

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL REVISION CASE No.82 of 2013

ORDER:

Heard the learned counsel for the revision petitioner Sri P.Vinod Lal and the learned counsel for the respondents Sri H.Sudhakar Rao.

2. The respondent/husband in M.C.No.230 of 2010 on the file of Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad, assails the award dated 10.12.2012, whereby, the 1st petitioner/wife was awarded Rs.6,000/- and the 2nd and 3rd petitioners/son and daughter were awarded Rs.5,000/- each as maintenance from the date of order, with a direction to pay the same on or before 10th of every month.

3. For the sake of convenience, the parties are referred to as they were arrayed before the trial Court.

4. The brief facts of the case are that the 1st respondent herein/1st petitioner along with her minor children/2nd and 3rd

petitioners, lodged a complaint under Section 125 of Code of Criminal Procedure, 1973 (for short 'CrPC') pleading that she was married to the respondent on 15.09.2006 as per the Muslim rites and custom and her parents presented dowry, gold, silver and household articles. Right from the start, the respondent used to ill-treat and beat her without any reason and his sisters and other family members were also harassed her by making her to attend entire household works with a demand for additional dowry of Rs.5,00,000/-. However, she continued her marital life and gave birth to 2nd petitioner and during the pregnancy of 3rd petitioner, on 04.07.2008, respondent left her with her parents with a demand to get Rs.5,00,000/- for reunion. Thus, she is forced to live separately with her kids and the respondent has completely neglected them though he is a businessman, having immovable properties and earning more than Rs.75,000/- per month. Hence, the petition for grant of Rs.20,000/- each to the petitioners for their maintenance.

5. On the other hand, while acceding the petitioners pleaded relationship, the revision petitioner herein/respondent

denied the claim of presentation of dowry, gold, silver or house-hold articles as their's was love marriage. Howsoever, in the beginning itself, the 1st petitioner informed him about her love affair with one of their neighbour and threatened him with suicide if he reveals about it to any one; At their house, there were 20 to 25 persons to take care of household activities and as his sisters were married and living with their families, the allegations of harassment referring these aspects are baseless. Further, the 1st petitioner is quarrelsome and used to insist him to set up the family in Hyderabad, but he refused as has to help his father in the rice-mill business; After the 1st petitioner left him, for restitution of conjugal rights, he filed a petition before the Darul Qaza Imarat on 28.03.2009 for counseling, wherein, the 1st petitioner agreed to join him, but within short time on 23.06.2009, she lodged police report with false averments. In addition, filed petition under Protection of Women from Domestic Violence Act (PWDVC) on the file of Chief Metropolitan Magistrate, Hyderabad vide DVC No. 61 of 2010. In this position, he divorced the 1st petitioner by pronouncing Talaq on 23.02.2010 and also made a publication on 24.02.2010 and his effort to pay maintenance for the Iddat

period was declined by her, though the same was sent by registered post on 18.09.2009. Howsoever, his father is having Ac.5.00 of land and also running rice-mill at Chintal Cheruvu Hathnoor Mandal, Medak District, but he is earning only Rs.20,000/- per annum by assisting him. Therefore, prayed for dismissal of the petition.

6. In the enquiry, the 1st petitioner got herself examined as P.W.1 and got marked Exs.P1 to P3 and respondent examined himself as R.W.1 and placed Exs.R1 to R15.

7. The trial Court after analyzing the material, held that the respondent is liable to pay the maintenance to the petitioners and ordered the petition.

8. In this revision, the learned counsel for the respondent would submit that, the trial Court failed to take into account of factual position and that the petitioners case is not satisfying the essential ingredients of Section 125 of CrPC., especially as the 1st petitioner is willfully withdrawn from his society, his efforts for reunion were shunned by her and that he divorced her as per Islamic norms and the 1st petitioner refused to receive the maintenance during the Iddat period and the 1st

petitioner is having income for maintenance. In this position, as the marital relationship is severed, the petition for maintenance itself is not maintainable. Despite everything, the petitioners failed to prove his income and in Ex.P3/bio-data of respondent reflects his father's income. Nonetheless, he is ready to pay maintenance to the 2nd and 3rd petitioners with his meager source of income, but awarding maintenance at Rs.16,000/- by the trial Court is burdensome. Therefore, prayed for reconsideration.

