

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.1860 of 2015

ORDER:

Challenging the order dated 15.04.2015 in FCOP No.392/2012 on the file of Judge, Family Court, S.P.S.R. Nellore District awarding monthly maintenance of Rs.10,000/- to the 1st respondent and Rs.2,500/- to the 2nd respondent from the date of petition, the petitioner preferred the instant CrI.R.C.

2) The parties in this paragraph are referred as they were arrayed before the Trial Court.

a) The facts in nutshell are thus:

The case of the petitioners is that 1st petitioner and respondent were married on 06.12.2009 at Nellore and the respondent was working as Software Engineer in WIPRO (Verizon), Hi-tech City, Hyderabad and the 1st petitioner was working as Dental Doctor in Narayana Hospital, Nellore. At the instance of respondent and his parents, the 1st petitioner discontinued her job and started to live with the parents, brother and sister of the respondent at Nellore and they used to harass her physically and mentally for additional dowry. When she was 7 months old pregnant, mediation was held between the family members of the 1st petitioner and the respondent, wherein the respondent agreed to take her to Hyderabad but he did not do so. Instead, the family members of the respondent drove her out of the house and so she is residing

with her parents along with 2nd petitioner since May, 2011 and she has no capacity to maintain herself and her son. The respondent is earning Rs.80,000/- p.m besides having own house at Nellore. Therefore, the petitioners craved for maintenance of Rs.15,000/- p.m to 1st petitioner and Rs.5,000/- p.m. to 2nd petitioner.

b) The respondent filed his counter admitting his relationship with petitioners and he also admitted that he was working as Software Engineer in Wipro at the time of marriage and denied the rest of the allegations. He contended that 1st petitioner after giving birth to son started demanding him to put up separate family by leaving his parents. He submitted that he had already given divorce to the 1st petitioner as per provisions of Islam. He thus prayed to dismiss the petition.

c) After hearing both sides and considering the oral and documentary evidence, the Trial Court allowed the FCOP awarding monthly maintenance of Rs.10,000/- to the 1st petitioner and Rs.2,500/- to the 2nd petitioner from the date of petition payable by the respondent on or before 10th of every succeeding month.

Hence the instant Crl.R.C.

3) Heard both sides.

4) Learned counsel for revision petitioner castigated the impugned order mainly on the grounds that the lower Court failed to appreciate the fundamental argument of the petitioner that he already divorced the 1st

respondent by pronouncing Talaq and therefore, she was not his wife and he had no responsibility to maintain her. Nextly, he challenged the order on the ground that the 1st respondent is a qualified BDS and she has been working in Narayana Dental College, Nellore and earning sufficient income to sustain herself and her son, whereas the petitioner though previously worked as Software Engineer in Wipro, now jobless and the Trial Court failed to appreciate this aspect in a proper perspective and erroneously held as if the petitioner being husband, liable to maintain the respondents and awarded huge amount of Rs.10,000/- to 1st respondent and Rs.2,500/- to 2nd respondent as monthly maintenance. He thus prayed to allow the CrI.R.C.

5) Per contra, learned counsel for respondents 1 and 2 would argue that the plea of Talaq was not substantiated by the petitioner as he did not depose about it and produce any evidence in that regard and therefore, the Trial Court rightly rejected the said plea. Sofaras the financial capacity of the parties is concerned, though the petitioner vehemently argued that the 1st respondent was working in Narayana Dental College and earning sufficient income, he did not produce any material to that effect. Petitioner is concerned, to substantiate his contention that he left the job, he did not produce any record showing that he resigned the job in Wipro. Considering the same, the Trial Court rightly fixed his monthly salary as Rs.1,00,000/- and awarded maintenance. Learned counsel thus prayed to dismiss the CrI.R.C.

6) The point for determination is:

“Whether there are merits in the CrI.R.C to allow?”

