

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.1316 of 2008

O R D E R:

This Criminal Revision Case is filed aggrieved by the Orders dated 11.07.2008 in CrI.M.P.No.2401 of 2005 in M.C.No.4 of 2001 passed by the learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class Magistrate, Nizamabad, wherein the respondent was directed to pay Rs.1,000/- per month to the first petitioner and Rs.500/- per month to the second petitioner, ultimately, enhancing monthly maintenance from ₹600/- to ₹1,500/-.

02. The facts in brief are as under: The petitioner No.1 is the wife and petitioner No.2 is the son of the respondent who filed M.C.No.4 of 2001 on the file of learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class Magistrate, Nizamabad, seeking maintenance to herself and her son. After full-fledged enquiry, the petition was allowed wherein trial Court granted a monthly maintenance of ₹400/- to the first petitioner and ₹200/- to the second petitioner.

03. CrI.M.P.No.2401 of 2005 in M.C.No.4 of 2001 was filed before the trial Court by the petitioners No.1 and 2 who are wife and son of the respondent seeking for enhancement of monthly maintenance from ₹600/- to ₹2,000/- each to the petitioners under Section 127 of Cr.P.C.

04. It is alleged that the respondent got transferred to Nizamabad from Hyderabad and thus the living expenditure was decreased and the maintenance amount granted in the year 2002 was very meagre and they cannot meet basic needs and requirements and sought for enhancement of maintenance amount.

05. The respondent has filed detailed counter in the said petition before the trial Court and opposed the allegations in respect of income and submitted that he was under suspension and also undergone judicial custody and he is drawing net salary of Rs.6,200/- and gross salary of Rs.10,000/- per month approximately and also got married again and blessed with another child through his second wife and incurring family expenses. Further submitted that the petitioner No.1/wife is working as Teacher and drawing

Rs.2,500/- per month towards her salary and therefore, sought for dismissal.

06. On considering the both rival contentions, the trial Court Judge by way of Orders dated 11.07.2008 in CrI.M.P.No.2401 of 2005 in M.C.No.4 of 2001 passed by the learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class Magistrate, Nizamabad, wherein the respondent was directed to pay Rs.1,000/- per month to the first petitioner and Rs.500/- per month to the second petitioner, ultimately, enhancing monthly maintenance from ₹600/- to ₹1,500/-.

07. Aggrieved by the same, the present Criminal Revision Case is filed on following grounds:

- i. The trial Court should have seen that the cost of living index as gone up necessitating increase in the maintenance amount.*
- ii. The trial Court ought to have considered that the respondent has been promoted from Junior Assistant to Senior Assistant and his salary has also been increased.*
- iii. The trial Court should have been considered that as the needs of the petitioners*

and therefore, sought for enhancing the maintenance amount also.

08. This Criminal Revision Case has been posted today under the caption 'for Orders', in spite of it, no representation on behalf of the revision petitioner. Therefore, the submissions of the revision petitioners is treated as heard.

09. Heard Sri V.Venkata Mayur, learned counsel for the respondent No.1. Sri S.Ganesh, learned Assistant Public Prosecutor for the State / Respondent No.2 was present. Therefore, this Criminal Revision Case is disposed of on merits. Perused record.

10. Now the point for determination is:

Whether the Orders dated 11.07.2008 in CrI.M.P.No.2401 of 2005 in M.C.No.4 of 2001 passed by the learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class Magistrate, Nizamabad, wherein the respondent was directed to pay Rs.1,000/- per month to the first petitioner and Rs.500/- per month to the second petitioner, ultimately, enhancing monthly maintenance from ₹600/- to ₹1,500/-, is liable to be set side ?

P O I N T:

11. The petitioner is challenging the Orders dated 11.07.2008 in CrI.M.P.No.2401 of 2005 in M.C.No.4 of 2001 passed by the learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class Magistrate, Nizamabad, wherein the respondent was directed to pay Rs.1,000/- per month to the first petitioner and Rs.500/- per month to the second petitioner, ultimately, enhancing monthly maintenance from ₹600/- to ₹1,500/-, on the ground that the cost of living has gone up and the respondent was promoted from the post of Junior Assistant to Senior Assistant, Wakf Board.

