

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.1471 of 2017

ORDER:

Heard the learned counsel for the petitioner.

Though notice is served on the first respondent, she neither appeared in person nor engaged any counsel to represent on her behalf.

The present criminal revision petition is filed questioning the orders passed in CrI.R.P.No.127 of 2016 dated 30.03.2017, on the file of the Court of the Additional Sessions Judge, Hindupur in setting aside the orders passed in M.C.No.7 of 2014 on the file of the Court of the Judicial First Class Magistrate, Madakasira, Ananthapur District.

The brief facts of the case are that the first respondent herein filed a maintenance case against the petitioner herein seeking maintenance @ Rs.5,000/- per month. It is her case that she is legally wedded wife of the petitioner herein. Her marriage with the petitioner was performed on 22.05.2013 as per the Hindu Rites and Customs prevalent in their community at Lord Sri Lakshminarasimhaswamy Temple, Bhaktharahalli hamlet of Y.B. Halli of Madakasira Mandal. At the time of marriage, her parents paid an amount of Rs.30,000/- towards dowry, one gold ring to the petitioner herein. Apart from that, one pair of ear studs, gold mangalyam chain, silver anklets to the first respondent. However, from the date of marriage, she was harassed by the petitioner herein and his parents for additional dowry of Rs.1,00,000/-. Out of their wedlock, they were not blessed with any children. The

petitioner was moving with another woman. One day prior to Svarathri festival in 2014, the petitioner picked up a quarrel, beat the first respondent by snatching her jewellery and necked her out from his house. Therefore, the maintenance case was filed claiming a sum of Rs.5,000/- per month towards maintenance.

The petitioner herein filed a counter denying the allegations made in the petition contending *inter alia* that at the time of marriage, he has not taken any dowry. In fact, the first respondent herein was not interested to marry him. After marriage also, the first respondent has not allowed for consummation of marriage. The first respondent has not performed any matrimonial obligations in spite of repeated requests. In fact, on 04.06.2014, the first respondent herself executed an agreement in his favour in her own handwriting in the presence of village elders mentioning that she has no interest to co-habit with the petitioner herein to lead a life and she does not claim any maintenance and she will not file any criminal case against the petitioner herein. After enquiry, the Court below, was pleased to dismiss the maintenance case by orders dated 05.10.2016. Aggrieved by the said orders, the first respondent herein filed Crl.R.P.No.127 of 2016 on the file of the Court of the II Additional Sessions Judge, Hindupur. After hearing, the said criminal revision petition was allowed by orders dated 30.03.2017. Aggrieved by the said orders, the present criminal revision case is filed.

The learned counsel appearing for the petitioner would contend that the first respondent herself executed an agreement called 'Jeevana Khararu Bidagade Pathra' in her own handwriting

in Kannada language in the presence of witnesses on 04.06.2014. In the said agreement, it is clearly admitted that she is not interested to lead matrimonial life with the petitioner and she does not claim any maintenance and she will not file any cases against him. The evidence produced on his behalf i.e. RWs.2 and 3 who are the independent witnesses, categorically deposed that they conducted panchayat between the petitioner and the first respondent and advised them to live happily. However, the first respondent herein executed a document stating that she is not willing to live with the petitioner. In fact, in the cross-examination, the first respondent has admitted that the signatures on the said agreement and vakalatnama are that of her. Taking the above said facts into consideration, the maintenance case was dismissed. However, the lower appellate Court, set aside the order, dated 30.03.2017 passed in the maintenance case on the ground that the court below has made a detailed discussion on unmarked document i.e. 'Jeevana Khararu Bidagade Pathra' and as per the settled judicial principles, unmarked documents cannot be commented upon and basing on that, no orders can be passed. On the ground, the order passed in M.C.No.7 of 2014 was set aside and directed the petitioner herein to pay Rs.5,000/- per month to the first respondent towards maintenance from the date of filing of the petition.

From the material on record, it is revealed that though the said 'Jeevana Khararu Bidagade Pathra' is not marked, the first respondent herein in her cross-examination, has categorically admitted that it is executed by her and the said document is in her

handwriting. Further, the evidence adduced on behalf of the petitioner herein also establishes that the first respondent voluntarily left the matrimonial society of the petitioner herein. To substantiate the same, the first respondent also executed the above said document whereunder it is clearly mentioned that she does not want to continue the matrimonial life with the petitioner herein. Further, the lower appellate Court, while appreciating the evidence, was pleased to hold that the first respondent did not show any valid reason or cause to leave the matrimonial home and to say that she has no belief in the petitioner. That apart, the lower appellate Court also pleased to observe that PW-1 admitted that the signatures on the petition and vakalatnama are that of her. The Court has also ample power to compare the signature as per Section 73 of the Indian Evidence Act. When compared the signatures of PW-1 on 'Jeevana Khararu Bidagade Pathra' with the signatures on petition and vakalatnama, they are tallied with each other. So, it can be said that the document dated 04.06.2014 was executed by the first respondent. From the perusal of the said document, it is clear that the first respondent has no like on the petitioner and she is not willing to lead matrimonial life with the petitioner. To that extent only, the document is considered. It is also interesting to note that the learned counsel for the petitioner cross examined PWs.1 to 3 with regard to the said document and RWs.1 to 3 also stated about the execution of the said document by the first respondent and also her handwriting on the said document. Thus, the whole case revolves around the 'Jeevana Khararu Bidagade Pathra' dated 04.06.2014. Though the lower appellate

Court found that the said document is executed by the first respondent and it can be relied upon to the extent that she has no like on the petitioner and not willing to lead marital life with the petitioner, ought not to have allowed the revision petition. However, keeping the peculiar facts and circumstances of the case on record, this Court deems it appropriate to remand the matter back to the trial Court to consider the matter afresh after marking the said document 'Jeevana Khararu Bidagade Pathra' dated 04.06.2014 as an exhibit and pass appropriate orders.

For the reasons stated above, the criminal revision case is allowed setting aside the orders passed in CrI.R.P.No.127 of 2016 dated 30.03.2017, on the file of the Court of the Additional Sessions Judge, Hindupur. The matter is remanded back to the trial Court for fresh disposal, in accordance with law, after marking the said document 'Jeevana Khararu Bidagade Pathra' dated 04.06.2014 as an exhibit.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

P. KESHA VA RAO,J

Date:18.06.2018
Ccm

HONOURABLE SRI JUSTICE P. KESHAVA RAO



CRIMINAL REVISION CASE No. 1471 of 2017

Date:18.06.2018

Ccm