

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.297 of 2015

ORDER:

Heard the learned counsel for the petitioner.

Pursuant to the orders of this Court, the notice taken out on the 1st respondent is served and the same has been filed along with a memo vide USR No.2720 of 2015. In spite of service of notice, the 2nd respondent has not chosen to appear either in-person or by engaging any counsel.

The present revision case is filed questioning the orders passed in M.C.No.26 of 2011 dated 17.12.2014 on the file of the Judge, Family Court-cum-IX Additional District and Sessions Judge, East Godavari, Rajahmundry, awarding a sum of Rs.3,000/- towards maintenance in favour of 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 20.09.1990 at Satyanarayana Swamy Vari Temple, Aryapuram, Rajahmundry as per Hindu rites and customs. Out of wedlock, they were blessed with a son and a daughter, whose ages were 19 and 18 years respectively at the time of filing of the maintenance case. The 1st respondent celebrated her daughter's marriage with the mercy of her father. The petitioner addicted to vices and he was influenced by his un-married brothers and sisters. For the purpose of blaming the 1st respondent and her daughter, the petitioner

even went to the extent of projecting them as prostitutes. It is stated in the maintenance case that the petitioner is working as a driver in ONGC and drawing a salary of Rs.10,000/- per month. The petitioner filed counter and denied the marriage with the 1st respondent. He stated that the 1st respondent already married to one Challa Satyanarayana of East Gonagudem and is subsisting. The petitioner runs a pan shop in Gandhipuram-II by the side of hospital of one Dr. Srinivas Rao. The 1st respondent's brother-in-law used to take treatment in Vimalamma hospital and used to purchase items and got acquaintance with the petitioner. The 1st respondent trapped the petitioner by making false representations that she was un-married. The petitioner without knowing the said fact lived with her. He does not own any property of his own. He never harassed the 1st respondent. It is also stated in the counter that the 1st respondent is doing business in finance and also does tailoring work. The land admeasuring Ac.1.00 given to the 1st respondent at the time of marriage was sold in the year 2011. Basing on the said pleadings and after analyzing the evidence, the learned Family Judge allowed the maintenance case in part by orders dated 17.12.2014, directing the petitioner to pay a sum of Rs.3,000/- per month to the 1st respondent towards maintenance. Aggrieved by the said orders, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that in the peculiar facts and circumstances of the case the 1st respondent is not entitled for any maintenance for the reason that as per her own admission, she is earning Rs.3,000/- per month on tailoring apart from receiving the sale consideration after selling the Ac.1.00 land, which was gifted to her at the time of her marriage. The learned counsel further contended that the petitioner is working as an opting driver and is not earning more than Rs.3,000/- per month.

Having heard the counsel and from the perusal of the material on record, it is revealed that the petitioner in his counter filed before the Court below has categorically stated that he runs a pan shop in Gandhipuram-II by the side of hospital of Dr. Srinivas Rao. He denied the marriage with the 1st respondent. However, he stated that the 1st respondent's brother-in-law used to take treatment in the hospital and in that context he came into contact with him. The 1st respondent trapped him by saying that she was un-married and interested to marry him. In a way though he disputed the marriage with the 1st respondent, he has admitted that he and the 1st respondent lived as wife and husband. They were blessed with two children. The question that crops up for consideration is:

Whether the 1st respondent is unable to maintain herself and whether she is entitled for the maintenance as awarded by the Court below?

The 1st respondent in the maintenance case has categorically stated that the petitioner is working as a Driver in ONGC and drawing a salary of Rs.10,000/- per month. Though she made such a statement, she has not produced any evidence to that effect. Per contra, the petitioner in his counter stated that he is working as an opting driver. That apart, he also stated that he runs a pan shop in Gandhipuram-II by the side of hospital of Dr. Srinivas Rao. However, no evidence is brought on record by the petitioner with regard to the income on the said pan shop or that he is earning only Rs.2,000/- or Rs.3,000/- per month. Though the learned Family Judge presumed that now a days any driver earns not less than Rs.500/- to Rs.1,000/- per day, such presumption cannot be deduced without there being any evidence. However, when the petitioner has categorically pleaded that he is working only as an opting driver, he could not produce evidence in that regard by examining any other witness. That apart, there is no evidence with regard to the income on the pan shop, which is being run by the petitioner in Gandhipuram-II. But, on the other hand, in the cross-examination, PW.1 has categorically admitted that she is earning a sum of Rs.3,000/- per month on tailoring. That by itself is not a ground to negative the entitlement of maintenance to the 1st respondent. Looking at the cost of living and the rate of inflation in the recent times, the sum of Rs.3,000/- per month as awarded by the learned Family

Judge towards maintenance cannot be taken as excessive. The petitioner being the husband of the 1st respondent, is legally and morally responsible to maintain the 1st respondent.

Though the learned counsel appearing for the petitioner vehemently argued that since the 1st respondent is having independent source of income, the petitioner need not be saddled with maintenance, cannot be countenanced on the ground that merely because the 1st respondent accepted that she is earning a sum of Rs.3,000/- per month on tailoring, it cannot be said that she is not entitled for maintenance. As discussed above, with a meagre income of Rs.3,000/-, it is very difficult to sustain for an independent person in the present society, more so, when he/she is having age related medical problems and etc.

In fact, the proceedings initiated under Section 125 Cr.P.C., are not to punish for the past neglect, but to prevent the vagrancy to those who can provide support for those who are unable to maintain themselves. “Unable to maintain” means inability of wife to maintain herself in a way she can used in her husband’s place. She has a moral claim to support. Section 125 Cr.P.C., is a measure of social justice specifically enacted for maintenance of wife and children. The burden is on the wife in the first instance to show that she is unable to maintain herself and the husband has means and the same are sufficient and the husband neglected and

refused to maintain the wife. Further, the husband has to establish that with the income she earned, she is able to maintain herself. Even if the wife is making efforts to survive after desertion, cannot be taken into consideration.

In the case on hand, merely because it is brought on record that the 1st respondent is earning a sum of Rs.3,000/- per month on tailoring that itself is not a ground to refuse maintenance to her. 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.

Date: 31.08.2018.
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P. KESHA RAO, J

