

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No. 2831 of 2017

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

The present criminal revision case is filed questioning the order dated 09.08.2017 passed in F.C.M.C.No.48 of 2016 on the file of the Court of the Judge, Family Court-cum-III Additional District Judge, Vizianagaram, awarding a sum of Rs.7,000/- and Rs.3,000/- per month to the respondents 1 and 2 respectively towards maintenance from the date of filing of the petition.

The facts of the case are that the respondents 1 and 2 filed FCMC No.48 of 2016 against the petitioner seeking a sum of Rs.15,000/- and Rs.10,000/- per month respectively towards maintenance against the petitioner on the file of the Court of the Judge, Family Court-cum-III Additional District Judge, Vizianagaram. It is the case of the respondents 1 and 2 that the marriage of the first respondent with the petitioner was performed on 26.08.2005 at Tekkali at her grandmother's house as per Hindu rites and customs. At the time of marriage, the petitioner was working in electrical department and the parents of the first respondent, paid Rs.2 lakhs towards dowry, 4 tulas of gold to the petitioner and 6 tulas of gold to the first respondent. Out of wedlock, they were blessed with the second respondent on 02.09.2011. After the delivery of the second respondent, the petitioner never turned up to see the female child and he started demanding an amount of Rs.2 lakhs towards

expenses to meet the future welfare of the child and towards additional dowry and also on the ground that if he married any other lady, he would have been given at least Rs.10 lakhs towards dowry. The petitioner was consuming alcohol daily and demanding the first respondent to bring additional dowry. In fact, he spent the entire salary amount on consuming liquor. He never treated the respondents 1 and 2 with love and affection. The first respondent in order to feed the second respondent, joined as nurse in a private hospital on monthly salary of Rs.3,000/- and with that amount, she was able to feed the second respondent. The petitioner driven out the respondents 1 and 2 from his house one year prior to filing of the maintenance case and threatened to kill them if they come without bringing additional dowry as demanded. Even in the panchayat held, the petitioner abused the first respondent and her parents and he confirmed that he will take them back when the amount is paid. In those circumstances, the first respondent is residing with her parents. In fact, the petitioner is earning Rs.45,000/- per month besides having a house at Tekkali and also house site at Pathapatnam worth about Rs.30 lakhs and therefore, he is having sufficient means to maintain the respondents 1 and 2. She also stated that she is incurring a sum of Rs.3,000/- per month for education of the second respondent and for maintenance of the second respondent, she is incurring a sum of Rs.10,000/- per month. The petitioner filed his counter denying the averments made in the maintenance case and contended *inter alia* that after the marriage, they led happy marital life for about 8 years during which period he purchased a house in the name of the first respondent.

The first respondent used to quarrel with him on every trivial issue and leaving his conjugal society most of the time along with the second respondent. In fact, she stayed in her mother's house for most of the time. In the month of June, 2014, the first respondent left the house without any information to the petitioner and taken away all the important certificates, documents, marriage photographs and also 25 tulas of gold ornaments and Rs.50,000/- cash. In fact, in the year 2006, the first respondent joined in Laxmi Nursing Home at Parlakimidi, Odisha State as Nurse and she was earning Rs.20,000/- per month. Since the first respondent is in a position to earn for herself, she is not entitled for any maintenance, apart from other aspects. During the course of trial, the first respondent examined herself as PW-1 and no documents were marked. On the other hand, the petitioner himself examined as PW-1 and salary certificate is marked as Ex.R-1, loan account statement issued by the State Bank of Hyderabad, Tekkali Branch is marked as Ex.R-2, Xerox copy of the postal S.B. account pass book showing that he is depositing a sum of Rs.5,000/- per month in the name of the mother of the first respondent and second respondent being the nominee as marked as Ex.R-3. After scrutinizing the oral as well as the documentary evidence, the learned Family Judge passed orders on 9.08.2017 and allowed the maintenance case in part granting maintenance @ Rs.7,000/- and Rs.3,000/- per month to the respondents 1 and 2. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel appearing for the petitioner, would contend that the award of maintenance @ Rs.7,000/- and Rs.3,000/- per

month to the respondents 1 and 2 is illegal and vitiated by material irregularities. The learned Family Judge failed to take note of the fact that the first respondent voluntarily left the matrimonial house and as such she is not entitled for any maintenance. The first respondent being a qualified nurse, and she is working as nurse in Laxmi Nursing Home since 2009, she is not entitled for any maintenance. During the course of arguments, the learned counsel for the petitioner fairly conceded that the petitioner has no grievance for paying maintenance to the second respondent. He also brought to the notice of this court that the petitioner is getting salary of Rs.12,000/- after deductions and he cannot afford to pay Rs.10,000/- to the respondents 1 and 2.

