

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.408 of 2013

ORDER:

Heard the counsel for the petitioner and first respondent who appeared as party-in-person.

2. The present revision case is filed aggrieved by the orders dated 21.12.2012 passed in M.C.No.75 of 2011 on the file of the Court of the Judge, Family Court, Ranga Reddy District at LB.Nagar.

3. The brief facts of the case are that the first respondent herein filed M.C.No.75 of 2011 against the petitioner claiming a sum of Rs.15000/- per month towards maintenance and also a direction to the petitioner to return the original certificates, gold ornaments, in total Rs.15,00,000/- to her. The marriage of the petitioner was performed with the first respondent on 19.02.1997 as per the rites and customs prevalent in their community at Plot No.C-34, Greenpark Colony, Saroomagar. It was an arranged marriage. Some time after the marriage, the first respondent joined the company of the petitioner. During the said period, the petitioner used to return home late in the night in a drunken condition and used to beat the first respondent. The parents of the petitioner also used to harass the first respondent physically and mentally for money. On 17.01.2000 the petitioner sent the first respondent to Saudi Arabia whereat she stayed for a period of 3 to 5 years. During the said period, the first respondent used to send money to the petitioner by way of demand drafts and by way of hundi. The first

respondent also sent gold ornaments to the petitioner weighing 28 grams of gold chain, three chains with different styles totaling 140 grams. Since the contract work of the first respondent was completed, she came back to India in the year 2004. However, the petitioner sent the first respondent to Saudi Arabia once again for want of money for construction of house at Greenpark Colony, Saroornagar. The first respondent obeyed the words of the petitioner and she went to Saudi Arabia and stayed up to July, 2009. On 17.08.2009 the petitioner came back to India. On 18.07.2009 the petitioner received the first respondent at Shamshabad Airport, Hyderabad and stayed up to 21.11.2009. From 29.09.2009 to 05.11.2009 the petitioner as well as the first respondent underwent treatment at Anu Test Tube Baby Centre at Raj Bhavan Road, Somajiguda, Hyderabad. On the instructions of the doctor, they have undergone necessary tests and taken medicines for the sake of children by attending four sittings. On 19.11.2009 the petitioner informed the first respondent that he has taken divorce from the Family Court, Ranga Reddy District and he cannot come to the house on the premise that he cannot live with her. Thereupon, the first respondent was shocked and contacted her counsel. On enquiry, the first respondent came to know that the Family Court was pleased to pass an ex parte decree on 17.07.2009 against the first respondent. The first respondent filed set aside petition along with delay condonation application. However, the same was dismissed. On 17.04.2010 the first respondent lodged a complaint against the petitioner and his parents before Women Police Station, Saroornagar for the offence under Section 498-A IPC.

The petitioner was arrested on 19.04.2010 and he was released on bail. It is also the case of the first respondent that the petitioner has taken ear rings of the first respondent. He was working in A.P. Administrative Tribunal at Hyderabad as Senior Section Officer and earning more than Rs.30,000/- per month. The first respondent was in helpless situation. She being a nursing graduate, the petitioner taken away all her certificates. Therefore, she filed the case.

4. The first respondent filed counter denying all the allegations except admission of the marriage with the first respondent. The petitioner admitted that he was working as Typist in A.P. Administrative Tribunal and the first respondent was working as staff nurse in Yashoda Hospital, Hyderabad at the time of the marriage. Both of them lived happily for a period of 7 to 8 months. The petitioner specifically denied that he habituated to drink alcohol and used to come late in the night and beating the first respondent. The petitioner also stated that prior to the date of the marriage, the first respondent was converted into Christianity and again she herself converted into Hinduism and converted her name as Laxmi. He also stated that the first respondent left him and the country in the month of January, 2000 promising to return within two to three years. The petitioner waited patiently and also wrote several letters to the first respondent to return from Soudi Arabia and join the conjugal society. Finally, he sent a notice on 18.10.2007 asking the first respondent to have divorce by mutual consent. Though, the first respondent received the notice, she did not give any reply. The petitioner also denied sending of money as well as gold by the first respondent. The petitioner even stated that he

