THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.1853 of 2008

O R D E R:

This Criminal Revision Case is filed aggrieved by the Orders dated 05.05.2008 in M.C.No.9 of 2006 passed by the learned VI Metropolitan Magistrate, Medchal, Rangareddy District, granting monthly maintenance of □2,000/- to the petitioner No.2/daughter and dismissed the maintenance claim of the petitioner No.1/wife.

02. The facts in brief are as under:

The petitioner and her daughter have filed main maintenance case in M.C.No.9 of 2006 on the file of the learned VI Metropolitan Magistrate, Medchal, Rangareddy District, seeking maintenance of Rs.3,000/- each. The marriage was performed on 19.02.2000. During the wedlock, the petitioner No.1 and respondent No.1 were blessed with a baby girl i.e, petitioner No.2. After two years of marital life, the disputes arose between the parties as the respondent No.1 is harassing the petitioner No.1/wife for additional dowry of Rs.1,00,000/-. The petitioner No.1 lodged

complaint in Cr.No.454 of 2003 of Alwal Police Station for the offence under Section 498-A IPC. The respondent is working as Police Constable and having immovable properties. The petitioners are unable to maintain themselves and prayed for maintenance.

03. The respondent filed counter opposing the contentions of the petitioners in the petition stating that the petitioner used to go to the house of her parents without any intimation and used to pick up quarrels and developed hatredness towards him for no fault of him. On 06.05.2022 the petitioner No.1 left the company of the respondent and refused to join again. The petitioner No.1 never allowed the respondent No.1 to see the petitioner No.2/daughter and the respondent No.1 filed O.P.No.92 of 2004 on the file of learned II Additional District & Sessions Judge, Rangareddy District at LB Nagar for restitution of conjugal rights. The petitioner No.1 has got means in better manner and the petition for maintenance is filed after lapse of four years from the date of desertion and prayed for dismissal of the petition.

04. On behalf the petitioners before the trial Court, petitioner No.1/wife was examined as PW1 and got marked Ex.P1 and P2. On behalf of the respondent, respondent himself got examined as RW1 and got marked Ex.R1 and R2.

05. There is no dispute that the petitioner is the wife of the respondent and they were blessed with a daughter, who is shown as second petitioner in maintenance case.

06. After full-fledged enquiry, on considering the both rival contentions, the trial Court Judge by way of Orders dated 05.05.2008 in M.C.No.9 of 2006 passed by the learned VI Metropolitan Magistrate, Medchal, Rangareddy District, granting monthly maintenance of □2,000/- to the petitioner No.2/daughter and dismissed the maintenance claim of the petitioner No.1/wife, as she has stated that she has means to maintain themselves before learned II Additional District & Sessions Judge, Rangareddy District in O.P.No.92 of 2004 and also before learned II Senior Civil Judge in O.P.No.478 of 2005.

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

i. The Judgment of the trial Court is contrary to law and weight of evidence on record.

ii. The trial Court ought has not considered the fact that the father of the petitioner No.1 is a retired employee and her brothers separated from family and that there is no means for the petitioner No.1 to maintain herself.

iii. The trial Court erred in dismissing the petitioner's maintenance claim that she can do job with her qualifications.

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 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.

09. Now the point for determination is:

Whether the Orders dated 05.05.2008 in M.C.No.9 of 2006 passed by the learned VI Metropolitan Magistrate, Medchal, Rangareddy District, granting monthly maintenance of □2,000/- to the petitioner

No.2/daughter and dismissed the maintenance claim of the petitioner No.1/wife, is liable to be set side ?

P O I N T:

10. The enquiry in a petition filed for grant of maintenance under Section 125 of Criminal Procedure Code is summary in nature. The trial Court has granted maintenance to the petitioner No.2/daughter and declining the same to the petitioner No.1/wife would go to show that the trial Court considered the facts on record and declined the relief to the petitioner.

11. The petitioner No.1 has examined herself as PW1 and stated that after birth of second petitioner, the respondent and his family members harassed her physically and mentally for additional dowry. On the other hand, it is the case of the respondent that on 06.05.2022 the petitioner No.1 left the company of the respondent and refused to join again and never allowed him to see the petitioner No.2/daughter. The petitioner No.1 has got means in better manner.

12. In order to consider grant of maintenance, the petitioner/wife is expected to prove that she has no means to maintain herself and she was sent out of the house by the respondent. If she voluntarily leaves the company of her husband, then she is not entitled for any maintenance.

13. There is no dispute in this case that the petitioner No.1 is the wife of the respondent. It is also not in dispute that though the petitioner has been living separately by withdrawing from the company of the respondent. The respondent and his family members have been allegedly harassing the petitioner No.1 for want of additional dowry after the birth of daughter. Therefore, the withdrawal of company of the respondent by the petitioner No.1 is not voluntary and as the petitioner No.1 lodged a complaint in Cr.No.454 of 2003 of P.S. Alwal under Section 498-A of Indian Penal Code.

14. Therefore, the only question to be considered here is whether the petitioner No.1 is capable of maintaining herself or not. The trial Court has taken the evidence of the petitioner No.1 as PW1 wherein she has stated to have

deposed that she is capable of maintaining herself and that she can also maintain her daughter better than the maintenance of the respondent.

15. According to the respondent, the petitioner No.1 is a Post-Graduate and capable of earning. The petitioner has been residing with her parents. Though he has stated that her father has retired from the service and her brother was separated from the family. She did not make out a case that though as on the date of giving evidence she is capable of maintaining herself, as on the date of filing of the maintenance case, her financial capacity was deteriorated and thereby she could not maintain herself.

16. The learned VI Metropolitan Magistrate, Medchal, Rangareddy District has passed order in M.C.No.9 of 2006 on 05.05.2008. More than 14 years lapsed from the date of passing of the Orders. In fact, the petitioners are not being represented in spite of posting this matter from time to time, speaks volumes.

17. Above all, it has to be noted that the Court will consider the quantum of maintenance basing on the financial capacity of the petitioner and the respondent. In fact, expenditure of the petitioner and respondent as on the date of filing of maintenance case in the year 2006 and subsequent to the filing of the petition in the year 2006 until 2022 about 16 years have been lapsed. The petitioner No.1 might have been working and earning and the daughter of the petitioner and the respondent who has been residing along with the petitioner No.1 must have grown up, thereby, the requirements of the petitioners have also been increased and similarly, the responsibilities of the respondent also must have been increased. Therefore, passing of the orders in this Criminal Revision Case would be a futile exercise on account of fact that whatever quantum of maintenance granted will not be sufficient to the requirements and needs of the present day society.

18. Considering the material available on record, the trial Court has rightly came to a conclusion that the petitioner No.1/wife herself came out of the company of

respondent. Therefore, there is no need for interference with the order passed by the trial Court.

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 of Jharkhand (2006 (1) AIR Jhar. R. 153)*** *that in a case where the learned Magistrate has granted maintenance holding that*

[1] *Judgment dated 09.08.2011 in Crl.A.No.219 of 2007 of Hon'ble Apex Court*

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 05.05.2008 in M.C.No.9 of 2006 passed by the learned VI Metropolitan Magistrate, Medchal, Rangareddy District, granting monthly maintenance of □2,000/- to the petitioner No.2/daughter and dismissed the maintenance claim of the petitioner No.1/wife, 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: 08-Nov-2022
KHRM

THE HONOURABLE DR. JUSTICE D.NAGARJUN

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