

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL REVISION CASE No.1889 of 2008

ORDER:

Heard the learned counsel for the revision petitioner Sri C.Sharan Reddy and the learned counsel for the 1st respondent Sri Anantaram Samudrala.

2. This revision is directed against the award of maintenance dated 14.11.2008 in M.C.No.111 of 2007, passed by the Additional Metropolitan Sessions Judge for the trial of JHBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

3. The wife and minor daughter of the revision petitioner/respondent filed the petition, claiming monthly maintenance of Rs.100/- and Rs.5,000/- respectively.

4. The parties are hereinafter referred to as per their array in the petition.

5. The case of the petitioners is that the 1st petitioner is legally wedded wife and the 2nd petitioner is the daughter of

the respondent. It is alleged that the respondent, necked the 1st petitioner out of the matrimonial home on 24.03.2003, along with the 2nd petitioner for additional dowry and other household articles. Since then, they are living separately and the respondent though able, neglected to maintain them. The 1st petitioner claiming that she is an employee and able to maintain herself, asked for Rs.100/- as token maintenance and Rs.5,000/- towards maintenance of minor daughter/2nd petitioner, filed the petition under Section 125 of the Code of Criminal Procedure (for short 'CrPC').

6. The trial Court on evaluating the pleadings and material on record, dismissed the claim of the 1st petitioner and awarded Rs.5,000/- as monthly maintenance to the 2nd petitioner from the date of petition, with a direction to pay the maintenance amount on or before 10th of every month.

7. Aggrieved by the awarded monthly maintenance, the respondent/father filed this revision, contending that the trial Court without any basis, even though the petitioners failed to prove his avocation and income and arbitrarily concluded that he is working in BDI Limited and fixed the quantum of

maintenance at Rs.5,000/- per month. The trial Court should have observed that the 1st petitioner is an Engineer and earning Rs.20,000/- per month, whereas, he is an un-employee and has no income. Thus, prayed to set aside the impugned order.

8. The learned counsel for the petitioners would submit that though the sources of income of the respondent was pleaded, the same was not considered by the trial Court. However, by observing the statements of the respondent in the cross examination, awarded modest monthly maintenance and there is no impropriety, no interference is warranted in the impugned order.

9. I have perused the record and considered the contentions raised in the revision.

10. The respondent/father is not disputing the paternity of his daughter/2nd petitioner. Section 125 (b) of CrPC., specifies among other aspects that the father is bound to maintain his minor child irrespective of the child's marital status and Section 125(c) of CrPc., requires to maintain the child even after attaining majority when the child is unable to maintain

self due to any abnormalities. Thus, as father, the respondent is statutorily liable to maintain his daughter/2nd petitioner and the financial ability of the mother with whom the 2nd petitioner is admittedly residing is in any way absolve the responsibility of the father/respondent.

11. In respect of the contention that the respondent had no means, the onus lies on him to establish that he does not have sufficient means to maintain the child, as the statutory liability to maintain the minor daughter is on him. However, except hurling averments that the petitioners did not place any evidence proving his avocation and income and he is an un-employed, having dependant parents, no legally acceptable material is placed to counter the specific pleadings of the petitioners that he is working as Junior Executive in BDI Limited and also earning rents and profits in chit fund business.

12. The learned trial Court considering the admission of the respondent in cross examination that he worked in BDI Limited, believed the employment as pleaded by the petitioners and by considering that the respondent's father is a

retired employee and pensioner, in absence of any other material for consideration, presumed that the respondent was earning not less than Rs.10,000/- per month. As the respondent had chosen to avoid his onus and there is no pleading that he is somehow disabled to practice any avocation, making assessment of income of the respondent on probabilities found rational.

13. The 2nd petitioner is aged 4 years. At this age, any child would have nutritional, health care and educational necessities and the parents are having obligation to meet the requirements. Merely because, the 2nd petitioner is residing with the 1st petitioner/mother and as she is gainfully employed, the liability of the respondent cannot be exonerated. The reports/Exs.P1 to P6 filed by the 1st petitioner and the fact of the 2nd petitioner is residing with her mother are indicating that the 1st petitioner is already attending certain necessities and expenditure of the child. In view of this position, as the respondent could not establish any other liabilities or responsibilities, granting Rs.5,000/- towards monthly maintenance is found reasonable.

14. For the aforesaid, this Court is of the considered opinion that the trial Court did not commit any error or no manifesting injustice is found in the impugned order necessitating interference by this Court. Accordingly, the revision fails on merit and in effect, dismissed.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N. TUKARAMJI, J

Date:23.06.2022
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