9. Per contra, the learned counsel for the petitioners pleaded that the Court below had considered all the contentions raised by the respondent and on recording findings on merits of essential factors and the financial status of the respondent, awarded the maintenance. Thus there is no tenable ground to interfere with the order.

10. In these rival claims, the point arises for determination is:

“Whether the revision petitioner could make out any impropriety or illegality in the impugned?”

11. At the outset, the facts of marriage between the respondent and 1st petitioner and the paternity of 2nd and 3rd petitioners are not in dispute.

12. The contentions of the respondent are that (a) the 1st petitioner left his company on her own volition, (b) he pronounced Talaq, (c) she is having means to maintain herself and (d) he has meager income and also remarried, thus not in a position to pay the maintenance as directed.

13. The 1st petitioner asserted that the respondent deserted her by leaving her along with the 2nd petitioner at her parents house while she was pregnant. Except suggestions and self serving pleadings, the respondent failed to clarify the circumstances, date and other relevant aspects in which the 1st petitioner left his society. Is common knowledge that when the pregnant wife along with a child leaves the society without reason, no husband would remain silent at least the matter would have been placed before the family or the community elders. No such move is at least pleaded by the respondent. The pleaded application for restitution of conjugal rights was after lapse of considerable time. These aspects are

probablising the existence of predicaments deposed by the 1st petitioner.

14. The respondent filed Ex.R11/divorce certificate, Ex.R13/divorce declaration, Ex.R14/original demand draft for Rs.10,000/- and Ex.R15 publication in news paper to support his plea of divorce and his efforts to pay maintenance during iddat period. Admittedly, Exs.R10 to R14 are not received by the first petitioner. Thus, the alleged proceedings of Talaq are unilateral and without knowledge to the 1st petitioner, therefore, the claimed dissolution of marriage between the parties is yet to be concluded.

15. Nevertheless, the Apex Court in the dictum between *Subana Bano Vs. Imran Khan*¹, pronounced that even after a Muslim woman has been divorced and after iddat period, she would be eligible to claim maintenance from her husband under Section 125 of CrPC. Thus, even if the version of respondent is taken as it is, the petition filed by the petitioner is perfectly maintainable.

¹ AIR 2010 SC 305

16. The stance of the petitioners is that they are unable to maintain themselves and to repudiate, the respondent pleaded that the 1st petitioner is having means. However, neither any particulars nor any material is placed on record to establish the resources of the 1st petitioner. Furthermore, the 2nd and 3rd petitioners being minors, the respondent being father, cannot disown his liability to maintain. Hence, no illegality is found in the impugned order in recording the obligation of the respondent to maintain the petitioners.

17. With regard to the quantum of award, the respondent's version is that he is only assisting his father in running rice-mill and earning only Rs.15,000/- to Rs.20,000/- per annum. Despite that the respondent pleading itself is explicit that he is only son to his parents and in their house 15 to 20 persons would attend the household works and his father runs a rice-mill, where he works. The onus lies on the respondent to prove his income as the same would be within his specific knowledge. Mere denial or pleading inability, will not absolve his responsibility. Thus, the facts asserted by the respondent, the plausible financial position of the respondent can be

presumed. Further having regard to the financial status of the parties and reasonable needs by the petitioners including the minor children and the absence of any other source of income to the petitioners, this Court finds no reason to defer with the quantum of maintenance awarded by the trial Court.

18. For the aforesaid, this Court is of the considered opinion that the Court below did not commit any error or no manifesting injustice is found in the impugned order necessitating interference by this Court. Accordingly, the revision fails on merit and in effect, dismissed.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N. TUKARAMJI, J

Date:14.06.2022
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