

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6642 of 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order 12.01.2016 in Criminal Revision Petition No.56 of 2015 on the file of the Court of III Additional Sessions Judge, Bhimavaram, West Godavari District, whereby the order dated 29.04.2015 passed in M.C.No.22 of 2014 by the II Additional Judicial First Class Magistrate, at Bhimavaram was confirmed.

The petitioner is the respondent in M.C.No.22 of 2014 and husband of respondent No.2 herein.

Respondent No.2 filed petition under Section 125 of Cr.P.C. for grant maintenance at the rate of Rs.15,000/- per month alleging that her marriage with the petitioner was performed on 08.04.2010 at Rice Millers Association Hall, Town Railway Station Road, Bhimavaram – 2 in the presence of relatives of both parties. At the time of marriage an amount of Rs.5,00,000/- was paid as dowry, as demanded by the parents of the petitioner besides presentation of 50 sovereigns of gold to the respondent and 10 sovereigns of gold to the petitioner herein. The parents of the petitioner made a promise that they will deposit the said amount of Rs.5,00,000/- in the name of the respondent in a nationalized bank after the marriage and they also demanded the father of the respondent to transfer some properties in the name of the respondent as a condition to perform the marriage and on their demand the mother of the respondent executed a registered

settlement deed dated 05-02-2010, Document No.433/2010 registered with S.R.O., Bhimavaram to an extent of 266.2 square yards of site in R.C.No.49/1, Plot No.12 of China Amiram Village in favour of the respondent and the father of respondent also executed a registered settlement deed dated 11.03.2010, Document No.375/2010 registered with S.R.O., Ganapavaram to an extent of 183.4 square yards of site in R.S.No.244/1 of Ganapavaram Village in favour of the respondent.

One month prior to the marriage, father of the petitioner informed the father of the respondent that they got another match to the petitioner offered huge dowry and demanded father of the respondent if he wish to perform the marriage of the respondent with the petitioner, he has to execute a consent deed in his favour that he will pay additional dowry to the petitioner, his father and mother, having no other option, father of the respondent executed a consent deed that he will deposit his retirement benefits of Rs.10,00,000/- on or before 31.08.2012 to the credit of the petitioner's account in a bank and also agreed to deposit the maturity value of two insurance policies worth of Rs.8,00,000/- (LIC policy Nos.803177819 and 801147886).

The marriage of the petitioner was performed on 08.04.2010 as stated above and as demanded by the parents of the petitioner, the father of the respondent arranged everything and later the respondent joined the company of the petitioner to lead marital life.

Thereafter, the petitioner herein and his parents together demanded the respondent to bring the house hold articles from her parents' house and the respondent informed the same to her parents. Then, the parents of the respondent sent her to the

petitioner's house along with all required house hold articles, the petitioner and his parents spent the said dowry amount of Rs.5,00,000/- which was entrusted to them by the father of the respondent, for their luxuries and thus failed to deposit the said amount in the name of the respondent in any bank as promised by them at the time of the marriage.

The respondent further alleged that after spending the said amount of Rs.5,00,000/-, the petitioner, his parents joined together and started harassing the respondent and used to beat her and used to allot entire household work to the respondent and demanded the respondent to bring an amount of Rs.10,00,000/- towards additional dowry from her parents, then only they will permit respondent to lead marital life with the petitioner and harassed the respondent both physically and mentally and they also stated that the said amount of Rs.5,00,000/- is not sufficient to their status.

The respondent was not provided food and shelter and the petitioner totally refused and neglected to maintain her. As the petitioner and his parents continued to harass the respondent for her failure to meet the illegal demand, lodged report with the police, which was registered as a case in Crime No.38 of 2014 for the offences punishable under Section 498-A of I.P.C. and under Section 4 of Dowry Prohibition Act and the same is pending for investigation on the date of filing of M.C.

The petitioner owned and possessed a residential house at Rayalam, Bhimavaram Mandal and getting an income of Rs.50,000/- per month as rent and also possessed cash in lakhs and doing money lending business, earning Rs.1,00,000/- per

month. The petitioner is also doing real estate business and earning an amount of Rs.50,000/- per month and the petitioner possessed sufficient means to maintain the respondent, whereas the respondent/wife did not possess any means much less sufficient means to maintain herself and requested to pay maintenance at the rate of Rs.15,000/- per month.

