HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.1518 of 2012

ORDER:

Challenging the order dated 15.02.2012 in M.C.No.92 of 2010 on the file of Judge, Family Court-cum-Additional District Judge, Guntur, awarding maintenance of Rs.3,000/- p.m. to the petitioners 2 and 3 (Rs.1,500/- each) from the date of order while dismissing against 1st petitioner (wife), the instant Crl.R.C. is filed.

2a) The facts in narrow compass are that marriage between the 1st petitioner and 1st respondent was performed on 31.08.2002 as per Hindu customs and rites and the marriage was solemnised; during their wedlock, they were blessed with two children viz. Borugadda Bhuva and Borugadda Bhavana petitioners 2 and 3 herein. At the time of marriage the 1st respondent (husband) was not having any job and after the death of his father, he got job in Veterinary Hospital as Attender on compassionate grounds and therefore, he shifted family to Rentachintala, Guntur District; thereafter, he was transferred to Bhodana village of Bellamkonda Mandal and hence used to shuttle between Guntur and Bhodana; subsequently he addicted to vices like drinking, gambling and flirting and neglected the petitioners; hence, the petitioners are taking shelter in the parents' house and filed the petition for maintenance.

b) The 1st respondent filed counter and opposed the petition contending that 1st petitioner herself left the matrimonial home and there is no fault on his part and she has capacity to maintain herself

and children. He submits that he is ready and willing to take back the 1st petitioner to matrimonial life. He thus prayed to dismiss the petition.

c) The trial Court after hearing both sides and perusing the entire material on record partly allowed the petition granting maintenance at the rate of Rs.3,000/- per month to the petitioners 2 and 3 (Rs.1,500/- each) from the date of its order while dismissing the claim of the 1st petitioner.

Hence, the instant Crl.R.C.

3) Though notice to respondent No.1 was served but there is no representation on his behalf. Hence heard learned counsel for petitioners.

4) The point for consideration is:

"Whether the order of the Trial Court is maintainable on facts and law?"

5) **POINT**: As per Section 125 Cr.P.C, any person having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself, or his legitimate or illegitimate children whether married or not, or his father or mother, unable to maintain themselves is liable to provide maintenance to them. Sofaras wife is concerned, she will be entitled to maintenance only when her case does not fall under Section 125(4) Cr.P.C, which reads thus:

> *"(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."*

The Apex Court in the case of ***Laxmi Bai Patel v. Shyam Kumar Patel***[1], has clarified this aspect stating that wife's right to claim maintenance under Section 125 Cr.P.C can be denied only in the circumstances provided under sub-Section (4) of Section 125 Cr.P.C. The Trial Court refused to award maintenance to the 1st petitioner on the ground that the 1st petitioner has voluntarily come out of the matrimonial home but not due to the negligence or refusal of the respondent. Ofcourse the Trial Court awarded maintenance @ Rs.1500/- per month to each of the two children of the 1st petitioner. Hence the instant Criminal Revision Case is filed seeking maintenance to 1st petitioner on one hand and enhancement of the maintenance awarded to the petitioners 2 and 3.

6) Severely fulminating the order of the Trial Court, learned counsel for petitioners would argue that admittedly the petitioners are the wife and children of the respondent and 1st petitioner is not an educated lady and she has no independent source of income either, whereas the respondent is working as an Attender in Veterinary Hospital in Bhodana Village of Bellamkonda Mandal, Guntur District and getting salary of Rs.16,000/- per month. Considering these aspects, the Trial Court ought to have granted maintenance to her. However, it denied the maintenance to her basing on the admission of the 1st petitioner in her cross-examination that she refused to join the respondent when he telephoned to her. Learned counsel would strenuously argue that refusal to join respondent was not intentional

[1] MANU/SC/0344/2002

but due to compulsion as he was addicted to all sorts of vices and more particularly womanising. Therefore, her refusal should not have been construed as adamancy to deprive her of the maintenance without which it is difficult for her to sustain and serve her children. Sofaras children are concerned, learned counsel argued that both the children of the 1st petitioner are growing up and attending school and therefore, the maintenance @ Rs.1500/- per month awarded by the Trial Court is hardly sufficient to bring them up. He thus prayed to allow the Crl.R.C and award maintenance to 1st petitioner and enhance the quantum of maintenance of petitioners 2 and 3. He placed reliance on the following decisions:

i) ***K. Anjaiah Goud v. State of A.P and another***[2]

ii) ***Naredla Sirisha v. Naredla Sura Reddy and another***[3]