does not know that the first respondent came back to India on 17.07.2009. Therefore, the question of petitioner again residing with the first respondent does not arise. On the complaint lodged by the first respondent, a case in Crime No.38 of 2010 for the offence under Section 498-A IPC was registered. Subsequently, she filed DVC No.131 of 2010 before the III Metropolitan Magistrate, Nampally, Hyderabad. On 17.07.2009 the petitioner obtained decree of divorce and residing separately with effect from 17.01.2000 to till the date of filing of the counter in the maintenance case. Hence, the question of harassing the first respondent by the petitioner and his family members does not arise. The petitioner also denied that the first respondent sent RS.10 lakhs and gold worth Rs.5,00,000/- to the petitioner. In fact, it is his specific case that after the marriage both of them lived together for a period of 7 or 8 months only and thereafter the first respondent started harassing, quarrelling with the petitioner and his family members and thereby forcing the petitioner to put up a separate family in the month of August, 1998 at Malakpet, Hyderabad. At that time, the first respondent was working as Nurse in Yashoda Hospital, Malakpet and whereas the petitioner was working as Typist in A.P. Administrative Tribunal, Hyderabad. In fact, the first respondent herself went to Soudi Arabia in the month of January, 2000 against the wish and will of the petitioner promising to return within two or three years. Therefore, the petitioner was constrained to issue a legal notice on 18.06.2007 asking the first respondent to obtain divorce by mutual consent. Though the first respondent received the notice, she did not give any reply. Thereafter, the petitioner filed divorce petition and

obtained the decree of divorce on 19.02.2007. Though the first respondent filed a petition to set aside the said decree, the same was dismissed. After the dismissal of the application to set aside the decree, the first respondent lodged a complaint for the offence under Section 498-A IPC before Saroomagar Police Station and the same was pending. The first respondent is a qualified woman as she completed her nursing course and worked in Yashoda Hospital. Thereafter, she went to Saudi Arabia. The first respondent again working as Senior Nurse in Asian Gastroenterology, Hyderabad and getting sufficient amount as salary to maintain herself. Since the marriage between them was already dissolved, the first respondent is not entitled for any relief.

5. During the pendency of the revision case, the petitioner filed an application in I.A.No.1 of 2019 under Section 311 Cr.P.C. to receive the documents filed along with the application as additional evidence in the revision case. However, the first respondent who is appearing as party-in-person submitted that she is not interested to file counter-affidavit in the said application. Therefore, after hearing the learned counsel for the petitioner, and in the light of the averments made in the affidavit filed in support of the application, I.A.No.1 of 2019 was ordered on 26.11.2019. Along with the application, the petitioner filed the salary particulars and date of joining of the first respondent in Asian Institute of Gastroenterology Pvt.Limited, Somajiguda, Hyderabad dated 27.06.2017 obtained under Right to Information Act, 2005. From the perusal of the said certificate, it is evident that the first respondent is

receiving net salary of Rs.14,148/- per month. The petitioner also filed a certified copy of the order passed in DVC No.131 of 2010 filed by the first respondent against the petitioner and his family members under Section 12 of Protection of Women from Domestic Violence Act, 2005 seeking an order of protection as well as grant of monetary reliefs under Sections 18, 20 to 22 of the said Act. A perusal of the said order, would reveal that DVC No.131 of 2010 was allowed in part restraining the petitioner herein and his family members from committing any type of domestic violence against the first respondent and the petitioner was directed to pay an amount of Rs.8,000/- per month to the first respondent towards maintenance and alternative accommodation charges which shall be paid on or before 5th day of every calendar month from the date of the order. The petitioner was also directed to pay a sum of Rs.1,00,000/- towards compensation to the first respondent in three instalments within three months from the date of the order. Aggrieved by the said orders, the petitioner herein preferred an appeal vide DVC Appeal No.1309 of 2017 before the IV Additional Metropolitan Sessions Judge, Hyderabad. However, the said appeal was dismissed by judgment dated 26.09.2018, confirming the orders passed in DVC No.131 of 2010 dated 31.10.2017.

6. The first respondent to prove her case, examined herself as PW-1 and marked Exs:P-1 to P-6. The petitioner examined himself as RW-1 and marked the certified copy of the order and decree in I.A.No.2924 of 2009 in O.P.No. 1280 of 2008 on the file of the Judge, Family Court, Ranga Reddy District at L.B. Nagar as Ex.R-1. The learned Family Judge after appreciating the pleadings and

evidence on record, allowed the case in part on 21.12.2012 granting a sum of Rs.3,000/- per month towards maintenance from the date of the order. It is also mentioned in the order that since the first respondent failed to prove that her educational certificates and an amount of Rs.15 lakhs in cash and gold was with the petitioner, the court below ordered that the first respondent is not entitled for return of the same. Aggrieved by the said orders, the petitioner filed the present revision case.

