

HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.610 of 2009

ORDER:

This revision case is filed aggrieved by the orders dated 19.02.2009 passed in F.C.M.C.No.6 of 2008, wherein the trial Court has passed orders directing the petitioner herein to pay an amount of Rs.2,000/- per month as maintenance to respondent No.1 herein, who is the wife of the petitioner.

2. The facts in brief are as under:

a. The wedding of the petitioner with respondent No.1 was solemnized on 21.11.2002. At the time of marriage, the family members of respondent No.1 have given dowry, gold and other house hold articles. For six months the petitioner has taken care of respondent No.1 and subsequently he started harassing her for want of additional dowry. He used to come late nights in drunken condition and used to beat respondent No.1 indiscriminately and instigate his money Kannamma and sister Yashoda to harass her. The petitioner has

demanding respondent No.1 to bring Rs.1,70,000/- to purchase new Auto and respondent No.1 could not accept the demand on account of poor financial condition of her parents and finally, she has approached Women Police Station and filed a complaint.

3. On the complaint filed by respondent No.1 a case in Crime No.327 of 2006 was registered for the offence under Section 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act. On completion of investigation and after filing charge sheet, it was taken on file as C.C.No.53 of 2007. It is also stated that the petitioner earns Rs.20,000/- per month working as Correspondent in Sri Boys Hostel, Karimnagar and he is also having 242 square yards of site costing about Rs.7 lakhs and he also gets the pension of his father, and therefore, respondent No.1 requested Rs.3,000/- per month as maintenance.

4. The petitioner opposed the M.C. by filing counter stating that respondent No.1 herself has withdrawn his company, respondent No.1 and her mother have demanded to transfer the house property belong to his mother,

respondent No.1 is earning Rs.200/- per day on tailoring work and also earns Rs.2,200/- per month by working in hostel.

5. During the course of enquiry, respondent No.1 was examined as PW.1 and her mother as PW.2 and Exs.P1 to P5 were marked, whereas the petitioner was examined as RW.1 and he also examined one R. Srinivas as RW.2 and Exs.R1 to R3 were marked. On hearing both sides, the trial Court has granted an amount of Rs.2,000/- per month as maintenance for respondent No.1.

6. Aggrieved by the same, the present revision case is filed on the following grounds:

i. The trial Court should have seen that the petitioner is earning only Rs.2,200/- in the hostel belonging to one R.Srinivas/RW.2 and the evidence of RW.2 that he is paying Rs.2,200/- to the petitioner is accepted and therefore, prayed the Court to allow the revision case.

7. There is no representation on behalf of the petitioner as well as respondent No.1.

8. The trial Court on considering the evidence on both sides both oral and documentary has directed the petitioner to pay an amount of Rs.2,000/- per month to respondent No.1 as maintenance under Section 125 Cr.P.C.

9. There is no dispute that respondent No.1 is the wife of the petitioner. According to respondent No.1, the petitioner after marriage has harassed her physically and mentally, including demand for additional dowry and thereby forced her to leave the house. It is not disputed by the petitioner that respondent No.1 has filed a complaint before the police basing on which a case in C.C.No.53 of 2007 was registered against him and ultimately after full fledged trial the petitioner was also found guilty of the offences alleged against him. Therefore, these facts would clearly disclose that respondent No.1 being the wife has to withdraw from the company of the petitioner on account of harassment.

10. The next question to be considered is whether respondent No.1 is capable of maintaining herself?

11. It is the specific case of the petitioner that respondent No.1 is earning Rs.200/- per day on tailoring work, but he has not produced any evidence to show that respondent No.1 has been working as a tailor and earning Rs.200/- per day. The petitioner could have produced a person, who has seen respondent No.1 working as a tailor and earning money. The petitioner also could have examined a customer of respondent No.1 to produce that she has entrusted job work to respondent No.1 wherein she has paid money for getting the job work done through respondent No.1. Therefore, as rightly concluded by the trial Court, the petitioner could not prove before the trial Court that respondent No.1 has been working as a tailor and earning Rs.200/- per day.

12. The other point to be considered is the capacity of the petitioner.

13. It is the case of respondent No.1 that the petitioner is working as a warden in Sri Boys Hostel and earning Rs.20,000/-. In order to disprove the same, not only the petitioner deposed as RW.1, but also produced one

Srinivas, who is stated to be the owner of Sri Boys Hostel, wherein he has deposed that he has been giving Rs.2,200/- as salary to the petitioner. Respondent No.1 has also submitted that the petitioner also gets pension of his father and he also got a house site worth of Rs.7 lakhs.

14. On considering the entire material on record, the trial Court has held that respondent No.1 is the wife of the petitioner and she has to withdraw the company on account of the petitioner and that thereby he has to pay Rs.2,000/- per month as maintenance.

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***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

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

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 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 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.

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, 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 19.02.2009 in F.C.M.C.No.6 of 2008 on the file of the learned Family Court, Karimnagar granting monthly maintenance of Rs.2,000/- to respondent No.1, cannot be interfered with and this Criminal Revision case is liable to be dismissed.

19. 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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