The petitioner filed counter while admitting performance of marriage denied the alleged payment of dowry and presentation of gold etc., so also subjecting the respondent to cruelty for her failure to meet the illegal demand. He specifically contended that he is suffering from ill-health, thereby resigned to his employment, as such he did not possess any means much less sufficient means to pay maintenance to the respondent at the rate of Rs.15,000/- per month and prayed for dismissal of the petition .

During enquiry, the respondent (petitioner before the trial Court) herself examined as P.W.1 and no documents were marked, whereas the petitioner herein was examined as R.W.1 besides examining R.W.2 and marked Exs.R.1 to R.14.

Upon hearing argument of both the counsel, the Magistrate allowed the petition and awarded maintenance at the rate of Rs.8,000/- per month as the petitioner herein possessed sufficient means to maintain the respondent/wife.

Aggrieved by the order passed by the Magistrate in M.C.No.22 of 2014, the petitioner herein preferred Criminal Revision Petition No.56 of 2015 before the III Additional Sessions Judge, Bhimavaram, which ended in dismissal confirming the order passed by the Magistrate.

The petitioner having suffered maintenance orders before the Magistrate, confirmed by the Sessions Court, the present petition is filed under Section 482 of Cr.P.C. mainly on the ground that the petitioner herein has no means to maintain himself and that he did not possess any property fetching income to pay maintenance to the respondent; the trial Court and the revisional Court did not consider the letter of resignation and awarded maintenance at the rate of Rs.8,000/- per month erroneously and requested this Court to set aside the orders passed by the Court below exercising power under Section 482 of Cr.P.C.

During hearing, Sri B.Chandra Sekhar, learned counsel for the petitioner contended that if Ex.R.7 is taken into consideration, the trial Court and the revisional Court ought not to have ordered payment of maintenance at the rate of Rs.8,000/- per month and the finding recorded by the Magistrate and the trial Court for rejection of Ex.R.7 is erroneous on the face of the record and apart from that the evidence of R.W.2 is corroborating the evidence of R.W.1, which clinchingly established that he was relieved from the services of Sify Hardware Limited on 09.07.2012. The trial Court and the revisional Court did not consider Ex.R.7 and committed error in awarding maintenance at the rate of Rs.8,000/- per month and requested to quash the order 12.01.2016 in Criminal Revision Petition No.56 of 2015 on the file of the Court of III Additional Sessions Judge, Bhimavaram, West Godavari District, whereby the order dated 29.04.2015 passed in M.C.No.22 of 2014 by the II Additional Judicial First Class Magistrate, at Bhimavaram was confirmed.

Sri K.V.L.Narasimha Rao, learned counsel for the respondent No.2 supported the order of trial Court and revisional Court in all respects while contending that the reason recorded by the trial Court and affirmed by the revisional Court for not accepting Ex.R.7 is just and reasonable, as no one was examined to prove Ex.R.7, more particularly the person who issued Ex.R.7 and in the absence of examination of person, who issued Ex.R.7, mere production of Ex.R.7 is not sufficient to accept that the petitioner was relieved from the services of SIFY Hardware Limited. Thus, the trial Court and the revisional Court did commit no error in awarding maintenance at the rate of Rs.8,000/- per month and requested this Court to dismiss the petition.

The marriage between the petitioner and the respondent; their living separately, so also pendency of criminal proceedings against the petitioner are not in dispute. When the respondent lodged report alleging that she was subjected to cruelty for her failure to meet the illegal demand of payment of additional dowry, there is any amount of justification for her separate living. Failure to provide any maintenance to the respondent/wife during subsistence of marriage between the petitioner and respondent, amounts to refusal or negligence on the part of the petitioner. The trial Court and the revisional Court recorded concurrent findings to the effect that the petitioner refused and neglected to maintain the respondent and the said fact finding cannot be disturbed while exercising power under Section 482 of Cr.P.C.

The core contention urged before this Court is that the petitioner though worked as an employee in SIFY Hardware Limited, due to health problems more particularly spinal card

problem, he resigned to his employment and he was relieved from service vide Ex.R.7. Ex.R.7 is the letter issued by SIFY Hardware limited. As per Ex.R.7 the petitioner was relieved from the employment. Except producing Ex.R.7 by the petitioner, none were examined to prove Ex.R.7 more particularly by examining the person who issued Ex.R.7 or at least by producing acquittance register or any other document from the SIFY Hardware limited to substantiate the contention that the petitioner was relieved from service of SIFY Hardware Limited. Admittedly, the petitioner is Engineering Graduate working in SIFY Hardware Limited. But his contention is that he was removed from service, to establish the said fact he produced Ex.R.7 only, and on the strength of the Ex.R.7 letter, the petitioner requested this Court to dismiss the maintenance petition. Since the petitioner did not examine any competent witness to speak about relieving of petitioner by SIFY Hardware Limited, the trial Court did not accept Ex.R.7 letter and rejected the contention of the petitioner herein that he was relieved from service by SIFY Hardware Limited. Even before the revisional Court also the petitioner did not make any attempt to adduce additional evidence, in such case the rejection of contention of the petitioner that he was removed from service by SIFY Hardware Limited cannot be interfered since the power of this Court is limited and this Court while exercising power under Section 482 of Cr.P.C. cannot re-appreciate the evidence.

