

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.890 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as respondent Nos.1 and 2.

The present revision case is filed questioning the orders passed in M.C.No.1 of 2014 dated 26.10.2017 on the file of the Court of the learned XIV Additional District and Sessions Judge-cum-Additional Family Judge, Vijayawada, in allowing the maintenance case in part and thereby directing the petitioner to pay maintenance allowance @ Rs.8,000/- per month each to respondent Nos.1 and 2 from the date of the application.

The facts of the case are that respondent Nos.1 and 2 filed M.C.No.1 of 2014 to direct the petitioner to pay monthly maintenance @ Rs.10,000/- per month each on the file of the above said Court. It is their case that their mother married the petitioner on 12.11.2005 at Vijayawada. Out of wedlock, they were blessed with them. In the month of May, 2009, the petitioner got job in Master Minds, Guntur and he worked there for three months. In the month of August, 2009, the petitioner set up his own institute in partnership with one Adusumilli Srinivas Rao. At that time, their mother was working at Maris Stella College, Vijayawada, and she continued the job till the end of the academic year. Meanwhile, the petitioner opened his own institute at Guntur

and he is earning more than Rs.50,000/-. He used to visit Vijayawada regularly. However, the petitioner slowly reduced the frequency of his visit to Vijayawada. After the academic year, when their mother wanted to join the petitioner to lead the conjugal life, he has not evinced any interest. Later, their mother came to know that the petitioner developed close relationship with one Rajyalaxmi, who was in the institute, and he was totally under her influence. The petitioner used to compare their mother with Rajyalaxmi and insulted her. In June, 2010, when their mother went to the institute, she found the petitioner and the said Rajyalaxmi sharing lunch together and sitting in a compromise position. On that the petitioner got annoyed and started torturing respondent Nos.1 and 2 and their mother mentally and physically. Unable to bear the torture, in the month of September, 2010, their mother came to her parents' house. In spite of the advice of well-wishers to sever the relationship with the said Rajyalaxmi, the petitioner bluntly refused to heed their advice. In those circumstances, they filed the maintenance case claiming Rs.10,000/- per month each towards maintenance.

The petitioner filed counter denying the averments in the petition. It is his case that the mother of respondent Nos.1 and 2 was the only daughter to her parents, who often interfered in their matrimonial life. At the instigation of the mother of respondent Nos.1 and 2, the petitioner agreed to

stay in his in-laws house at Vijayawada. He shuttled between Guntur and Vijayawada for his livelihood. The petitioner looked after his wife well and he did not insist her to join in the house hold work and he also tutored her as a guide for B.Ed., studies. On employment, when the petitioner shifted to Rajahmundry, she refused to join him. Subsequently, when the petitioner got job in Master Minds in Guntur, his wife once again refused to join him at Guntur. In fact, the petitioner himself admitted his son in Little Flower School, Vidyanagar, Guntur. However, his wife refused to bring the 2nd respondent, who was under the care and custody of his in-laws at Vijayawada. His wife developed suspicious mentality and she was suspecting his every movement. The petitioner also stated that if really he has tortured his wife, she would have filed a complaint under Section 498-A IPC and he would not have filed O.P.No.592 of 2012 for restitution of conjugal rights.

During the course of enquiry, respondent Nos.1 and 2 have examined PWs.1 to 3 and marked Exs.P1 to P20 and also marked Exs.X1 to X5 on their behalf and the petitioner examined RWs.1 to 3 and marked Exs.R1 to R5 on his behalf.

The learned Family Judge, after hearing, was pleased to allow the maintenance case in part by orders dated 26.10.2017, directing the petitioner to pay maintenance allowance @ Rs.8,000/- per month each to respondent Nos.1

and 2 from the date of application. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner contended that the petitioner is a tutor. The Court below failed to appreciate that his wife deserted him in the month of August, 2012 and staying at Vijayawada along with her parents. She is a Government employee drawing more salary than him. The mother of respondent Nos.1 and 2 failed to give any reply to the petition filed for restitution of conjugal rights in O.P.No.592 of 2012. The lower Court failed to appreciate that Ex.R1 would clearly show that he committed default in payment of equal monthly installments which itself establish that he is not having proper income to maintain himself and respondent Nos.1 and 2. Though, the petitioner got immovable property through gift deed from his father in respect of an agricultural land admeasuring Ac.0.96 cents in Sy.No.375, the same is not handed over to him and as such it cannot be construed that he is generating income out of it. Finally, it is also submitted that the mother of respondent Nos.1 and 2 being a Teacher, earning more than Rs.30,000/- per month, which is self-sufficient to maintain herself and the children.