7) **POINT**: I gave my anxious consideration to the pleadings, evidence and respective contentions of both sides. The marriage between the parties and their begetting a son (2nd respondent) are all admitted facts. The Trial Court on appreciation of evidence has ultimately held that the petitioner was at fault as he deserted the 1st respondent and did not accept her to his fold even after the birth of son inspite of the efforts made by her. The Trial Court further observed that even to a specific question that the petitioner was ready to join her and whether he accepts her, he curtly replied that he was not willing to accept the 1st respondent to his society. Thus the Trial Court held that it was the petitioner who neglected his wife and son. Thereupon the Trial Court considered the financial status of both parties and held that the 1st respondent herein is idle and she has no independent source of income. So far as petitioner is concerned, the Trial Court observed that he did not produce any reliable evidence to show that he left the job and now he is idle. He is a qualified B.E (Mechanical) Graduate and he started working when he was aged 22 years and he worked as Software Engineer. The Trial Court ultimately opined that he would earn atleast Rs.1,00,000/- p.m. On this premise, the Trial Court fixed Rs.10,000/- to 1st respondent and Rs.2,500/- to 2nd respondent.

8) In the revision, the petitioner has not much argued about the finding of the Trial Court that the petitioner himself has neglected his wife and son but the argument was centered around the Talaq allegedly given by him and also 1st respondent's employment. Both the aforesaid arguments, it must be said, are not substantiated by any credible evidence. In the revision, the petitioner produced a Photostat copy of Divorce Certificate dt.29.02.2012 said to be

issued by A.P State Wakf Board, noting therein that the petitioner and 1st respondent were divorced on 28.02.2012. However, the said certificate was not produced by the petitioner before the lower Court. In his evidence also, the petitioner did not state about the said certificate. On the other hand, in the cross-examination he admitted that he did not mention in his counter about the date, place and in whose presence he pronounced the Talaq to his wife. He further admitted that he did not file any document to show that he pronounced Talaq to the 1st respondent. However, all of a sudden in the revision he produced a copy of the Divorce Certificate, said to be issued by the Wakf Board. Hence, the said certificate cannot be taken into consideration. Consequently, the Talaq pleaded by the petitioner cannot be countenanced.

9) Coming to the financial position of the parties, the petitioner was admittedly working as Software Engineer in Hyderabad, by the time of his marriage. He claimed before the lower Court that since December, 2012 he was idle. As rightly observed by the Trial Court, if he left the job, the said fact would be borne out by record. The petitioner did not produce any record showing the particulars of his salary and his leaving the job. Hence, his contention cannot be accepted. So far as the 1st respondent is concerned, admittedly she is a Dentist and at the time of marriage, she was working in Narayana Dental College, Nellore, however, her categorical case is that she resigned her job on 16.08.2009. No doubt she admitted that with her experience of 2 years in Narayana Dental College, she would be eligible to secure job in any other college. However, her submission is that since her son was at tender age, it was not possible to opt for a job and therefore, she

remained idle. She stated that one year after she would admit her son in the school and then seek for job. There is a ring of truth in her version. Admittedly her son during the relevant period was a tender aged boy and therefore, he needed nursing of his mother. Therefore, the 1st respondent could not be able to take up any job though she was a qualified doctor. Hence the petitioner is liable to maintain his wife and his son. Since there is no evidence that the petitioner left his job in Wipro, the Trial Court rightly presumed that still he was in job. Ofcourse the presumption of the Trial Court that he would earn atleast Rs.1,00,000/- p.m appears to be on high side. Therefore, having regard to his educational qualification, it can be said that he would earn atleast Rs.50,000/- to Rs.60,000/- p.m. Even on that assessment, awarding of monthly maintenance of Rs.10,000/- to 1st respondent and Rs.2,500/- to 2nd respondent by the Trial Court cannot be said to be exorbitant. Nowadays, the aforesaid amount is the barest minimum for the respondents to sustain themselves. Therefore, I do not find any illegality or perversity in the order impugned.

10) In the result, this Criminal Revision Case is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 18.06.2018

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