

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.2399 of 2014

ORDER:

Heard the learned counsel for the parties.

The present revision case is filed questioning the orders passed in F.C.M.C.No.18 of 2013 dated 30.10.2014 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, awarding a sum of Rs.5,500/- per month towards maintenance to the 1st respondent.

The facts in brief are that the 1st respondent is the legally wedded wife of the petitioner. Their marriage was performed on 17.05.2002 at Karimnagar as per the Hindu rites and customs. At the time of marriage, the parents of the 1st respondent paid a sum of Rs.3,50,000/- in cash towards dowry, 10½ tulas of gold ornaments, including silver and other household articles to the petitioner and his family members. After marriage, they lead happy marital life for sometime and thereafter, at the instigation and abetment of his parents, the petitioner developed hatredness against the 1st respondent without any reason. The petitioner demanded additional dowry from the 1st respondent and her parents. When they expressed their helplessness, he harassed the 1st respondent mentally and physically. The petitioner, in fact, contracted a second marriage with one Padmaja, D/o. Janardhan on 14.02.2009 at Vemulawada and totally neglected the 1st respondent which led to filing of the present F.C.M.C. for maintenance. The petitioner filed his counter admitting the

marriage, but denied the harassment and demand of additional dowry and contended *inter alia* that the 1st respondent lead marital life with him only for two weeks and demanded to live separately from his parents. On 01.06.2002, the parents of the 1st respondent came to Jagtial and took away her. They also informed the petitioner and his family members that their daughter will give divorce to the petitioner and he should pay Rs.2,50,000/-. Even though several panchayats were held, there was no positive result. In those circumstances, the petitioner filed a petition in O.P.No.23 of 2008 for divorce against the 1st respondent. The said O.P. was allowed on 08.07.2008. After the said orders, there was a settlement between the petitioner and the 1st respondent under a deed of settlement dated 10.03.2009, whereunder the petitioner paid an amount of Rs.2,50,000/- to the 1st respondent towards her lifetime maintenance and permanent alimony and the same has been acknowledged by the 1st respondent. In fact, a copy of the deed of settlement filed in the material papers evidence the same. However, after receiving the sum of Rs.2,50,000/- towards permanent alimony, the 1st respondent filed the present F.C.M.C.No.18 of 2013 for maintenance under Section 125 Cr.P.C. @ Rs.10,000/- per month from the petitioner.

The 1st respondent examined herself as PW.1 and examined one Rama Devi as PW.2 and marked Exs.A1 and A2. The petitioner examined himself as RW.1 and marked Exs.B1 to B5.

The learned Family Judge, after hearing the parties and appreciating the evidence brought on record, allowed the said

F.C.M.C. in part by orders dated 30.10.2014, directing the petitioner to pay a sum of Rs.5,500/- per month towards maintenance from the date of the petition. Aggrieved by the said order, the present revision case is filed.

Learned counsel appearing for the petitioner specifically contended that by virtue of the settlement deed arrived at between the petitioner and the 1st respondent and since the 1st respondent agreed to live separately, she is not entitled for maintenance. In fact, after 01.06.2002, the 1st respondent never came back to the conjugal society of the petitioner. Therefore, when the 1st respondent deserted the petitioner voluntarily without any reasonable cause, she is not entitled for any maintenance.

Learned counsel appearing for the 1st respondent supported the impugned order.

Having heard both the counsel and from a perusal of the material on record, the question that crops up for consideration is:

Whether the 1st respondent is entitled for maintenance in the light of the decree obtained by the petitioner in O.P.No.23 of 2008, which is marked as Ex.B4?

Admittedly, the 1st respondent is the wife of the petitioner. There are allegations and counter allegations against each other with regard to demand of additional dowry and harassment by the petitioner. On the other hand, the petitioner alleged that the 1st respondent insisted him to live separately from his parents due to which he underwent lot of mental torture. The behaviour of the 1st respondent became bad to worse and as she was not interested to

cohabitate with him. On 01.06.2002, she left his conjugal society without any reasonable cause. Subsequently, the petitioner was forced to file O.P.No.23 of 2008 for divorce and the same was allowed on 08.07.2008 dissolving his marriage with the 1st respondent. Thereafter, the settlement was arrived at vide Ex.B1, wherein the petitioner paid an amount of Rs.2,50,000/- towards life time maintenance and permanent alimony which the 1st respondent has acknowledged.

As far as maintainability of the present revision case in the light of Exs.B1 to B3, settlement deed, receipt and decree of divorce respectively are concerned, the law is well settled that when the agreement between husband and wife for divorce is ordered and when they are living separately, the question of invocation of Section 125 (4) Cr.P.C., does not arise and it would not disentitle the wife from claiming maintenance. The maintenance of the wife cannot be negated by entering into an agreement. In fact, a divorced wife is also entitled for maintenance as long as she remains unmarried and unable to maintain herself. The grant of divorce will not end the right of the wife to claim maintenance.

