

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 2413 OF 2014

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for respondent Nos. 1 and 2.

2. The present Criminal Revision Case is filed questioning the orders passed in M.C.No. 3 of 2013 dated 18.6.2014 on the file of the Court of the Judge, Family Court, Kurnool, awarding a sum of Rs.8,000/- p.m. to respondent No.1 and Rs.2,500/- p.m. to respondent No.2 towards maintenance from the date of the order.

3. The facts in brief are that respondent No.1 herein is the legally wedded wife of the petitioner. Their marriage was performed on 22.5.2005 as per the rites and customs prevalent in their community in Lord Jodu Ganesh Temple, Bellary. It is the specific case of respondent No.1 that at the time of marriage, Rs.2,00,000/- in cash, 13 thulas of gold ornaments apart from other customary articles were given by respondent No.1 towards dowry. However, the petitioner and his family members, not satisfying with the said dowry and etc., started harassing respondent No.1 physically and mentally for additional dowry, leading to separation. In fact, respondent No.1 also filed a complaint against the petitioner for the offence

under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. Finding no other go and since respondent No.1 was facing financial difficulties, she filed the above said maintenance case. After filing of the complaint, the petitioner induced respondent No.1 for compromise by stating that he will continue the conjugal life with respondent No.1. In fact, the matter was placed before the Lok Adalat. Respondent No.1, believing the words of the petitioner, joined his conjugal society. However, the petitioner and his family members, once again violated the terms and conditions arrived at the time of settlement before the Lok Adalat. Therefore, respondent No. 1 filed the maintenance case. Only to get over the criminal prosecution, the petitioner and his family members pretended for a compromise and arrived at a settlement in the Lok Adalat.

4. From the perusal of the impugned orders, it is evident that the petitioner herein has not participated in the proceedings and he was set *ex parte*. In those circumstances, learned Judge, Family Court, after hearing respondent No.1 and perusing the material on record, allowed the maintenance case in part awarding a sum of Rs.8,000/- and Rs.2,500/- p.m. each to respondent Nos. 1 and 2 respectively towards maintenance from the date of the order by orders dated 18.6.2014.

Aggrieved by the said orders, the present Criminal Revision Case is filed.

5. Learned counsel for the petitioner would contend that the petitioner has not received any notice in the maintenance case and thereby he was deprived of his valuable right to contest the case by producing appropriate evidence. To substantiate his contention, learned counsel placed reliance on the endorsement made on the copy application filed to furnish the certified copy of the served notice and also the paper publication. The endorsement made on 4.9.2014 on the copy application is as under:

“Served notice not available in the MC. 3/13.
Publication not yet filed in MC 3/13. Hence return.”

6. The above endorsement would go to show that notice is not served.

7. Per contra, learned counsel for respondent Nos. 1 and 2 strenuously contended that notice has been served on the petitioner. However, he failed to appear before the Court and not taken any steps either to file a counter or cross-examine respondent No.1. He also fairly submitted that if, for any reason, this Court comes to a conclusion that notice is not served on the petitioner, the matter may be remitted back

giving opportunity to the petitioner to lead his evidence and the matter can be decided afresh.

8. Having heard both the counsel and from the perusal of the material on record, the admitted facts are that respondent No.1 is the legally wedded wife of the petitioner. Out of the wedlock, they were blessed with two children, including respondent No.2 herein. After marriage, there were disputes with regard to demand of additional dowry, though it has been denied by the petitioner. It is borne on record that a complaint was filed by respondent No.1 against the petitioner for the offence under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. However, the said criminal proceedings have been withdrawn by virtue of a settlement before the Lok Adalat. Thereafter, there was a reunion between the petitioner and respondent No.1. It appears, again disputes arose leading to separate living. In those circumstances, the maintenance case was filed.

9. Though learned counsel for respondent Nos. 1 and 2 have asserted that the notice is served on the petitioner, the endorsement made by the concerned Section would indicate that the notice is not served. When the notice is not served on the petitioner enabling him to file his counter and participate in the proceedings in M.C.No.3 of 2013, his valuable right is

defeated. Therefore, this Court is of the opinion that this is a fit case where the impugned order has to be set aside and the matter has to be remitted to the learned Judge, Family Court to consider the matter afresh.

10. Accordingly, the order passed in M.C.No.3 of 2013 dated 18.6.2014 on the file of the Judge, Family Court, Kurnool, is set aside and consequently, the matter is remitted for fresh consideration giving opportunity to the parties to complete their pleadings and to lead evidence.

11. It is needless to observe that though the impugned order is set aside, in the interest of justice, the maintenance as awarded by the learned Judge, Family Court, Kurnool, on 18.6.2014, shall continue to be paid till fresh orders are passed by virtue of the remand.

12. At this stage, learned counsel for the petitioner would state that the petitioner shall be permitted to pay the arrears of maintenance if any, within a period of three weeks from today to respondent Nos. 1 and 2.

13. In the event of non complying with the said undertaking, respondent Nos.1 and 2 are at liberty to take appropriate steps for recovery of the said arrears as per law.

14. In the light of the above, the Judge, Family Court, Kurnool, is directed to dispose of the matter as expeditiously as

possible, preferably within a period of three months from the date of receipt of a copy of the order.

15. With the above said observations, Criminal Revision Case is allowed.

Pending miscellaneous petitions, if any, shall also stand closed.

P. KESHA RAO,J

Date: 26.9.2018

KPM