12. The respondent No.1/husband filed detailed counter before this Court stating that the marriage was performed on 28.05.1995 and they lived happily for 10 years and thereafter disputes arose and the petitioner No.1 has taken away gold, silver ornaments and valuable clothes along with Rs.5,000/- and the petitioner No.1 has not informed about birth of petitioner No.2/son. The respondent has filed O.S.No.177 of 1996 for restitution of conjugal rights and the

petitioner No.1 has agreed to live along with respondent, for which the respondent has withdrawn the said suit. Again on 27.02.1997 the petitioner No.1/wife left the company of the respondent/husband, for which the respondent again filed suit in O.S.No.90 of 1997 for restitution of conjugal rights and the same was decreed on 20.02.1998 by the learned Principal Junior Civil Judge, Nizamabad. Thereafter, respondent filed E.P.No.68 of 1998 for execution of decree and the petitioner has filed a case in Cr.No.90 of 2007 for the offences under Sections 498-A and 109 of Indian Penal Code. The said Execution Petition was dismissed on the ground that a criminal case is pending against the respondent. The said crime was numbered as C.C.No.140 of 2000 on the file of the learned Judicial First Class Magistrate, Nizamabad, and the same was ended in acquittal vide Judgment dated 16.04.2002. During the pendency of the said CC, the first petitioner filed M.C.No.4 of 2002 on the file of learned Judicial First Class Magistrate, Nizamabad, wherein trial Court granted a monthly maintenance of ₹400/- to the first petitioner and ₹200/- to the second petitioner. Aggrieved by the same, the respondent filed Criminal Revision Petition in

Crl.R.P.No.8 of 2001 on the file of the learned IV Additional District & Sessions Judge, Nizamabad, and the same was dismissed on 01.12.2003. During the year 2005, the first petitioner filed Crl.M.P.No.2401 of 2005 in M.C.No.4 of 2001 and the Orders dated 11.07.2008 were passed by the learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class Magistrate, Nizamabad, wherein the respondent was directed to pay Rs.1,000/- per month to the first petitioner and Rs.500/- per month to the second petitioner, ultimately, enhancing monthly maintenance from ₹600/- to ₹1,500/-.

13. It is submitted by the learned counsel for the respondent No.1 that on account of respondent No.1's marriage with other person, he is incurring expenses to for the family consisting of wife and children, he is unable to meet the directions of the trial Court to pay the enhanced amount and therefore sought for reviewing the same.

14. Originally, maintenance of Rs.600/- was granted in the year 2002. Enhancement petition was allowed in the year 2008 as the petitioners have submitted that the cost of

living was increased. Similarly, the cost of living has also increased to the respondents.

15. It is mentioned by the petitioner that subsequent to the disputes with the petitioner No.1 herein he has married another lady and through her he has a child. According to him, the respondent was earning Rs.6,200/- as a net salary, out of Rs.10,000/- gross amount. Admittedly, the petitioners have not filed any record to show that the respondent is getting salary of more than Rs.6,000/- as on the date of filing of this petition.

16. After passing of enhancement order in the year 2008 by the trial Court, 13 years have been lapsed. Taking into consideration the cost of living, an amount of Rs.1,500/- awarded to the both petitioners together, is not sufficient. Similarly, the income of the respondent also must have been certainly increased. The expenditure of the respondent also could have gone up. The requirements of the petitioners also could have gone up, therefore, in order to consider the income and expenditure of the respondent, and in order to

see whether any enhancement can be done, the source of income as of today is to be taken into consideration.

17. The very fact that the petitioners have been managing since 2008 onwards until now, would go to show that they must have some source of income. The petitioners must have been getting enhancement maintenance of Rs.1,500/- as directed in Orders dated 11.07.2008 in CrI.M.P.No.2401 of 2005 in M.C.No.4 of 2001 passed by the learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class Magistrate, Nizamabad, which is under challenge. Therefore, after 13 years of passing of enhancement order by the trial Court, considering the application on the source of income of the respondent in the year 2008 would be a futile exercise.

18. In any case, the petitioners can file another application for enhancement of maintenance amount basing on the circumstances prevailing now. In view of the above, the petition cannot be considered at this stage. Moreover, the petitioner also called absent and no representation on behalf of the petitioner, which demonstrates that the

petitioner may not be interested in prosecuting this Criminal Revision Case.

19. 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***

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

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 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.”*

20. Considering the above rationale and 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 and other questions cannot be taken up and heard and finding in the Revision Case.

21. In view of the above discussion, the finding of the trial Court in Orders dated 11.07.2008 in CrI.M.P.No.2401 of 2005 in M.C.No.4 of 2001 passed by the learned Principal Junior Civil Judge-cum-FAC Additional Judicial First Class

Magistrate, Nizamabad, wherein the respondent was directed to pay Rs.1,000/- per month to the first petitioner and Rs.500/- per month to the second petitioner, ultimately, enhancing monthly maintenance from ₹600/- to ₹1,500/-, cannot be interfered with and this Criminal Revision case is liable to be dismissed.

22. Accordingly, this Criminal Revision Case is dismissed. There shall be no order as to costs.

As a sequel, pending Miscellaneous Applications in this matter, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 07-Nov-2022
KHRM

THE HONOURABLE DR. JUSTICE D.NAGARJUN

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