7) I gave my anxious consideration to the evidence on record and the impugned order. Sofaras 1st petitioner is concerned, it must be said, the Trial Court was right in refusing to grant maintenance to her. From the record particulars and that from the evidence of PW.1 it would appear, the 1st petitioner hardly lived with her husband. In her chief-examination she stated that at the time of marriage, the respondent was jobless and fortunately he could get the post of Attender in Veterinary Hospital on compassionate grounds as his father died in harness while working as Armed Reserve Sub-Inspector. She further stated that after getting job both of them shifted

[2] 2009 (3) ALT (Crl.) 16 (AP)
[3] 2010 (3) ALT (Crl.) 240 (AP)

their family to Rentachintala of Guntur District, where respondent used to work. Thereafter, the respondent got transferred to Bhodana Village of Bellamkonda Mandal and he used to shuttle between Guntur and Bhodana. So her evidence manifests that she lived with respondent at Rentachintala for some time. Thereafter, when he was transferred to Bellamkonda, she remained at Guntur which is her parental town. The respondent used to shuttle between Guntur and Bhodana. This fact supports the version of the respondent that as the 1st petitioner was brought up in town atmosphere she developed aversion towards him and used to come over to her parents' house. In this backdrop, when her admission in the cross-examination is perused, she stated that she did not go to Bellamkonda of Sattenapally while respondent worked there and he was shuttling between Bellamkonda of Guntur. She did not give any reason why they did not setup a family at his workplace i.e, Bellamkonda. She further admitted that she refused to join the respondent when he telephoned to her. Ofcourse she stated that she did not refuse to join him when he sent mediators as suggested by him. She curtly stated that she was not inclined to go to respondent to the matrimonial home. This is the evidence of petitioner (PW.1). Ofcourse the apparent reason for her not joining the respondent is that he was addicted to all sorts of vices like drinking, gambling and flirting with girls and he neglected her and children. Generally, when a husband is addicted to vices, a dutiful wife will not leave him and go away to her parental home, on

the other hand she would try to live with him and mend his ways. We do not find in the evidence of PW.1 as having made any such efforts. Sofaras the allegation of the vices of respondent are concerned, except the oral assertion of the petitioner (PW.1) there is no other evidence placed before the Court. She has not even named the woman with whom the respondent was allegedly moving. PW.2 who is the paternal uncle of the 1st petitioner, in his evidence except stating that some disputes arose between couple, did not specifically make a statement about the vices of the respondent. In the cross-examination he stated that they are willing to send the petitioner to the respondent if she is willing to accept.

8) So the facts and evidence would clearly depict that 1st petitioner's residing away from her husband is not supported by any plausible ground. Her attitude gives an inference that without lawful excuse she remained with her parents. In this factual situation, the 1st petitioner is not entitled to maintenance as laid under Section 125(4) Cr.P.C. The Trial Court has rightly refused to grant maintenance to her. The wife who lives separately from the society of her husband without any lawful excuse does not deserve maintenance. It was so held in the case of ***Anil v. Smt. Sunita***[4]. The decisions in ***K.Anjaiah Goud'***s case (2 supra) and ***Naredla Sirisha'***s case (3 supra) relied upon by the learned counsel for petitioners will not help the cause of 1st petitioner.

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[4] 2016(4) Crimes 648(MP) = MANU/MP/0785/2016

9) Then, coming to petitioners 2 and 3, the Trial Court awarded only Rs.1500/- each to them, which, in the present day of skyrocketing prices, is hardly sufficient particularly when the children are growing up and attending school. Respondent No.1 is concerned, admittedly, he is a Government employee and though he claimed that he was getting only Rs.10,000/- as salary, he did not produce salary certificate before the Trial Court. Thus, it can be inferred that he is getting much more than what he pleaded and thereby it can be inferred that he can maintain his children. Having regard to the change in price index and other increasing needs of the children of the 1st petitioner who are growing up, this Court is inclined to enhance the maintenance of petitioners 2 and 3.

10) In the result, this Criminal Revision Case is partly allowed and while upholding the order of the Trial Court in dismissing the claim of the 1st petitioner, the maintenance of petitioners 2 and 3 is enhanced from Rs.3,000/- to Rs.6,000/- i.e, Rs. 3,000/- each to the petitioners 2 and 3 from the date of filing Crl.R.C.

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

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U. DURGA PRASAD RAO, J

Date: 26.12.2018
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