Per contra, the learned counsel appearing for the respondents 1 and 2, supported the impugned orders and contended *inter alia* that the first respondent is not working as nurse and in fact, she has been removed from the said job and at present she is idle. Therefore, she sought for dismissal of the criminal revision case.

Having heard both the learned counsel and a perusal of the material on record, it is revealed that the respondents 1 and 2 filed maintenance case against the petitioner claiming a sum of Rs.15,000/- and Rs.10,000/- per month respectively. The learned Family Judge, on appreciating the evidence granted a sum of Rs.7,000/- and Rs.3,000/- per month respectively towards maintenance.

The point that arises for consideration is:

“Whether the amount of maintenance as awarded by the learned Family Judge, is liable to be sustained?”

The first respondent herself examined as PW-1 whereunder she reiterated the petition averments. During the course of cross examination she admitted that three months after the marriage, her grandfather joined her in the nursing course and after completing the same, she joined as nurse in Laxmi Nursing Home, Parlakimidi, Odisha State in the year 2009. She denied that the petitioner purchased a flat in her name by borrowing the amounts from others. She also specifically denied the suggestion that the petitioner was ready and willing to live with her. She also denied the suggestion that the petitioner is depositing a sum of Rs.5,000/- in the name of the second respondent. In fact, the sister of the petitioner is depositing a sum of Rs.5,000/- in the name of the second respondent. Per contra, the petitioner also examined himself as RW-1 and he also reiterated the averments made in the counter. He admitted that he did not file any document to show that he purchased the property in the name of the first respondent. He also admitted that he has not filed any document to show that in the year 2006, the first respondent joined in Laxmi Nursing Home and was earning Rs.20,000/- per month. In fact, he specifically admitted that he is working as electrical lineman and drawing a salary of Rs.32,170/-. He has his own house and a site at Pathapatnam. He also admitted that he has bank balance of Rs.2 lakhs as on 02.06.2015.

From the evidence adduced on behalf of the parties, it is revealed that though PW-1 has categorically stated that the petitioner is earning a sum of Rs.45,000/- per month, no evidence is forthcoming on that aspect. She also categorically stated that while she was staying at Vizianagaram, she lost job as nurse. The petitioner in his cross examination has categorically admitted that he is having sufficient properties in the form of a house, house site apart from the bank balance and working as lineman, drawing a salary of Rs.32,170/- as per Ex.R-1. Admittedly, the petitioner and the first respondent are living separately since 2014. The petitioner being the husband, is legally and morally bound to maintain the respondents 1 and 2. The evidence adduced establish that the petitioner neglected to maintain them and failed to prove that the first respondent has got independent source of income to maintain herself and second respondent. The petitioner since separation is not paying anything to the respondents 1 and 2 for their maintenance. Therefore, on appreciation of the pleadings as well as evidence adduced on behalf of the parties, it is established that the petitioner totally neglected and refused to maintain the respondents 1 and 2. On the other hand, the first respondent is totally depending upon the mercy of her parents. It is relevant to mention that the petitioner in his cross examination admitted that his mother is staying with him and she is getting RS.12,000/- per month as pension. It is settled law that when the respondents 1 and 2 are not having any income of their own, the petitioner being the husband and lineman in electrical department, and having sufficient means, cannot disown his responsibility to maintain them

and pay maintenance. Though the petitioner denied all the suggestions put-forth to him in the cross examination and at the same time, he miserably failed to establish that the respondents 1 and 2 have got any independent source of income. Therefore, he cannot escape from his legal obligation to maintain the respondents 1 and 2. In fact, in a decision reported in K. LAKSHMI AND ANTOHER v. V.K. SATYANARAYANA AND ANOTHER¹ it was held as under:

“The quantum of maintenance to a wife or child or parent has to be fixed in the light of the facts and circumstances of each case with due regard to the capacity of the husband and the needs of the claimant as also the cost of living bearing however in mind that the proceedings are merely ‘maintenance proceedings’ intended to provide not a lavish grant but the necessary sustenance amount covering food, clothing and shelter.”

Under these circumstances, this Court does not find any irregularity or illegality in the orders passed by the learned Family Judge and 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, pending in this criminal revision case shall stand dismissed.

P. KESHAVA RAO, J

Date: 07.08.2018
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¹ 1979(2) APLJ 91 (NOC)

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