

HON'BLE SRI JUSTICE P.KESHAHA RAO

CRL.R.C.No.1426 OF 2018

ORDER

Heard the learned counsel for the petitioner as well as learned counsel for the 2nd respondent.

The present criminal revision case is filed questioning the order dated 4.4.2018 passed in MC.No.30 of 2016 on the file of the Judge, Family Court-cum-VIII Additional Sessions Judge, Mahabubnagar, awarding a sum of Rs.3,500/- per month towards maintenance to the 2nd respondent herein.

The facts, in brief, are that the 2nd respondent herein is the legally wedded wife of the petitioner. Their marriage was performed on 07.12.2014 at Motinagar Community Hall, Hyderabad, as per Hindu rites and customs. The mother of the 2nd respondent deserted her husband long back and brought up her children. The 2nd respondent prosecuted B.Ed course. The brother of the 2nd respondent is living separately working in private organization. The petitioner herein belongs to a reputed family and financially sound. At the time of marriage, the mother of the 2nd respondent presented 1,50,000/- in cash, four tulas of gold and house hold articles worth Rs.50,000/- towards dowry. After marriage, the 2nd respondent led happy marital life for about three months. Thereafter, the petitioner and his relatives started abusing the 2nd respondent in each and every issue. The petitioner used to insult the 2nd respondent before his friends. In

fact, the 2nd respondent was humiliated and tortured by the petitioner on several occasions. Though the 2nd respondent is his legally wedded wife, the petitioner never shown any affection towards her. In fact, the parents of the petitioner very often used to inform the 2nd respondent that they would perform second marriage to the petitioner, for which they will get good dowry. In fact, the petitioner filed FOP No.25 of 2016 for divorce against the 2nd respondent with all false and untenable grounds. In the month of January, 2016, the 2nd respondent was driven out of the house. It is also stated that the petitioner is a practising advocate in various Courts of twin cities and having income of approximately Rs.30,000/- per month. The father of the petitioner was a retired Sub Inspector of Police and the petitioner is the only son to his parents. The petitioner is having a house at Hyderabad. Several portions of the said house were given on rent and approximately they get income of Rs.40,000/- per month.

The petitioner herein filed a counter admitting the relationship between him and the 2nd respondent and contended that the 2nd respondent is a Science Graduate with B.Ed qualification. The parents of the 2nd respondent are financially sound. In fact, the marriage was performed with the expenses of the petitioner. The petitioner and his parents never subjected the 2nd respondent to cruelty. In spite of the request made by the petitioner, the 2nd respondent refused to join his conjugal society.

Since the 2nd respondent is not willing to join the conjugal society, the petitioner was constrained to file FOP No.25 of 2016 for divorce. It is also stated in the counter that the petitioner is not earning Rs.30,000/- per month. In fact, he is working as a junior advocate and is earning Rs.5,000/- per month.

In order to substantiate her contention, the 2nd respondent herself was examined as PW1 and on her behalf, PW2 was also examined and Exs.P1 to P5 were marked. On behalf of the petitioner, he himself was examined as RW1, apart from examining RW2 and Exs.R1 to R5 were marked.

The learned Judge, after hearing the parties, allowed M.C.No.30 of 2016 in part by order dated 4.4.2018, awarding a sum of Rs.3,500/- per month towards maintenance in favour of the 2nd respondent. Aggrieved by the said order, the present writ petition is filed.

Learned counsel for the petitioner would submit that the learned Judge committed an error while awarding maintenance @ Rs.3,500/- per month without appreciating the financial aspect of the 2nd respondent. The petitioner is earning Rs.5,000./- per month working under a senior counsel. On the other hand, the 2nd respondent is highly qualified and she is capable of earning the amounts. However, she is not doing any job only for the purpose of claiming maintenance from the petitioner herein. Learned counsel also brought to the notice of

this Court that the 2nd respondent left the conjugal society of the petitioner on her own and she was not driven out by the petitioner or his family members. Therefore, she is not entitled for maintenance.

Per contra, learned counsel for the 2nd respondent would submit that the petitioner is having good practice and earning good income. In fact, he is maintaining a four wheeler. He brought to the notice of this Court Ex.R4-registration certificate of car bearing No.AP28AY-3201.

On the other hand, the theory adopted by the petitioner that his senior counsel is paying only Rs.5,000/- has been disbelieved by the learned Family Judge since the income tax returns of the senior counsel does not reflect the amounts paid to the petitioner herein. It is argued that the petitioner is earning good amount and is in position to pay the maintenance to his legally wedded wife as awarded by the learned Family Judge.

Having heard both the learned counsel and from a perusal of the material on record, it is revealed that the 2nd respondent is the legally wedded wife of the petitioner and their marriage was performed on 07.12.2014. Out of the wedlock, they were blessed with no children. Since the petitioner and his family members humiliated the 2nd respondent before their relatives, and as she was driven out of the house, it resulted in filing of the maintenance case.

It is the case of the 2nd respondent that the petitioner is working as an advocate and earning a sum of Rs.30,000/- per month apart from Rs.40,000/- rental income from the building owned by his family. On the other hand, the petitioner came up with a theory that he is working as a junior advocate under a senior and earning a sum of Rs.5,000/-. Therefore, his financial position will not permit him to pay the maintenance amount as awarded by the learned Family Judge.

The petitioner and his family members have not necked out the 2nd respondent from the matrimonial house. In fact, the 2nd respondent himself left the conjugal society of the petitioner along with her brother and the said fact has been substantiated by SMS message sent by the 2nd respondent to the petitioner while leaving the house.

Upon the said facts, the **issue** that arises for consideration is whether the maintenance as awarded by the learned Family Judge is excessive?

The evidence brought on record by the 2nd respondent in the form of PW1 clearly established that the petitioner is working as an advocate. Though it is stated that the petitioner is earning Rs.30,000/- per month, no evidence has been produced to rebut the same. Per contra, though the petitioner has taken a specific plea that he is being paid Rs.5,000./- by his senior counsel, the same has been disbelieved by the Court below on the ground

that the income tax returns of his senior counsel does not reflect the amounts paid to him. On the other hand, the fact that the petitioner is maintaining a car itself shows that the financial position of the petitioner is not that poor where he cannot pay Rs.3,500/- per month towards maintenance to the 2nd respondent. Though the 2nd respondent has taken a specific plea apart from his income, the petitioner is getting a sum of Rs.40,000/- towards rental income from the portions let out in their building, no rebuttal evidence has been produced to the effect that the petitioner is not earning so much of amount on rentals. Apart from the same, looking at the cost of living and inflation, the award of Rs.3,500/- per month towards maintenance is not excessive.

In these circumstances, this Court is of the opinion that there are no merits in the Criminal Revision Case.

Accordingly, the Criminal Revision Case is dismissed.

The applications, pending consideration, if any, shall stand closed.

JUSTICE P.KESHAHA RAO

27th July, 2018
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