

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.819 of 2011

ORDER:

Heard the learned counsel for the petitioner.

The present revision case is filed assailing the orders passed in M.C.No.26 of 2010 dated 02.02.2011 on the file of the Judicial Magistrate of First Class, Tandur, Ranga Reddy district, awarding a sum of Rs.4,000/- and Rs.3,000/- per month to respondent Nos.2 and 3 towards maintenance.

The facts in brief are that the 2nd respondent is the legally wedded wife of the petitioner. Their marriage was performed in the month of May, 1992. At the time of marriage, her parents gave Rs.50,000/- in cash, 5 tulas of gold to the petitioner on his demand. They lead a happy marital life for two years and thereafter the petitioner started harassing the 2nd respondent for additional dowry of Rs.50,000/-. Out of wedlock, they were blessed with the 3rd respondent. In spite of conducting panchayats and the elders tried to convince the petitioner, the petitioner and his family members continued the harassment. In those circumstances, the 2nd respondent was forced to live separately. In fact, she filed a complaint under Section 498-A IPC against the petitioner vide Crime No.234 of 2005. Thereafter, she filed the maintenance case. In the maintenance case, she stated that the petitioner is having a big house at Hyder Sha Court

village, Rajendranagar Mandal and he let out three portions on rent and getting Rs.6,000/- per month on the said house. The petitioner also has Ac.4.00 of agricultural land at Chiragpally Village of Zaheerabad Mandal of Medak district and getting Rs.3 lakhs on agriculture apart from 100 square yards residential plot at Hyder Sha Court Village, Rajendranagar Mandal. The petitioner is a Carpenter by profession and is earning Rs.20,000/- per month.

The petitioner filed counter denying the material allegations made against him in maintenance case and contended *inter alia* that the 2nd respondent after marriage joined the conjugal society at Hyderabad and she used to pick up quarrel with him and with his parents and used to abuse them in filthy language. On the advice of her parents and brothers, the 2nd respondent insisted the petitioner to set up separate family in the year 1992 i.e., within a short period after marriage. He also stated that as per the condition imposed by the 2nd respondent in the panchayat, he purchased 100 square yards of land at Hyder Sha Court Village in the joint names of the 2nd respondent and himself on 19.09.2005 and thereafter the 2nd respondent took the original document of the land. Subsequently, along with respondent No.3, respondent No.2 left his conjugal society apart from other aspects.

The learned Magistrate, after hearing the parties and appreciating the evidence on record, allowed the maintenance

in part, awarding Rs.4,000/- and Rs.3,000/- per month to respondent Nos.2 and 3 respectively towards maintenance by orders dated 02.02.2011. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that the maintenance, as awarded by the learned Magistrate, is illegal and contrary to the evidence on record. The learned Magistrate ought to have dismissed the maintenance case holding that respondent No.2 failed to establish that she was deserted and neglected by the petitioner. He also contended that the 2nd respondent is in a position to maintain herself and the 3rd respondent. The petitioner does not have the sufficient means to pay the quantum of maintenance as awarded by the learned Magistrate. Except the evidence of PW.3, there is no evidence brought on record by respondent Nos.2 and 3 to prove that the petitioner is getting income from the agricultural land and also from his profession.

Having heard the learned counsel for the petitioner and from the perusal of the material on record, it is revealed that the 2nd respondent is the legally wedded wife of the petitioner. Out of wedlock, they were blessed with the 3rd respondent. Since disputes arose between them with regard to the demand of additional dowry as well as the 2nd respondent quarrelling with the petitioner and his family members on every trivial issues, the same lead to filing of a criminal case

under Section 498-A IPC and also the present maintenance. As far as entitlement of maintenance is concerned, the petitioner himself admitted that the 2nd respondent is his legally wedded wife. The 2nd respondent examined herself as PW.1 and narrated the contents in the maintenance case. PW.2, who is the sister of PW.1, deposed that the petitioner harassed the 2nd respondent to bring additional dowry of Rs.50,000/-. Though panchayats were held in the presence of elders, the petitioner threatened to marry second time. In fact, the 2nd respondent was necked out of the matrimonial home in the year 2005. PW.3, who is a neighbour of respondent Nos.2 and 3, deposed that after marriage the petitioner and the 2nd respondent lived happily for sometime and on one day the 2nd respondent came to their house at Tandur by crying. On enquiry, it was revealed that the petitioner demanded Rs.50,000/- as additional dowry. However, in the cross-examination, he admitted that he does not know the marriage talks and performance of the marriage and no dowry was given in his presence.

Per contra, the petitioner examined himself as RW.1. In his evidence, he stated that divorce was granted to them in F.C.O.P.No.624 of 2006. The 2nd respondent is working in houses in Hyderabad and earning Rs.4,000/- to Rs.5,000/- per month. RW.2, who is a resident of the petitioner's village, deposed that previously the petitioner was a Carpenter. However, the 2nd respondent used to quarrel with him by

suspecting his character. In fact, he came to know that the 2nd respondent left the petitioner in the year 1996.

From the appreciation of the evidence, it is established that the 2nd respondent was harassed by the petitioner for additional dowry and the petitioner necked out the 2nd respondent from the matrimonial house. Though the petitioner has categorically pleaded that the 2nd respondent is working in the houses and earning Rs.4,000/- to Rs.5,000/- per month, he failed to substantiate the same by placing evidence on record. On the contrary, the 2nd respondent through herself and PWs.2 and 3 established that she has no independent source of income, thereby she is entitled for maintenance from the petitioner.

Further, the 2nd respondent in the maintenance case pleaded that the petitioner is having substantial properties in the form of residential houses and agricultural land apart from income on agricultural land as well as rentals. Though the petitioner denied the same, he failed to produce any evidence as to the actual income on the above said properties. In fact, he is the best person to produce the evidence available with regard to the income on the above said properties. Having withheld the same, an adverse inference has to be drawn against him for not producing the best evidence available with him.

Be that as it may, award of maintenance @ Rs.4,000/- and Rs.3,000/- per month to respondent Nos.2 and 3 towards

maintenance, in the facts and circumstances of the case, particularly, with regard to the profession and the properties possessed by the petitioner, at any stretch of imagination, cannot be treated as excessive. Looking at the present day cost of living and the rate of inflation, it is difficult for two persons to sustain with the meagre sum of Rs.7,000/- per month, more so, when the 3rd respondent is pursuing his studies. In these circumstances, there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.
Interim stay granted on 06.04.2011 stands vacated.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 27.09.2018.
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