

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2696 OF 2017

JUDGMENT:

The revision petitioner is respondent in F.C.M.C. No.37 of 2014, on the file of the Judge, Family Court - cum - Additional District Judge, Anantapuramu.

2. Aggrieved over the order, dated 22.03.2017, awarding Rs.10,000/- to his wife, who is respondent No.1 herein and petitioner No.1 in the aforesaid FCMC, and Rs.5,000/- to the child, who is respondent No.2 herein and petitioner No.2 in the aforesaid FCMC, towards monthly maintenance, the revision petitioner preferred the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

3. Heard Sri K. Venkat Rao, learned counsel for the revision petitioner - husband, and Sri I. Venkata Prasad, learned counsel for respondent Nos.1 and 2 - wife and child.

4. The main submissions of the learned counsel for the revision petitioner are; first, there was no reason for wife and child to live separately who have on their own volition left his society and even efforts made through elders proved futile and, therefore, the learned Judge was not right in holding that the wife and child are entitled to separate living.

i) Second, the husband has no means at all to pay the maintenance though, he worked earlier in Wipro, Bangalore, drawing Rs.80,000/- per month at the time of marriage and later worked in Abudabi and Qatar, earning Rs.2,00,000/- per month, but since he was subjected to litigation initiated by the wife, he lost his job and virtually dependant upon his parents which the learned Judge completely failed to take note of. It is also according to the learned counsel that the wife is able to sustain herself as her father is working in Town Planning Section of Anantapuramu Municipal Corporation as Chain-man and, therefore, sought to set aside the order of maintenance awarded to the wife and child.

5. The learned Judge, Family Court, taking note of the mandatory requirement of Section 125 of the Code, formulated the point for consideration in assessing the evidence of PWs.1 and 2, who are wife and an elder to the mediation respectively, and marked Exs.A-1 to A-4 and the evidence of husband as RW.1 and arrived at the finding that the cause for separation between the couple ventilated by the wife has to be accepted in view of the evidence of PW.2 an elder to the mediation and, thus, held that her stay with her parents is justifiable.

6. In regard to claim for monthly maintenance made by the wife and child, the learned Judge held that there is nothing on record to substantiate the stand taken by the husband as to her ability to

maintain herself to prove that she was earning money by undertaking tuitions as even the suggestion made therefor was bluntly denied by the wife.

7. Turning to the income of the husband, the learned Judge having referred to his occupation in Wipro at the time of marriage, drawing Rs.80,000/- per month, then working at Abudabi and Qatar, earning Rs.2,00,000/- per month, disbelieved his stand that he is sitting idle and opined that it is inconceivable that he would be sitting idle though, accepting that he lost his job and then based on the answer he has given in his cross-examination that his father is working and thereby opined that even if the husband is not working anywhere, it cannot be said that he was not in a position to pay money for maintenance because of his earlier earnings in India and Abroad and even otherwise, it is his moral and legal obligation either to beg or borrow and finally, concluded by awarding Rs.10,000/- to the wife and Rs.5,000/- to the child towards their monthly maintenance from the date of petition.

8. Touching the submissions made by the learned counsel for the husband, evidence of PW.2, by name, B. Jahangeer, would prove that a panchayat was held to resolve the disputes between the spouses. If the stand taken by the husband that his wife is very adamant and entire fault lies with her and because of adamancy she could not adjust with his parents and herself went away is true, he would have elicited

something concrete from PW.2, in his cross-examination, or at least made an attempt to examine any other *panchayatdar* to the mediation which he did not do, thereby giving rise to an inference adverse to the stand he has put forth to arrive at the view the stand he has taken is entirely artificial and unnatural. Therefore, the finding recorded by the learned Judge that her separate living with her child is rightly justified and cannot be interfered.

9. Turning to the monthly maintenance awarded to the wife and child and the capacity or means of the husband, the very fact that he worked in Wipro at the time of marriage, drawing Rs.80,000/- even as early as 2012 as marriage of parties had taken place on 12.03.2012, later working at Abudabi and Qatar, drawing Rs.2,00,000/- per month and working as Business Development Manager in M/s. I.S.I. Company, Hyderabad, would all *ex facie* reflect that he has got rich experience and would get a job as that would not be difficult for him and the stand he has taken that on account of litigation initiated by the wife, he lost his job is difficult to believe as nothing is placed on record to show that he was terminated by M/s. I.S.I. Company or even did not examine any persons authorized to depose to show that he was not employed and his job was terminated. Therefore, to the extent of Rs.10,000/- awarded towards monthly maintenance of the wife, it cannot be viewed as unreasonable in view of the family status of the wife, soaring price index and spiraling prices of articles of daily

consumption and present day cost of medical expenditure and education to the minor child.

10. So far as the amount of Rs.5,000/- awarded to the child is concerned, his age was shown as 20 months in 2014 and he must be now aged around 5 years and, therefore, it would be reasonable to reduce the monthly maintenance from Rs.5,000/- to Rs.3,000/-. Thus, the husband - revision petitioner is directed to deposit the arrears of maintenance within six (06) weeks from today.

11. Accordingly, the Criminal Revision Case is allowed in part with costs, to the extent indicated in the above.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

January 02, 2018.

Mgr/PV