

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.2528 of 2014

ORDER:

Heard the learned counsel for the petitioner and the 1st respondent.

The present revision case is filed assailing the orders passed in F.C.O.P.No.45 of 2012 dated 24.09.2014 on the file of the Judge, Family Court-cum-III Additional District and Sessions Judge, Vizianagaram, awarding a sum of Rs.3,000/- 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 10.06.1972 in the house of the father of the 1st respondent at Kottapeta. After marriage, the 1st respondent stayed with the petitioner at Visakhapatnam. Two years thereafter, they shifted to Vizianagaram to the house of one K.Atchayamma and later to a rented house and they lived in that house up to 1997. Out of wedlock, they were blessed with a son, who is a handicapped person. After the birth of the son, the petitioner started neglecting the 1st respondent. In these circumstances, she was constrained to file M.C.No.41 of 2000 on the file of the Judicial Magistrate of First Class, Special Mobile Court, Vizianagaram. During the pendency of the said M.C., the 1st respondent and the petitioner have compromised the matter at the intervention of the mediators and the petitioner paid a sum of Rs.30,000/- to the 1st

respondent and her son and to that effect a memo was also filed on 10.05.2001. It is also stated in the F.C.O.P. that the petitioner is having a house at Visakhapatnam and is getting rents apart from retirement pension of Rs.15,000/- per month. The petitioner filed counter denying the material allegations made in the F.C.O.P. He also denied even his marriage with the 1st respondent and also the legitimacy of the son. He stated that he has no means to maintain himself and it is very difficult to sustain on meagre amount of pension. The learned Family Judge, after hearing the respective parties and analyzing the evidence, was pleased to allow the F.C.O.P. in part by orders dated 24.09.2014 granting maintenance @ Rs.3,000/- per month to the 1st respondent. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that the 1st respondent is not his legally wedded wife. Since the relationship is denied, the learned Family Judge ought to have given a finding on the same. However, without giving any finding, without appreciating the matter in proper perspective and without there being any evidence on record, maintenance @ Rs.3,000/- per month has been awarded. He also contended that when the maintenance case was compromised by filing a memo towards full and final settlement of claim against the petitioner by receiving Rs.30,000/-, it is not open for the 1st respondent to file the

present F.C.O.P. The Court below also failed to appreciate that the petitioner has already married to one Suryakantham and they got four children.

Learned counsel appearing for the 1st respondent contended that the petitioner, suppressing his earlier marriage, married the 1st respondent and lived with her initially at Visakhapatnam and later they shifted to Vizianagaram. In fact, the petitioner and the 1st respondent lived together up to 1997 at Vizianagaram. Out of wedlock, they were blessed with a son. In fact, the petitioner retired as an Excise Constable and he was receiving pension of Rs.11,000/- at the time of filing of the F.C.O.P. The learned counsel also informed the Court that at present the petitioner is getting more than Rs.25,000/- towards pension. In fact, the present case is squarely covered by the judgment of the Apex Court in **Badshah vs. Sou. Urmila Badshah Godse and another**¹.

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 the legally wedded wife of the petitioner and, if so, whether she is entitled for maintenance?

As far as the first aspect with regard to the relationship between the petitioner and the 1st respondent is concerned,

¹ 2014 CrI.L.J. 1076 (SC)

the 1st respondent specifically pleaded in the F.C.O.P. that her marriage with the petitioner was performed on 10.06.1972 and they lived together up to 1997. Out of wedlock, they were blessed with a son. Though the petitioner has taken a specific plea denying his relationship with the 1st respondent and also with regard to the legitimacy of their son, admittedly, he has not taken any steps to prove that the 1st respondent is not his legally wedded wife. On the other hand, in M.C.No.41 of 2000 filed by the 1st respondent, the petitioner paid Rs.30,000/- towards full and final settlement of the claims of the 1st respondent. So this aspect clinchingly proved that the petitioner admitted that the 1st respondent is his legally wedded wife.

Now coming to the quantum of maintenance is concerned, the petitioner retired as a Constable from Excise department and it is brought on record that he was getting monthly pension @ Rs.11,000/- per month at the time of filing of the FCOP. As contended by the learned counsel for the 1st respondent now the pension would have been about Rs.25,000/- per month. In the FCOP the 1st respondent has categorically pleaded that the petitioner is having a house at Visakhapatnam and getting rents on the same. From a perusal of the counter affidavit, there is no denial as far as the said aspect. When admittedly the petitioner is getting pension and also receiving rents from his house, awarding of Rs.3,000/- per month towards maintenance is not excessive.

On the other hand, the petitioner being the husband is legally and morally obligated to maintain his wife with the same standard of living in which he is leading his life. Nowadays, looking at the cost of living and the rate of inflation, Rs.3,000/- per month is hardly sufficient to sustain. In these circumstances, this Court is of the opinion that there is no irregularity or illegality in the orders passed by the Court below. As such, there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.



P. KESHA RAO, J

Date: 20.09.2018.
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