

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.2599 of 2014

ORDER:

Heard the learned counsel for the petitioner and learned counsel for respondents 2 to 4.

The present Criminal Revision Case is filed challenging the order passed in M.C.No.11 of 2011 dated 28.10.2014 on the file of the court of the Family Judge-cum-V Additional District and Sessions Judge, Tirupati awarding a sum of Rs.3,000/- each per month to respondents 3 and 4 towards maintenance and Rs.30,000/- each per annum to respondents 3 and 4 towards their education, clothing etc.,

The facts in brief are that the second respondent is the legally wedded wife of the petitioner. Their marriage was performed on 5.9.2001. Out of their wedlock, they were blessed with two children. Since disputes arose between them, the petitioner and the second respondent are living separately from 27.8.2008 onwards. It is relevant to mention here that the allegation of the second respondent is that she along with respondents 3 and 4 were necked out by the petitioner on the said date. But, as per the petitioner, on 27.8.2008, the second respondent left conjugal society of the petitioner without any reasonable cause. In those circumstances, respondents 2 to 4 were constrained to file the above said maintenance case claiming a sum of Rs.3,500/- each to respondents 2 to 4 and Rs.30,000/- each per annum towards

clothing, shelter and medical expenses. As far as the means of the petitioner herein is concerned, the petitioner has categorically stated in the maintenance case that he is working in a private company and earning a sum of Rs.25,000/- per month. However, though the petitioner denied the said contention, he categorically pleaded in the counter that he is earning Rs.10,000/- per month but he has not produced any evidence to that effect.

To substantiate their contention, the second respondent examined herself as PW.1, apart from two other witnesses as PWs.2 and 3 and marked Exs.P1 and P2. The petitioner examined himself as RW.1 apart from RWs.2 and 3. However, no documents were marked on his behalf.

The Family Judge, after analyzing the evidence brought on record, passed order on 28.10.2014 directing the petitioner to pay a sum of Rs.3,000/- each per month to respondents 3 and 4 towards maintenance and a sum of Rs.30,000/- each per annum to respondents 3 and 4 towards their education, clothing etc.,. However, maintenance to the second respondent is concerned, it was dismissed by holding that the second respondent voluntarily left conjugal society of the petitioner without reasonable cause. Aggrieved by the said order, the present criminal revision case is filed.

Learned counsel for the petitioner would contend that the orders passed by the Family Judge are contrary to law and weight of evidence. The Family Judge failed to appreciate that the second respondent gave different versions with regard to salary of the petitioner varying from Rs.20,000/- to Rs.25,000/- per month. He also contended that the Family Judge erred in observing that the

petitioner is having house site of 2400 sq.feet and at the same time, failed to appreciate that no income will be derived from the house site. Learned counsel brought to the notice of this Court that the petitioner has to maintain his aged parents and unmarried sister and, therefore, maintenance as awarded by the Family Judge is excessive.

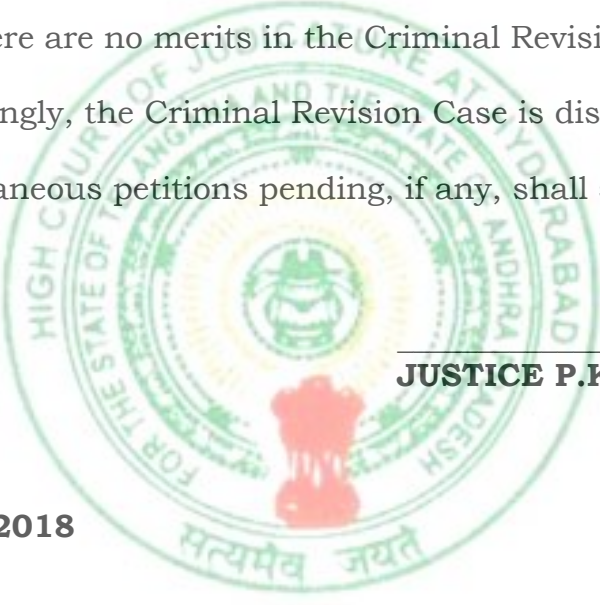
Learned counsel appearing for respondents 2 to 4 supported the impugned order and submitted that the maintenance awarded by the Family Judge is just and reasonable in the facts and circumstances of the case.

Having heard both the counsel and from the perusal of the material on record, the issue that crops up for consideration is whether the maintenance amount as awarded by the Family Judge is reasonable. The petitioner, in the maintenance case, has specifically stated that he is working as an employee in a private company drawing salary of Rs.25,000/- per month though he denied the same in the counter saying that he is drawing salary of Rs.10,000/- per month. It is relevant to mention that the petitioner in the cross examination admitted that apart from working as a private employee, he purchased 2400 sq. feet open plot at Vepambut near Tiruvallur apart from owning ancestral house with ground floor and first floor in Chennai. However, these aspects were not mentioned in the counter filed by the petitioner. Therefore, this Court infers that only for the purpose of avoiding payment of maintenance, the petitioner seems to have suppressed this relevant aspect. As far as salary of the petitioner is concerned as to whether he is drawing a sum of Rs.20,000/- or Rs.25,000/- per month, he is the best person to produce the evidence available

which is in his custody. From the perusal of the record, he has not produced any documentary evidence as to how much he is earning per month. Therefore, an adverse inference has to be drawn against him for withholding best evidence available with him with regard to monthly salary. Be that as it may, when respondents 3 and 4 are the school going children, now-a-days looking at the expenditure that will be incurred for imparting education, awarding Rs.3000/- each per month and Rs.30,000/- each per annum towards clothing, shelter and medical expenses etc., at any stretch of imagination, can be presumed that it is excessive. Therefore, there are no merits in the Criminal Revision Case.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.



JUSTICE P.KESHA RAO

Date: 30.08.2018

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