

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Crl.P.No.5955 of 2018
and
Crl.R.C.No.1918 of 2018

COMMON ORDER:

Crl.P.No.5955 of 2018 is filed by respondent/husband and Crl.R.C.No.1918 of 2018 is filed by petitioner/wife aggrieved by the order dated 30.04.2018 in Crl.R.P.No.135 of 2017 passed by IX Additional Sessions Judge (Fast Track Court) Krishna at Machilipatnam, modifying the order passed by Additional Judicial First Class Magistrate in M.C.No.39 of 2014.

2) The parties are referred to as they were arrayed in the trial Court.

3a) The brief facts of the case are that the marriage between the petitioner and respondent was performed on 30.05.2002 as per Christian rights and customs; the petitioner joined matrimonial home and during their wedlock they were blessed with two sons; thereafter, the respondent and his family members used to harass the petitioner for additional dowry; subsequently the respondent also demanded her to bring money for investing the amount in Aluminium Factory at Baroda and the petitioner gave Rs.5 lakhs; thereafter, the respondent and her sister demanded the petitioner to sell away the land which was gifted to her at the time of her marriage; due to persistent demands made by respondent and his sister, her parents sold the land and gave

Rs.23 lakhs to the respondent; even after receiving the said money the respondent did not mend his behaviour and continued to harass her and at last respondent necked out her from the matrimonial home; then, the petitioner filed a report to the SP, Krishna at Machilipatnam; after counseling before Challapalli Police, the respondent set up family at Rajahmundry where also he continued to harass her and in the month of September, 2014 again she was necked out from the matrimonial home; the mediation talks proved futile; hence she filed a petition—M.C.No.39 of 2014 seeking maintenance of Rs.20,000/- per month.

b) Respondent/husband filed counter and opposed the petition contending that petitioner is an adamant lady and used to pick up disputes with neighbours and relatives; the parents of the petitioner do not have financial capacity to give Rs.23 lakhs as alleged; in view of matrimonial disputes only he resigned his job in Aluminium Company at Rajahmundry; on 11.09.2010, she committed theft of gold ornaments in the owners house at Rajahmundry and sold the said ornaments in Khazana Jewellers; after mediation before elders he paid Rs.50,000/- to the house owner; in the month of September, 2010 she voluntarily left the matrimonial home leaving the respondent and children and did not turn up; respondent is doing private job and earning Rs.20,000/- per month and she has sufficient means to maintain herself. He thus prayed to dismiss the petition.

c) The trial Court after hearing both sides and considering the evidence on record, partly allowed the petition directing the respondent to pay Rs.15,000/- per month to the petitioner towards her monthly maintenance from the date of petition.

d) Aggrieved, the respondent/husband filed CrI.R.P.No.135 of 2017 before the IX Additional Sessions Judge, Krishna at Machilipatnam. The learned Sessions Judge after considering the evidence both oral and documentary, modified the order of the trial Court directing the respondent to pay Rs.7,000/- per month to the petitioner from the date of petition.

e) Aggrieved, the respondent/husband filed CrI.P.No.5955 of 2018 and the petitioner/wife filed CrI.R.C.1918 of 2018.

4) Heard arguments of Sri Ghantasala Udaya Bhaskar, learned counsel for petitioner in CrI.R.C.No.1918 of 2018 and 1st respondent in CrI.P.No.5955 of 2018; Sri P.Kiran Palakurthi, learned counsel for petitioner in CrI.P.No.5955 of 2018 and learned Public Prosecutor (AP) for 2nd respondent in both the cases.

5) Fulminating the orders of the Courts below, Sri Kiran Palakurthi, learned counsel for petitioner in CrI.P.No.5955 of 2018, would submit that both the Courts below committed grave error in holding that respondent/husband has necked out the petitioner/wife from the house and he is not looking her welfare and maintenance despite having sufficient means. He would argue that the pleadings

and evidence would clearly show that petitioner herself deserted the respondent and left the matrimonial home leaving her husband and two minor sons without any plausible reason and therefore, she does not deserve any maintenance. Further, she earlier filed divorce petition which was dismissed for default. Thus, her attitude showed it was the petitioner who left the society of the respondent without any justifiable cause. On that ground alone her petition deserves dismissal. In the contrary, he would argue, both the Courts awarded maintenance to her without reference to the financial burdens of the respondent. He would submit that the respondent is doing a private job and getting monthly salary of Rs.20,000/- with which he has to fend his two grown up sons and educate them. Therefore, even for argument sake the Courts below were right in granting maintenance to petitioner, the quantum of maintenance should have been fixed within bearable limits of the respondent. He thus prayed to allow the CrI.P.No.5955 of 2018 and set aside the maintenance of Rs.7,000/- awarded by Additional Sessions Judge.