Power of the revisional Court is also limited and the revisional Court can exercise such power only in exceptional circumstances. Though, power is conferred on the High Court or Court of Session acting in the exercise of its powers of revision

under Section 397 or 401 Cr.P.C, the revisional Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court below is without any evidence or material. Section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court or Court of Session by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the revisional Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the revisional Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily.

In view of the powers conferred on Court under Section 397 and 401 of Cr.P.C., the revisional Court did not interfere with the order passed by the Magistrate.

Coming to the powers of this Court; this Court normally cannot interfere with concurrent fact findings recorded by the Courts below, more particularly when the concurrent findings are recorded with regard to the income or source of income of the petitioner while holding that the respondent did not possess

except possessing residential plots, which would not fetch any income for her maintenance.

The powers of this Court also limited and this Court cannot appreciate the evidence but evaluate the material while exercising power under Section 482 of Cr.P.C.

Learned counsel for the petitioner, during hearing, drew the attention of this Court to the depositions P.W.1 and R.Ws.1 and 2. R.W.1 admitted that certain amount was transferred to P.W.1/wife's account. R.W.2 stated that the account No.32646759295 was closed on 16.01.2013 and the amount was transferred to savings account. Account No.32595250137 is joint account of respondent and her mother. Therefore, she received benefit of waiver of gold loan granted by the Government. But the said evidence of R.Ws.1 and 2 is not sufficient to conclude that the respondent possessed sufficient means to maintain herself.

The petitioner is able-bodied person and engineering graduate, who can earn income and his earning capacity was disclosed by Ex.R.7 as an engineer. Thus, the petitioner is able to earn sufficiently being an engineer working anywhere, besides that he owned and possessed sufficient income fetching property. Though the respondent contended that the petitioner is carrying on money lending business and also getting rents of Rs.50,000/- per month from his house property, these facts are not substantiated by any material. Even assuming that the petitioner did not possess any house and not getting any income by way of rents and real estate business, still the petitioner being an engineering graduate is able to earn sufficiently as an engineer in SIFY Hardware Limited. Therefore, his earning capacity can be

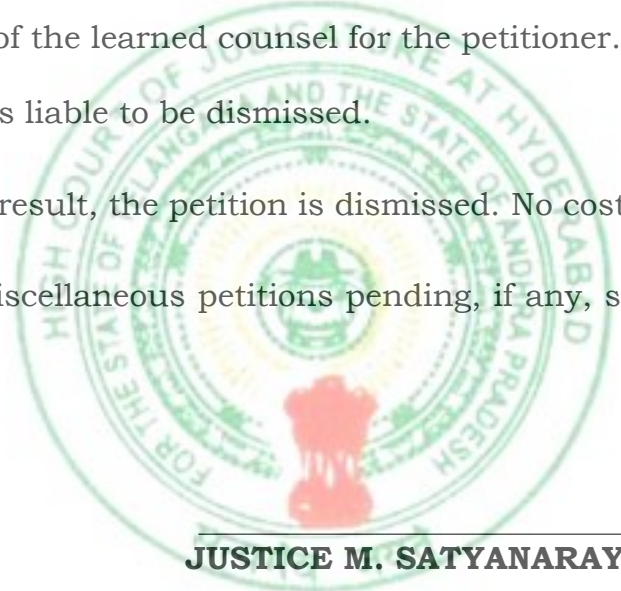
estimated basing on the admission made by the petitioner in his evidence.

Therefore, granting of maintenance at the rate of Rs.8,000/- per month by the trial Court is just and reasonable since the respondent is expected to lead same standard of living, which the petitioner is leading and to meet the expenses for food, medical and clothing etc. Therefore, the amount awarded by the trial Court and affirmed by the Sessions Court is commensurate with the price index and cost of living.

In view of my foregoing discussion, I find no substance in the contentions of the learned counsel for the petitioner. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.



JUSTICE M. SATYANARAYANA MURTHY

29.08.2018
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