Rs.10,000/- to Rs.8,500/- and Rs.5,000/- to Rs.4,000/- to respondent Nos.2 and 3 per month. It is needless to observe that the arrears of maintenance at the above said rate shall be calculated from the date of the petition i.e., 22.08.2014 and the same shall be paid within a period of four weeks from today. In default,

respondent Nos.2 and 3 are at liberty to take appropriate steps as per law.

With the above said observations, the criminal revision case is disposed of.

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

P. KESHA RAO, J

Date: 05.07.2018.
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