

HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.1837 of 2011

ORDER:

This revision case is filed challenging the orders dated 08.12.2020 passed in M.C.No.98 of 2010.

2. The facts in brief as per the records are as under:

a. The wedding of the petitioner was taken place on 15.05.1974. It is alleged by the respondent, who is the wife of the petitioner, that at the time of marriage, her parents gave Rs.500/-, 5 grams of gold ring and household articles. During the wedlock, she gave birth to four children and marriages of all of them were performed and they are living with their respective family members. Petitioner, who is working as Warden in the jail department, started harassing respondent No.1. Even though the neighbours have intervened and advised him several times, he has not changed his attitude and continued to ill-treat respondent No.1. Petitioner has sold away the gold ornaments belonging to respondent No.1 and has been suspecting her. In the year 2009, December, the

petitioner sent respondent No.1 away from his house. She was suffering from blood pressure, weakness and old age ailments. Petitioner was drawing salary of Rs.30,000/- per month. Therefore, respondent No.1 filed a petition in M.C.No.98 of 2010 for grant of Rs.15,000/- per month as maintenance.

b. The petitioner remained ex-parte in the maintenance case. Ex-parte evidence was recorded and respondent No.1 has also filed five documents i.e., Exs.P1 to P5. Ex.P5 is the letter of undertaking given by the petitioner, wherein he has undertaken to pay Rs.10,000/- per month to respondent No.1. On considering the oral and documentary evidence, including the undertaking given by the petitioner, the trial Court has allowed M.C.No.98 of 2010 directing the petitioner to pay Rs.10,000/- per month as maintenance.

3. Aggrieved by the same, the present petition is filed on the following grounds:

i. Petitioner has never neglected respondent No.1, he has performed the marriages of her children, awarding of

maintenance of Rs.10,000/- per month is unjust and is highly excessively, reasonable opportunity was not given to the petitioner, respondent No.1 is staying with his elder son, petitioner has never necked out of respondent No.1, letter of undertaking/Ex.P5 is not a genuine document, his net salary is Rs.18,958/-, he was suffering from health problems since 2017 and therefore, prayed the Court to allow the criminal petition.

4. Heard the learned counsel for the petitioner/respondent and perused the record. There is no representation on behalf of respondent No.1, thereby arguments of respondent No.1 are treated as heard.

5. Now, the point for determination is whether order dated 08.12.2010 passed in M.C.No.98 of 2010 can be set aside?

6. There is no dispute that the petitioner and respondent No.1 are husband and wife and during their wedlock, respondent No.1 gave birth to four children and their marriages were also performed by them. It is alleged by respondent No.1 that the petitioner has sent her out of

the house and she is unable to maintain herself. The petitioner has also not disputed that he is working in jail department as Warden. He has also not disputed that respondent No.1 is not an earning member thereby she cannot maintain herself. The petitioner has submitted in this revision that he has not sent respondent No.1 out of the house. He has contended that he has been residing with his elder son.

7. The petitioner has not participated in the proceedings before the trial Court as he was set ex-parte. There is no record to show whether he has made any attempt to move an application for setting aside the ex-parte orders passed against him. Even in this revision also the petitioner has not filed any document to show that he gets only Rs.18,958/- as submitted by him. Therefore, in the absence of any record to show that respondent No.1 is residing with his elder son and the petitioner was getting Rs.18,958/- only, all the contentions raised by the petitioner to revise the order of the trial Court cannot be considered.

8. It is to be noted that the impugned orders are passed on 08.12.2010 i.e., 12 years ago. As seen from the record, the petitioner herein must be 68 years old, whereas respondent No.1 could be 66 years old. The petitioner must have retired from service and must be getting some pension. The income of the petitioner must have been definitely reduced when compared to the income on the date of filing of this petition. It is also not clear that both the petitioner and respondent No.1 are residing together. The petitioner has not contested this petition instead he has allegedly filed letter of undertaking to pay Rs.10,000/- per month as maintenance. Therefore, considering the circumstances, there is no material to interfere with the orders of the trial Court.

9. It is to be noted that the orders passed by the trial Court are basing on the conditions prevailing on the date of filing of M.C.No.98 of 2010. Admittedly, the petitioner was working as a Warden by that time and now he is retired. Similarly, both the petitioner and respondent No.1 requires money for medical expenses.

10. The scope of the revision against the Orders passed by the trial Court in maintenance case, has been dealt with extensively by the Honourable Apex Court in a case between ***Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu and another***¹ wherein it is held that:

“9. In fact, we also find sufficient substance in the plea that the High Court in its revisional jurisdiction ought not to have entered into a scrutiny of the finding recorded by the Magistrate that the appellant was a married wife of the respondent, before allowing an application determining maintenance as it is well-settled that the revisional court can interfere only if there is any illegality in the order or there is any material irregularity in the procedure or there is an error of jurisdiction. The High Court under its revisional jurisdiction is not required to enter into re-appreciation of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including **Suresh Mondal vs. State of Jharkhand (2006 (1) AIR Jhar. R. 153)** that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the revisional court is very limited. The revisional court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.

10. In revision against the maintenance order passed in proceedings under **Section 125, Cr.P.C.**, the revisional court has no power to re-assess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the revisional court cannot substitute its own views. The

¹ Judgment dated 09.08.2011 in CrL.A.No.219 of 2007 of Hon'ble Apex Court

High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both child and the woman. This was the view expressed by the Supreme Court in the matter of **Santosh (Smt.) vs. Naresh Pal (1998) 8 SCC 447 5**), as also in the case of **Parvathy Rani Sahu vs. Bishnu Sahu (2002) 10 SCC 510**. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under **Section 125, Cr.P.C.**, is that it should not be disturbed while exercising revisional jurisdiction.”

11. Considering the above rationale the revisional Court cannot re-appreciate the evidence recorded by the trial Court to upset the finding in respect of quantum of amount and the very decision that revision petitioner has to pay the monthly maintenance as awarded.

12. On perusal of the entire material on record, this Court finds that there is no irregularity or illegality and thereby it is not a case where miscarriage of justice has been done. As long as there is no irregularity, or illegality in the finding of the trial Court as to whether it was justified in granting the quantum of amount, other

questions cannot be taken up and heard and finding in the Revision Case.

13. In view of the above discussion, the finding of the trial Court in Order dated 08.12.2010 in M.C.No.98 of 2010 on the file of the learned Family Court, Ranga Reddy at L.B. Nagar, Hyderabad granting monthly maintenance of Rs.10,000/- to respondent No.1, cannot be interfered with and this Criminal Revision case is liable to be dismissed.

14. Accordingly, the Criminal Revision Case is dismissed.
No costs.

Miscellaneous applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 10.11.2022
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