7. Learned counsel appearing for the petitioner submitted that the order passed by the Court below is contrary to the evidence on record and probabilities of the case. Since the first respondent was working as nurse in Asian Institute of Gastroenterology, Somajiguda, Hyderabad and also worked in Gulf country for several years, she is not entitled for any maintenance and the impugned order is liable to be set aside. He also submitted that the petitioner obtained decree of divorce on 17.07.2009 on the ground of desertion. Therefore, the first respondent is not entitled for maintenance. Learned counsel also specifically emphasized that there is no pleading in the maintenance petition that the first respondent is unable to maintain herself and as such, the learned Family Judge committed an error in granting maintenance. The petition for maintenance under Section 125 Cr.P.C. was filed by the first respondent only to harass the petitioner, though she was already employed as nurse and having sufficient earnings to maintain herself. Learned counsel also submitted that the first respondent filed DVC No.131 of 2010 against the petitioner and obtained orders directing the petitioner to pay a sum of Rs.8,000/-

per month towards maintenance and alternative accommodation charges. Therefore, she is not entitled for further earnings in the present case.

8. The first respondent who is appearing as party-in-person, supported the orders passed by the court below. She also submitted that she is leading a destitute life since the amount awarded towards maintenance is hardly sufficient to maintain herself. She also submitted that the certified copy filed by the revision petitioner, cannot be relied on since no opportunity has been given to her to verify the genuineness of the documents. The petitioner has taken away her original certificates and also received an amount of Rs.15 lakhs in the form of cash by way of demand drafts and hundi, gold ornaments in all weighing 140 grams apart from another pair of ear rings. Since the petitioner is working as Senior Section Officer in the A.P. Administrative Tribunal, Hyderabad, he is earning more than Rs.30,000/- per month, the petitioner is liable to maintain her in the same standard of living in which the petitioner is leading his life. It is relevant here to mention that in the letter/representation dated 30.09.2019 addressed to the Honourable Chief Justice of this Court, she enclosed a xerox copy of the salary certificate of the petitioner. A perusal of the said certificate, would reveal that the petitioner's gross salary is at Rs.84,689/- and after deductions, he is drawing a net salary of Rs.60,334/-. Therefore, she is entitled for maintenance as claimed in the court below.

9. Having heard both the parties and from a perusal of the material on record, the points that arise for consideration are:

1. Whether the first respondent deserted the petitioner and went to Soudi Arabia on her own accord or at the will of the petitioner?
2. Whether the first respondent is entitled for maintenance?

10. It is the case of the first respondent that she married the petitioner on 19.02.1997 at Greenpark Colony, Saroomagar. Subsequent to the marriage, the first respondent joined the company of the petitioner. During the said period, the petitioner used to return home late in the night in a drunken condition and used to beat the first respondent without any reason. The in-laws of the first respondent and the petitioner also used to harass the first respondent physically and mentally for money. The petitioner sent the first respondent to Soudi Arabia. According to the first respondent, she was sent to Soudi Arabia by the petitioner for want of money and also for construction of house at Greenpark Colony at Saroomagar. However, the petitioner has taken a specific plea that the first respondent was greedy for money and therefore she herself on her own will and wish went to Soudi Arabia. If the petitioner's version that the first respondent herself deserted him and went to Soudi Arabia, the question of sending money by way of demand drafts and by way of hundi, may not arise. After the contract period was over, the first respondent returned to India in the year 2004. However, the first respondent was sent to Soudi Arabia by the petitioner for want of money for construction of house, as stated supra. The first respondent agreed and she went to Soudi Arabia and stayed there up to July, 2009. But, the first respondent has taken a specific plea that she was sent to Soudi Arabia by the petitioner to secure money for construction of house

at Greenpark Colony, Saroomagar, Hyderabad. If the petitioner's version that the first respondent deserted him at her own accord and went to Saudi Arabia since she was greedy for money, is to be considered, the question of sending the money to the petitioner in the form of demand drafts, may not arise. However, Ex:P-1 is demand drafts five in number sent to the petitioner belies his contention that the first respondent left his conjugal society. The first respondent also sent gold ornaments weighing about 140 grams to the petitioner. In fact, on 18.07.2009 the petitioner received the first respondent at Shamshabad Airport, Hyderabad. Thereafter, they set up a family in a rented house in Flat No.55, Poornodaya Colony, Saidabad, Hyderabad and during which period, they underwent treatment at Anu Test Tube Baby Centre at Rajbhavan Road, Somajiguda, Hyderabad. On the advice of doctor, they underwent necessary tests up to four sittings and taken medicines for the sake of children. On 10.04.2010 the first respondent lodged a police complaint against the petitioner and his parents and she filed domestic violence case against the petitioner and his parents. It is also the case of the first respondent that she sent about Rs.15 lakhs for construction of a house in Greenpark Colony, Saroomagar. If the first respondent left the company of the petitioner on her own accord, the question of sending money through Ex.P-1 (demand drafts five in number) may not arise. Therefore, it can be safely construed that the contention of the petitioner that the first respondent deserted him for want of money is not sustainable. Even Exs:P-2 to P-6 also belie the contention of the petitioner that the first respondent left his company voluntarily. The contention