In the case on hand, merely, because a clause has been incorporated in the settlement deed i.e., Ex.B1 that a sum of Rs.2,50,000/- was paid to the 1st respondent towards her lifetime maintenance and permanent alimony, that cannot be used as a defence in proceedings under Section 125 Cr.P.C., since it is opposed to public policy and under Section 23 of the Contract Act. In fact, the quantum of Rs.2,50,000/- so paid under Ex.B1 at best

could be considered as one of the circumstances under which the maintenance can be reduced. The basic object in incorporating Section 125 Cr.P.C., is to remove the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons mentioned in the provisions so that some suitable arrangements may be made by the Court and thereby she can sustain herself and also her children. In fact, the sustenance does not necessarily mean to lead the life of an animal. She is entitled to lead a life in the similar manner as she would have been lived in the house of her husband.

In **K. Pandian v. A. Savithiri**¹, the Madras High Court has held as under:

“Agreement between husband and wife for divorce no question of mutual consent to live separately. Sec. 125 (4) not attracted mere fact that some amount would also not disentitle her from claiming maintenance.”

In **R. Rambilas v. Ms. Anitha and another**², this Court has held as under:

“Maintenance claim of wife cannot be defeated by agreement not to claim maintenance and even divorced wife entitled to maintain so long as she remains unmarried and unable to maintain herself. Mere divorce does not end right to maintenance. A clause in an agreement wife shall not be entitled to claim maintenance from husband cannot be used as defence in proceedings under Section 125 since it is opposed to public policy under Section 23 of Contract Act.”

In **Bhuwan Mohan Sing vs. Meena and others**³ the Apex Court held as under:

“Sec. 125 was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for

¹ 1999 Criminal Law Journal page 8

² 2009 (1) ALD (Crl.) 855 (AP)

³ 2014 Crl. Law Journal 3979

the reasons provided in the provisions so that some suitable arrangements may be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basis maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play and that is where the obligations of the husband, in case of a wife, become a prominent once. In a proceeding of this nature, the husband can not take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar.”

However, in the peculiar facts and circumstances of the case and looking into the amount paid under Exs.B1 and B2 and also the conduct of the 1st respondent leaving the conjugal society of the petitioner, this Court is of the opinion that the amount of maintenance, as awarded by the learned Family Judge @ Rs.5,500/-, is excessive and the same is liable to be reduced. In these circumstances, to meet the ends of justice, this Court reduces the monthly maintenance from Rs.5,500/- to Rs.4,000/- per month.

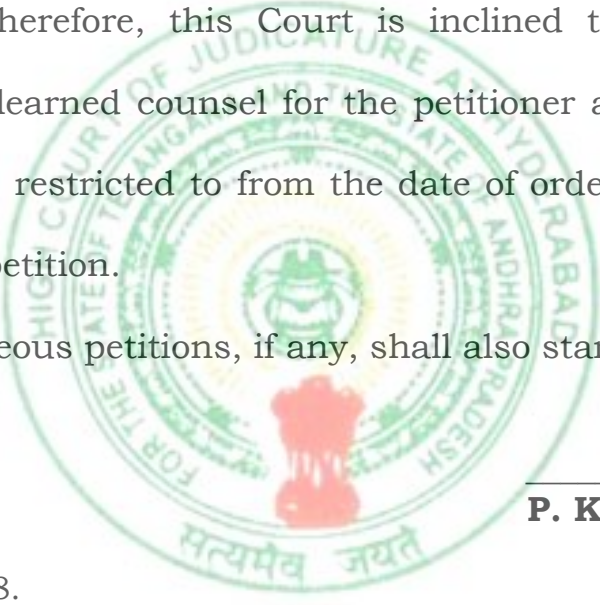
Accordingly, the criminal revision case is disposed of, modifying the orders passed in F.C.M.C.No.18 of 2013 dated 30.10.2014 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, as indicated above.

Learned counsel appearing for the petitioner brought to the notice of this Court that by virtue of the orders passed by the learned Family Judge in Crl.M.P.No.161 of 2013 in F.C.M.C.No.18 of 2013 dated 28.01.2014 towards interim maintenance @ Rs.2,500/- per month and by virtue of the interim orders passed by

this Court against the said order in CrI.R.C.M.P.No.529 of 2014 in CrI.R.C.No.320 of 2014 dated 03.03.2014, the petitioner has been paying maintenance @ Rs.1,250/- per month. Though the maintenance case is filed in the year 2013, orders were pronounced on 30.10.2014. When there is no abnormal delay or any delay on the part of the petitioner, the learned Family Judge ought to have given reasons for grant of maintenance from the date of the petition.

However, from a perusal of the impugned order nothing is mentioned. Therefore, this Court is inclined to accede to the request of the learned counsel for the petitioner and the award of maintenance is restricted to from the date of order instead of date of filing of the petition.

Miscellaneous petitions, if any, shall also stand disposed of.



P. KESHA RAO, J

Date: 17.09.2018.
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