

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

**CRIMINAL REVISION CASE No.205 of 2010**

**ORDER:**

This Criminal Revision Case is filed aggrieved by the Order dated 30.01.2010 in M.P.No.1288 of 2009 in M.C.No.214 of 2004 on the file of the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad wherein the trial Court directed the petitioner to be arrested and committed to prison for a period of six months for non-payment of arrears of maintenance amount.

02. Originally, the main case in M.C.No.214 of 2004 was filed by the petitioner No.1/wife and petitioner No.2/daughter against the respondent/husband-father before the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad seeking maintenance and after due enquiry, on 04.03.2008 the trial Court granted monthly maintenance of Rs.4,000/- per month to the petitioner No.2/daughter and dismissed the claim of the

petitioner No.1/wife. However, the petitioner/father disputed the paternity of the petitioner No.2/daughter and did not comply the above Orders of the trial Court and the respondent No.1 herein/daughter filed a petition under Section 125 (3) of Criminal Procedure Code and sought for arrest of the petitioner herein.

03. On considering the same, the trial Court passed the impugned orders directing the petitioner herein/father to be arrested and committed to prison for a period of six months for non-payment of arrears of maintenance amount.

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

- i. The order passed by learned trial Judge is against law, weight of evidence on record.*
- ii. The trial Court ought to have considered the Order dated 19.04.1997 in O.P.No.478 of 1996 wherein the mother and father of the respondent No.1 were granted divorce.*
- iii. The trial Court ought to have considered O.P.No.499 of 2004 filed by the mother of the respondent No.1 herein against the petitioner*

*herein seeking restitution of conjugal rights, was dismissed vide order dated 30.10.2006.*

05. 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 as well as 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.

06. Now the point for determination is:

Whether Order dated 30.01.2010 in M.P.No.1288 of 2009 in M.C.No.214 of 2004 on the file of the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad wherein the trial Court directed the petitioner to be arrested and committed to prison for a period of six months for non-payment of arrears of maintenance amount, is liable to be set side ?

**P O I N T:**

07. This Revision is filed aggrieved by the Orders dated 30.01.2010 in M.P.No.1288 of 2009 in M.C.No.214 of 2004 and there was no representation either from the

petitioner or from the respondent and the submissions of both sides are treated as heard.

08. The respondent No.1 has filed M.C.No.214 of 2004 was filed by the petitioner No.1/wife and petitioner No.2/daughter against the respondent/husband-father before the trial Court seeking maintenance to the wife and respondent No.1/daughter, who was born through the petitioner herein. The petitioner/respondent remained exparte and he has filed an application to set aside the same and filed copies in O.P.No.478 of 1996 which was filed for dissolution of marriage. The petitioner has taken a plea that the respondent herein is not born through him. The mother of the respondent has also filed OP for restitution of conjugal rights. However, in the mean while since the petitioner failed to comply the directions of the Orders passed in M.C.No.214 of 2004 directing to pay maintenance to the respondent.

09. The respondent has filed M.P.No.1288 of 2009 in M.C.No.214 of 2004 for sending the petitioner to civil prison for non-payment of arrears of maintenance of Rs.44,000/-. After enquiry, the trial Court has passed orders directing the

petitioner to be arrested and committed to prison for a period of six months for non-payment of arrears of maintenance amount.

10. Aggrieved by the same, this Criminal Revision Case is filed alleging that the respondent mother is legally wedded wife of the petitioner and respondent has not born through the petitioner and decree of divorce was granted between them in O.P.No.478 of 1996 dated 19.04.1997 and giving a direction for payment without referring to the parentity of the respondent. Therefore, prayed to set aside the Orders of the trial Court.

11. It has to be noted that even according to the petitioner, the Orders in main M.C.No.214 of 2004 are still in force. The said Orders are though exparte have not been set aside either by the same Court or by the appellant Court or Revisional Court. It is not the case of the petitioner that he has paid Rs.44,000/- arrears of maintenance. It is alleged that without considering the fact whether the petitioner is capable of paying the arrears of maintenance amount, the Orders have been passed by the Court below.

12. The petitioner has to pay the arrears of maintenance amount and the Courts are not bound to examine the capacity of the petitioner to pay the arrears of maintenance amount. It is for the petitioner to take steps to prove before appropriate Court that there is no means to pay maintenance. If at all there are orders and if the orders of the Court are not being implemented, there will be no purpose in passing such orders, the Court are required to be stringent when comes to the question of recovery of arrears of maintenance amount.

13. The petitioner is disputing the relationship of the respondent No.1 that she is not born to the petitioner. The petitioner might have taken the said plea before the trial Court in the main case and might have sought for dismissal of the maintenance case and he is not permitted to take the said plea before this Court.

14. 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 substitute its own finding and*

---

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

*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.”*

15. 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.

16. In view of the above discussion, the finding of the trial Court in Order dated 30.01.2010 in M.P.No.1288 of 2009 in M.C.No.214 of 2004 on the file of the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad wherein the trial Court directed the petitioner to be arrested and committed to prison for a period of six months for non-payment of arrears of maintenance

amount, cannot be interfered with and this Criminal Revision case is liable to be dismissed.

17. 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: 10-Nov-2022  
KHRM

---

**DR. D.NAGARJUN, J**

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

**CRIMINAL REVISION CASE No.205 of 2010**

Date: 10-Nov-2022  
KHRM