

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1273 OF 2018

ORDER:

This Criminal Revision Case is filed questioning the orders passed in M.C.No.19 of 2017 dated 29.03.2018 on the file of II Additional Judicial Magistrate of First Class, Machilipatnam, FAC: I Additional Junior Civil Judge, Machilipatnam, granting a sum of Rs.6,000/- per month towards maintenance to the second respondent herein.

Heard the learned counsel for the petitioner as well as the second respondent.

The facts of the case are that the second respondent herein filed M.C.No.19 of 2017 against the petitioner herein contending that she is the legally wedded wife of the petitioner and their marriage was performed on 03.03.2016 at Teachers' Guild Home, Machilipatnam. At the time of marriage, the petitioner herein was working as an Analyst Designer in a firm at Bangalore. At the time of marriage, her parents gave a sum of Rs.10.00 lakhs towards dowry apart from presenting gold jewellery and articles. After the marriage, the petitioner and his parents demanded to bring Rs.5.00 lakhs towards additional dowry as she is the only daughter to her parents. On 20.3.2016 at the instigation of the family members, the petitioner took the second respondent to her parents house at Machilipatnam and left her there stating that unless additional dowry of Rs.5.00 lakhs is paid, she will not be allowed to lead conjugal life with him. Since the second respondent has been

living with her parents, she filed the maintenance case claiming a sum of Rs.35,000/- per months towards maintenance.

The petitioner herein filed a counter denying the averments made in the maintenance case and contended that he has not received any amount as dowry. The petitioner is having a degree in Bachelor of Design at National Institute of Fashion Technology, Hyderabad, which is highly qualified education in India. At the time of marriage and subsequent thereto, there was no proposal of dowry or presentations between the petitioner and the second respondent. After the marriage, the second respondent joined him at Dargmitta, Nellore to lead marital life. She stayed till 19.06.2016 at Nellore. For all these years, the second respondent denied to have any sexual relationship with the petitioner. Though the petitioner moved amicably with the second respondent, she has not changed her attitude. In fact, at her request alone, the petitioner took the second respondent to her parents house on 19.03.2016 and left her there requesting her to join him soon. But she never turned up, apart from other aspects.

The second respondent, to substantiate her contentions, examined herself as P.W.1 and got marked Exs.P.1 and P.2 i.e. wedding card and marriage photo. Though a counter is filed, it appears, the petitioner herein was set ex parte on 27.12.2017.

Basing on the material available on record and in the light of the evidence let in by the second respondent herein, the Court below, allowed the M.C. in part directing the petitioner herein to pay a sum of Rs.6,000/- per month to the second respondent towards her maintenance from the date of filing of the petition i.e.

19.04.2017. Aggrieved by the said orders, the present revision is filed.

The counsel appearing for the petitioner would contend that the petitioner is suffering from marital discard and the same is persisting as the second respondent has not joined his conjugal society. On the other hand, she filed a maintenance case. In fact, marital discard is a very serious disease due to the break up of marriage. As such the petitioner could not present himself before the Court below.

From the material on record, it is revealed that though a counter has been filed by the petitioner herein, the Court below while passing the orders, has not taken into consideration any of the aspects mentioned therein. That apart, in the order itself, the Court below was pleased to observe that no material is produced by the second respondent herein to prove that the petitioner is earning a sum of Rs.1.00 lakh per month. However, in view of the contentions of both the parties and since the petitioner herein is hale and healthy and living separately, the second respondent can be granted a reasonable amount. The said observation is contrary to the record and opposed to the canons of law. It is settled law that as far as grant of maintenance is concerned, it is based on the financial status of the husband/petitioner and the monthly income that he is getting. When the trial Court observed that there is no material placed before the Court with regard to the income and financial status of the petitioner, the awarding of maintenance at the rate of Rs.6,000/- per month may not stand to the legal scrutiny, but at the same time, the second respondent herein being

the legally wedded wife of the petitioner, it is his obligation to maintain her.

Having regard to the rival contentions, this Court feels it appropriate not to go into the merits of the case since it is an ex parte order. But at the same time, since the second respondent has already been awarded a sum of Rs.6,000/- per month towards maintenance, the same cannot be disturbed. In these circumstances, this Court deems it fit to remand the matter back to the trial Court for giving an opportunity to the petitioner herein to participate in the proceedings.

Accordingly, the Criminal Revision Case is disposed of remanding M.C.No19 of 2017 to the II Additional Judicial Magistrate of First Class, Machilipatnam for fresh disposal. It is needless to observe that the monthly maintenance granted by the Court below is not disturbed and at the same time, the Court below is directed to dispose of the M.C. within a period of four months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHAVA RAO,J

20th JUNE 2018.

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