

**THE HONOURABLE DR. JUSTICE D.NAGARJUN**

**CRIMINAL REVISION CASE No.852 of 2011**

**O R D E R:**

This Criminal Revision Case is filed aggrieved by the Order dated 05.02.2011 in M.C.No.306 of 2008 on the file of the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad granting monthly maintenance of ₹2,500/- to the first respondent and ₹1,000/- per month each to respondent No.2 and 3.

02. The facts in brief are as under:

The petitioner has married the first respondent on 29.08.1993 and during the wedlock the first respondent gave birth to second and third respondents. On account of disputes between the parties, a criminal case has been registered against the petitioner for the offence under Section 498-A of Indian Penal Code. The respondents No.1 to 3 were driven out of the house on 07.12.2007. The respondents unable to maintain themselves respondents No.2 and 3 are school going children and they don't have any income to

maintain themselves. Whereas the petitioner is having own house at Borabanda and he is getting monthly rent of ₹10,000/- the petitioner is also doing travel business and earning huge amount and therefore sought for ₹5,000/- to each of the respondents No.1 to 3 by filing M.C.No.306 of 2008 on the learned Family Court.

03. The petitioner has opposed the contentions of the respondents No.1 to 3 and stated in the counter that the petitioner not harassed the respondent No.1 and there was no demand of dowry from the family members of the petitioner. In order to extract money a false criminal case has been filed. The petitioner has sent huge amounts to the respondent No.1 from Soudi Arabia. First petitioner has purchased a house and living the same house and also get some rent to the tune of ₹15,000/- a month.

04. On the other hand, the petitioner has no income and he is working as Driver and earning ₹5,000/- per month and he has to take care of his own parents. The respondents Nos.1 to 3 have deserted the petitioner and living separately.

05. During the course of enquiry, the learned Judge has examined the respondent No.1 as PW1 and marked Exs.P1 and P2 on her behalf. On behalf of the petitioner, he himself was examined as RW1 and also examined more witnesses RW2. On considering the evidence on record, the trial Court has ultimately allowed the maintenance case granting monthly maintenance of ₹2,500/- to the first respondent and ₹1,000/- per month each to respondents Nos.2 and 3.

06. Aggrieved by the same, the petitioner has filed this Criminal Revision Case on following grounds:

- i. The trial Court below has not properly appreciated the evidence and maintenance petition should have been dismissed.
- ii. There are no valid grounds in favour of the respondents No.1 to 3 in granting the maintenance.

07. The trial Court should have considered that the revision petitioner has to maintain his parents, brothers sisters who are depending on his income.

08. The finding of the trial Court about the source of income is without any basis and trial Court could have considered that the petitioner found not guilty in the criminal case filed by the respondent No.1.

09. Heard both sides and perused the record including the orders under challenge dated 05.02.2011 in M.C.No.306 of 2008 passed by learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad granting monthly maintenance of ₹2,500/- to the first respondent and ₹1,000/- per month each to respondent No.2 and 3.

10. Now the point for determination is:

Whether the Order dated 05.02.2011 in M.C.No.306 of 2008 passed by the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad granting monthly maintenance of ₹2,500/- to the respondent No.1 and ₹1,000/- per month each to respondent No.2 and 3, is liable to be set side ?

**P O I N T:**

11. On going through the Orders passed by the trial Court, it is clear that the respondent No.1 who is the wife of the petitioner, was given an opportunity to give her evidence and mark two documents, one of which is Undertaking given by the respondents and another document is Receipt.

12. On the other hand, the petitioner himself was permitted to examine himself as RW1 and also examined one more witness as RW2. The petitioner in his evidence denied what all respondent No.1 has stated and stick to the contents of the counter.

13. The trial Court on considering the evidence on record gave a finding that there is no dispute between the relationship as husband and wife between the revision petitioner and first respondent, that the respondents No.1 to 3 has no source of income and respondents No.2 and 3 are school going children and all of them are living separately, and that the revision petitioner was earning in the gulf countries and he admittedly working as a driver and it is also opined that the revision petitioner must have earned a lot of

money and must be earning money as well and accordingly awarded Rs.2,500/- per month to the first respondent and Rs.1,000/- each to the respondent No.2 and 3.

14. The maintenance was awarded in the year 2011, keeping in view of cost of living of 2011. Considering the cost of living present day the respondents Nos.1 and 2 will not be able to sustain with the meagre amount of maintenance amount of Rs.2,500/- for their food, shelter, clothing, school education expenses, medical expenses etc.,. However, the respondents No.2 and 3 have become majors. The revision petitioner has not placed any record as to whether respondent No.2 and 3 are studying or working elsewhere and whether they are earning money and supporting their mother and other connected things. In case if respondents No.1 to 3 are maintaining themselves then the revision petitioner is expected to take steps for filing an appropriate application in the appropriate forum.

15. 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**<sup>1</sup> 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

---

<sup>1</sup> Judgment dated 09.08.2011 in Crl.A.No.219 of 2007 of Hon'ble Apex Court

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.”

16. Considering the above rationale the Revisional Court cannot reappreciate 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.

17. 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.

18. In view of the above discussion, the finding of the trial Court in Order dated 05-02-2011 in M.C.No.306 of 2008 on the file of the learned Additional Family Judge, Hyderabad granting monthly maintenance of ₹2,500/- to the first

respondent and ₹ 1,000/- per month each to respondent No.2 and 3, cannot be interfered with and this Criminal Revision case is liable to be dismissed.

19. 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.

Date: 03-Nov-2022  
KHRM

---

**DR. D.NAGARJUN, J**

**THE HONOURABLE DR. JUSTICE D.NAGARJUN**

**CRIMINAL REVISION CASE No.852 of 2011**

Date: 03-Nov-2022  
KHRM