6) In oppugnation, Sri Ghantasala Udaya Bhaskar, learned counsel for 1st respondent in CrI.P.No.5955 of 2018 and petitioner in CrI.R.C.No.1918 of 2018, would argued that since short time after her marriage, the respondent and his parents were guilty of demanding money from the petitioner and her parents and in order to meet their demands, the parents of petitioner gave Rs.50,000/-, six sovereigns of gold, Rs.5 lakhs and Rs.23 lakhs to the respondent on different

occasions and in spite of the same he necked her out of the house and therefore in unavoidable circumstances she had to file the petition for maintenance as she has no independent income and depending on her parents for sustenance. Learned counsel would further argue that the respondent made grave allegations of theft and unchastity against the petitioner without an iota of truth therein and therefore, the trial Court rightly held that the wild and untruthful allegations made against her are sufficient grounds for her to live apart from him and accordingly granted maintenance. However, the revision Court drastically reduced the maintenance amount without any justifiable clause. He thus prayed to allow the CrI.R.C. and enhance the maintenance amount as awarded by the trial Court.

7) The points for determination are:

1. *Whether the respondent despite having sufficient means neglected to maintain the petitioner?*
2. *Whether the petitioner is justified to live apart and claim maintenance against the respondent and if so, the quantum of maintenance which she deserve?*

8) **POINT Nos.1 and 2:** Admittedly, the petitioner is the legally wedded wife of the respondent and their marriage took place on 30.05.2002 and they were blessed with two sons who are now under the care and custody of respondent. While according to the petitioner, the reason for her staying apart from respondent is due to the fact that since after marriage, himself and his family members unduly demanded her to get money and to quench their lust for money, her

parents gave Rs.50,000/-, three sovereigns of gold bangles, Rs.5 lakhs and Rs.23 lakhs on different occasions and not being satisfied with the same, the respondent ultimately necked her out from the house in 2014, the version of the respondent, in contrast is that the petitioner herself deserted him without there being any cause.

9) On perusal of the evidence on record, as rightly observed by the trial Court, the respondent made wild and unruly allegations against the petitioner stating that she committed theft in the house of her owners and she has illicit intimacy with auto driver. The respondent could not substantiate both the allegations. Further, he did not mention such allegations in Exs.P2 and P3. Therefore, there was justifiable cause for the petitioner to live separately and claim maintenance.

10) So far as quantum of maintenance is concerned, the petitioner is a lady and now living with her parents. Her case is that she is living on the mercy of her parents. Through respondent claims that she is an employee and getting salary, he did not produce any evidence to that effect. Therefore, she should be treated as dependent on her parents. So far as the means of the respondent are concerned, though petitioner claims he is a business magnate and earning Rs.1 lakh per month from out of business, she has not produced any record. The version of the respondent is that he is doing a private job and earning Rs.20,000/- per month with which he has to maintain and educate his two sons. The trial Court taking the fact that he deposited Rs.24 lakhs with the elders into consideration, observed that he has sufficient means lest he

should not have deposited such huge amount. No doubt, the respondent claimed that he deposited the said amount by borrowing money. However, he has not placed any record to that effect. So, his depositing of Rs.24 lakhs with the mediators cannot be secluded while computing his means. Further, on his own admission he is getting monthly salary of Rs.20,000/- if not Rs.1 lakh as proclaimed by the petitioner. Thus, the facts and evidence would show that respondent is an able bodied person having sufficient means to maintain his wife. Considering the fact that for some time the petitioner and respondent lived at Baroda and thereafter at Rajahmundry on account of job of respondent, their social status can be said to be a higher middle class family. Having regard to such back ground and the present day sky rocketing prices, the petitioner in the opinion of this Court will require atleast Rs.10,000/- per month to lead a decent life.

11) Accordingly, the Criminal Revision Case No.1918 of 2018 is partly allowed and order of the lower appellate Court in Crl.R.P.No.135 of 2017 is set aside and maintenance amount is enhanced from Rs.7,000/- to Rs.10,000/- from the date of filing M.C. Consequently, Criminal Petition No.5955 of 2018 is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 06.12.2018
Murthy