raised by the petitioner is that there is no proof to show that the first respondent sent money and the petitioner received the said amount. Further, if the contention of the petitioner that the first respondent voluntarily left his company in the year 2000 itself and since then they are living separately, the question of petitioner and the first respondent undergoing treatment at Anu Test Tube Baby Centre for children, does not arise. In fact, Exs:P-2 to P-6 medical reports clearly establish that even-after return from Saudi Arabia to India, they lived together and undergone various tests to procure children. Exs:P-2 to P-6 support the contention of the first respondent. Further, the contention of the petitioner that by virtue of the *ex parte* decree obtained against the first respondent on the ground of desertion will not help the petitioner to say that the first respondent is not entitled for maintenance. Thus, on both grounds, the petitioner miserably failed to prove that the first respondent left his conjugal society voluntarily.

11. The other point that crops up for consideration is whether the first respondent is entitled for maintenance. The first respondent specifically contended that the petitioner has taken away all her certificates and she is not able to secure any job and she is leading a destitute life, is belied by the certificate obtained under Right to Information Act produced by him from the Asian Institute of Gastroenterology, Somajiguda, Hyderabad. The said certificate amply prove that the first respondent is getting a net salary of Rs.14,148/- per month. The said certificate also prove that the first respondent is still working as staff nurse in the hospital. When the first respondent is working as nurse in a hospital and earning Rs.14,148/-,

she is not entitled for any maintenance as contended by the petitioner.

12. After appreciating the pleadings and also evidence on record, it is culled out that the petitioner is drawing gross salary of Rs.84,689/- per month. In fact, a divorced wife is also entitled for maintenance. Even a working wife is also entitled for maintenance since she is expected to lead life in the same standard of life in which her husband is living.

13. In fact, if the monthly maintenance of the petitioner and the first respondent are compared, the first respondent, is entitled to claim maintenance from the petitioner since the difference of income, is huge. Further, since the first respondent is working as staff nurse in Asian Institute of Gastroenterology Pvt.Ltd. Somajiguda, Hyderabad as an effort to lead a dignified life for herself, after she separated from the petitioner, it cannot be said that the first respondent is not entitled for any maintenance. Merely because the first respondent is working as staff nurse, her employment should not deprive the first respondent to claim maintenance from the petitioner.

14. It is to be noted here that it is not that only a woman who is on verge of starvation and destitution, is entitled to interim maintenance, the amount of maintenance should be such that the wife is unable to live in 'reasonable comfort' considering her status and life style, she had been enjoying while living with her husband. Though, the onus to prove husband's financial status is on the wife but it becomes difficult for estranged wife to furnish proof,

especially in informal economy and a lot of women do not know anything about their husband's income or property because it is considered in bad form and in said circumstances, it boils down to what the husband himself discloses his income to be and deprives the women to his lawful right to get maintenance commensurate to the standard and status of living enjoyed by her husband. The bias that woman should be happy with whatever she gets, rather than what is her right, still continues to plague our society.

15. In fact, in *NAYANIKA THAKUR MEHTA v. MOHIT MEHTA*¹ the Delhi High Court observed as under:

“Even an earning wife is entitled to claim maintenance from her husband if the difference of income is huge. In the instant case, the appellant started working as Assistant Professor in Amity University only as an effort to ensure a dignified life for her self and for her minor child, after she was forced to leave the matrimonial home. In such a situation, when the wife instead of just depending on the money of others, tries to secure some employment and earn, her employment should not deprive her to claim maintenance from her husband, whose income is manifold higher than the income of his wife.”

16. The Court should also take into consideration the status of the parties and the financial status of the spouse to pay maintenance and in the case on hand, there is lot of disparity in the earnings of the petitioner as well as the first respondent as stated supra. Therefore, it cannot be said that the first respondent is not entitled for maintenance on the ground that she is working as a staff nurse in the hospital.

17. In *MANISH JAIN v. AKANKSHA JAIN*² the Apex Court held as under:

¹ 2017 (2) JCC 1213

“The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.”

18. The petitioner is also duty bound to maintain the first respondent as per his status. The monthly maintenance of the first respondent when compared with the petitioner, is meagre and with that amount, the first respondent will not be able to lead a life with all the comforts as she had been enjoying while living with the petitioner.

19. In these circumstances, this Court is of the opinion that there is no irregularity or illegality in the orders passed by the court below in awarding a sum of Rs.3,000/- per month towards maintenance to the first respondent. Thus, there are no merits in the revision and the same is liable to be dismissed.

20. Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA VA RAO, J

Date:02.01.2020.
CCM

HONOURABLE SRI JUSTICE P. KESHA VA RAO



CRIMINAL REVISION CASE No.408 of 2013

Date:02.01.2020

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