The point that arises for consideration is whether respondent Nos.1 and 2 are entitled to seek maintenance from the petitioner and if so, @ Rs.8,000/- per month each from the date of application?

The facts, which are not in dispute, are that the petitioner's marriage with the mother of respondent Nos.1 and 2 was performed on 12.11.2005. Out of wedlock, they were blessed with respondent Nos.1 and 2. However, disputes arose between the petitioner and his wife because of the temporary shifting of the petitioner from Vijayawada to Rajahmundry and Guntur, where it is alleged that he developed a close relationship with another woman by name Rajyalaxmi. The mother of respondent Nos.1 and 2 has been working as a Teacher in A.P. Model School, Dachepally, and she is drawing salary. From the pleading, it is clear that the petitioner as well as the mother of respondent Nos.1 and 2 made allegations against each other. According to PW.1, she is drawing salary of Rs.35,000/- per month and Rs.12,000/- was deducted towards income tax. She is paying Rs.1,00,000/- towards premium for S.B.I. Smart Wealth Builder Plan and Rs.2,000/- per month in the name of her daughter under Jagruthi Sukanya Samrudhi Scheme at post office and Rs.3,500/- per month towards rent of the house at Dachepally. Similarly, she paid different amounts towards premium for LIC policy, motor vehicle loan, educational fee for respondent Nos.1 and 2 and towards transportation of her children. To substantiate the same, she has relied on Exs.P4 to P15 which demonstrate the payments made by her. Therefore, there is no doubt with regard to the expenditure incurred by her to maintain herself and respondent Nos.1 and

2 and for their education. The petitioner is a proprietor of Aditya Competitions situated at Brodipet, Guntur. In the cross-examination, he has admitted that under Ex.X1 he deposited Rs.6,00,000/-. He is also having a vacant site in an extent of 209 square yards at Gorantla Village, Guntur. Under Ex.R4, the plot situated at Shamalanagar, Guntur, belong to him. It was registered in his name. The rental value of the said flat is Rs.8,500/- per month.

From a perusal of the impugned order at para 24, it is indicated that at one stage the petitioner stated that he has no objection to pay maintenance to his children. So it is crystal clear that from the evidence of PWs.1 to 3 and RW.1 that the mother of respondent Nos.1 and 2 is doing job and getting salary. At the same time, the petitioner is also running an institute under the name and style of Aditya Competitions and getting sufficient income from it, part from agricultural land and the plot. Though allegations are made against each other by the petitioner and the mother of respondent Nos.1 and 2 for the purpose of this petition, the same may not matter much. The maintenance case is filed by the minors represented by their mother claiming maintenance from the petitioner. Respondent Nos.1 and 2, being the children of the petitioner, it is the bounden duty of the petitioner to maintain them. He is legally and morally responsible to bring them up in life by giving good education and providing them all the opportunities and the same

standard of living which he is leading. Even from the impugned order, it is revealed that though interim maintenance has been granted @ Rs.5,000/- per month each to respondent Nos.1 and 2, the petitioner committed default forcing them to file separate petition for recovery of arrears. Therefore, the petitioner being a duty bound father, is expected to maintain his minor children. He cannot take a shelter on the ground that the mother of respondent Nos.1 and 2 is an employee and earning sufficiently not only to maintain herself but also respondent Nos.1 and 2. Further, the evidence brought on record with regard to the financial capacity of the petitioner, establishes that the maintenance fixed @ Rs.8,000/- per month each to respondent Nos.1 and 2 by the Court below is appropriate and does not warrant any interference from this Court. Therefore, this Court feels that there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO, J

Date: 09.07.2018.
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