

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.3287 of 2017

ORDER:

Heard the counsel for the petitioner as well as the learned counsel for the first respondent.

The present revision case is filed against the orders dated 22.09.2017 passed in F.C.M.C.No.6 of 2017 on the file of the Court of the Judge, Family Court-cum-III Additional District and Sessions Judge, Srikakulam awarding a sum of Rs.10,000/- towards monthly maintenance to the first respondent herein from the date of filing of the petition and Rs.5,000/- towards litigation expenses.

The facts of the case are that the first respondent herein is the legally wedded wife of the petitioner and their marriage was solemnized on 20.03.2003. At the time of marriage, the parents of the first respondent presented Rs.1,50,000/- cash and 5 tolas of gold articles to the petitioner apart from Rs.50,000/- towards miscellaneous expenses. The case of the first respondent is that they lived together happily for a period of one year and thereafter, the petitioner and his family members started harassing the first respondent both physically and mentally for additional dowry. The parties have no issues. The petitioner used to beat the first respondent mercilessly, demanding additional dowry and other properties from her parents. The petitioner is working as School Assistant in Z.P.H.School, Amalapadu village and is getting salary of Rs.35,000/- per month and also having own house at Palasa and three acres of wet land. Even on the wet land he is getting Rs.50,000/- per annum. Though the petitioner herein filed a counter

admitting the relationship with the first respondent, he denied the other allegations made in the petition. During the enquiry, the first respondent examined herself as PW-1 and Exs:P-1 to P-6 are marked. She also examined PWs.2 and 3 on her behalf. On behalf of the petitioner, he examined himself as RW-1 and marked Exs:R-1 to R-9. Apart from him, he examined RWs.2 and 3 on his behalf. The Court below after appreciating the evidence, was pleased to allow the maintenance case directing the petitioner to pay a sum of Rs.10,000/- towards monthly maintenance to the first respondent herein from the date of filing of the petition and Rs.5,000/- towards litigation expenses by orders dated 22.09.2017. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel appearing for the petitioner basically contended that the Court below ought to have seen that the marriage took place in the year 2003 and the petitioner stayed with the first respondent for one week after the marriage and thereafter, she left from the matrimonial house voluntarily. Therefore, she is not entitled for any maintenance. The Court below also failed to appreciate the aspect that the first respondent is able to maintain herself for 14 long years since she filed maintenance case only in the year 2017. As such, the first respondent is not entitled for maintenance. He also contended that the first respondent herself has withdrawn from the conjugal society of the petitioner and in the cross examination she has admitted that she would not join the petitioner. On these grounds, the counsel argued that the first respondent is not entitled for maintenance.

Learned counsel appearing for the first respondent supported the impugned order passed by the Court below.

Having heard both the learned counsel and the perusal of the material on record, would disclose that the first respondent is the legally wedded wife of the petitioner. Out of their wedlock, they were not blessed with any children. The specific contention of the first respondent is that she lived with the petitioner happily after the marriage for a period of one year and subsequently the petitioner and his family members harassed her physically and mentally demanding additional dowry. The petitioner used to beat the first respondent brutally and she was necked out by him during the mid-night while she was in deep sleep and he harassed her sexually and when she reported the same to her in-laws, they did not take any action. Though the matter was placed before the elders, there is no change in the behaviour of the petitioner. It is her specific case that in May, 2004 she was necked out by the petitioner and since then, she was living in her parents' house. The petitioner is working as School Assistant in Z.P.H.School, Amalapadu and he is drawing a gross salary of Rs.43,462/- as is evident from the salary particulars issued from the office of Head Master, Z.P.H.S., Amalapadu which is placed on record during the course of arguments. The evidence of PW-1 i.e. the first respondent clearly establishes the harassment meted out to her and in spite of informing her in-laws, they did not take any action. PW-2 examined on behalf of the first respondent, categorically deposed that the petitioner and his parents abused the first respondent and insulted her in her presence. In the cross examination it was elicited that she

acted as one of the mediators for the marriage of the parties. RW-1, narrated the version in the counter. As far as the financial aspect is concerned, the petitioner is working as School Assistant in ZP.H.S, Amalapadu village and getting gross salary of Rs.43,462/- per month. Merely because, the first respondent has not filed maintenance case till 2017, it does not mean that she is not entitled for maintenance nor she waived her right to claim maintenance. In fact, in CHATURBHUI v. SITA BAI¹, the Hon'ble Apex Court dealt with the issue and held asunder:

“The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court. In CAPTAIN RAMESH CHANDER KAUSHAL v. MRS. VEENA KAUSHAL AND ORS (AIR 1978 SC 1807) falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the ‘Constitution’). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in SAVITABEN SOMABHAI BHATIYA v. STATE OF GUJARAT AND ORS (2005 (2) SUPREME 503).”

¹ (2008) 2 SCC 316

It is further held that:

“In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In BHAGWAN V. KAMLA DEVI (AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under section 125 Cr.P.C.”

Therefore, it is the bounden duty of the petitioner to maintain the first respondent and to look after her needs since she has no source of income on her own to eke out her livelihood. Hence, this Court is of the opinion that there are no merits in the revision and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 27.06.2018.
CCM

HONOURABLE SRI JUSTICE P. KESHA VA RAO



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