

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1205 of 2018

ORDER:

Heard the learned counsel appearing for the petitioner.

Though notice is served on the first respondent, there is no representation.

The present criminal revision case is filed questioning the orders passed in M.C.No.208 of 2014 dated 12.05.2017 on the file of the Court of the Judge, Family Court, Ranga Reddy District, L.B.Nagar, in awarding a sum of Rs.10,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2 towards maintenance from the date of the petition.

The facts of the case are that the respondents 1 and 2 herein filed M.C.No.208 of 2014 against the petitioner claiming a sum of Rs.60,000/- per month towards maintenance from the petitioner i.e. RS.40,000/- to the first respondent and Rs.20,000/- to the second respondent, on the file of the Judge, Family Court, Ranga Reddy District, L.B.Nagar. It is their case that the first respondent herein is legally wedded wife of the petitioner. Their marriage was performed on 13.05.2001 as per the Hindu rites and customs in the presence of the relatives and well wishers. At the time of marriage, the father of the first respondent presented Rs.2,25,000/- towards Stridhana, 8 tolas of gold ornaments, Rs.1,25,000/- worth Hero Honda motorcycle and other articles. Out of the wedlock, they were blessed with the second respondent herein. After the marriage, they lived happily for some time and thereafter, the petitioner and his family members started harassing the first respondent physically and mentally to get additional dowry and to accept for the second marriage of the petitioner. In fact, after the birth of the second respondent, the first respondent was suffering with spinal cord problem and later it was known

as muscular dystrophy. In the month of October, 2010, the petitioner went to America for his employment from T.C.S. Company and returned to India in the month of January, 2011. Similarly, the petitioner was going abroad for his employment purpose and coming back to India. For all this period, the petitioner neglected the respondents without giving any amount for their maintenance. It is also stated that the petitioner is working as Software Engineer and drawing a sum of Rs. One lakh per month towards salary, apart from possessing movable and immovable properties. Since the petitioner neglected and deserted them, she filed maintenance case claiming the above said amounts.

The petitioner herein filed counter denying the averments made in the maintenance case particularly with regard to the amount and the articles which are alleged to have been presented to him at the time of marriage. He categorically stated that he and his family members never harassed the respondents 1 and 2 physically and mentally and never demanded the additional dowry. Since the first respondent was suffering from muscular dystrophy, he has taken to the hospital and gave much attention to her. In fact, the first respondent never discharged her matrimonial duties and she used to go to her parents' house without informing his parents. In fact, in the month of August, 2003, the first respondent left the matrimonial house without informing him and his parents and she joined after one year. Again in the month of June, 2005, she went to her parents' house and returned back in the month of August, 2006. Once again she left in the month of July, 2009 and returned back in the month of June, 2010. Finally in the month of April, 2013 she deserted the petitioner and staying with her parents. In order to prove her case, the first respondent was examined as PW-1 and marked Exs:P-1 to P-10. On behalf of the petitioner, he examined himself as RW-1 and got marked Exs:R-1 to R-5. Learned Family Judge after hearing the matter at length,

was pleased to allow the maintenance case by orders dated 12.05.2017 directing the petitioner to pay a sum of Rs.10,000/- per month to the first respondent and Rs.4,000/- per month to the second respondent towards maintenance from the date of the petition. Aggrieved by the said orders, the present criminal revision case is filed.

Learned counsel appearing for the petitioner contended that the first respondent is not eligible for maintenance under Section 125 Cr.P.,C. since she voluntarily left the matrimonial home without any sufficient cause. The Court below, has granted maintenance from the date of petition instead from the date of order without giving any valid reasons. The Court below has also not taken into consideration the financial constraints of the petitioner while granting maintenance to the respondents 1 and 2. In fact, the petitioner was ready to take back the first respondent to the matrimonial home, but she never responded. He also contended that the father of the first respondent was receiving two pensions and also getting rents and as such, there were no financial constraints for taking care of the respondents 1 and 2.

Per contra, though notice is served, the first respondent, has not chosen to appear either in person or by engaging any counsel.

Having heard the submissions made by the learned counsel for the petitioner and a perusal of the material on record, would reveal that the first respondent is the legally wedded wife of the petitioner. Out of wedlock, they were blessed with second respondent herein. Admittedly, the first respondent was suffering from muscular dystrophy. As far as the income of the petitioner herein is concerned, it is contended by the first respondent that he is working as software engineer and earning Rs.61,275/- per month and his younger brother also is an employee and they got both movable and immovable properties and getting income out of it. In fact, the first respondent has been crippled in view of her

disease and she is not able to do any job and she has no independent source of income to spend on herself and for the second respondent child. In fact, her father is a pensioner and he is unable to provide sufficient maintenance to them. The second respondent is a school going child and requires school fee and other amenities. It is pertinent to mention that though the petitioner denied that he is getting more than Rs.61,275/-, but he admitted that he is drawing a salary of Rs.51,000/- per month. Though he has taken such a plea, he has not placed any evidence before the Court in the form of producing salary certificate as to how much salary he is drawing per month. In fact, he is the best person to produce the evidence and since he has not come out with the correct particulars, adverse inference can be drawn against him. Be that as it may, even if the salary of the petitioner is taken to be Rs.5,000/- per month, and since the first respondent, because of her disease, is unable to do any work and maintain herself and the second respondent, the petitioner being the husband is legally and morally liable to maintain the respondent Nos.1 and 2. It is also relevant that the first respondent has filed medical reports, school fee and other fee particulars of the second respondent which are marked as Exs.P-2 to P-10. These documents clinchingly establish the expenditure that is being incurred on her towards medical bills and the education of the second respondent. But, at the same time, this Court is conscious of the fact that the petitioner has to maintain himself. Under these circumstances, this Court deems it appropriate to modify the orders passed by the learned Family Judge and direct the petitioner to pay a sum of Rs.8,000/- per month to the first respondent and Rs.3,000/- per month to the second respondent towards maintenance from the date of the petition.

Accordingly, the criminal revision case is allowed in part directing the petitioner to pay a sum of Rs.8,000/- (Rupees eight thousand only) per

month to the first respondent and Rs.3,000/- (Rupees three thousand only) per month to the second respondent towards maintenance from the date of the petition. It is needless to observe that the arrears of maintenance, if any, that will be calculated at the above said rate, shall be payable to the petitioner within a period of six weeks from the date of receipt of a copy of this order. In default, it is open to the respondents 1 and 2 to take steps for recovery of the said arrears as per law.

Miscellaneous petitions, if any, shall also stand dismissed.

Date:05.07.2018.
CCM

P. KESHA RAO, J



HON'BLE SRI JUSTICE P. KESHA VA RAO



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