

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.2080 of 2009

O R D E R:

This Criminal Revision Case is filed aggrieved by the Order dated 17.09.2009 in M.P.No.1576 of 2008 in M.C.No.320 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 interim maintenance of ₹3,000/- to the first respondent till disposal of the main maintenance case.

02. The facts in brief are as under: The marriage of the petitioner with the respondent was taken place on 03.12.2007. The relationship between the petitioner and the respondent could not be proceeded smoothly on account of disputes. The disputes took place between the petitioner and respondent and ultimately, the petitioner harassed the respondent for want of dowry and for other reasons and the respondent came to know that the petitioner already married one Muslim lady.

03. A Memorandum of Understanding was entered between the parties wherein the petitioner and family members have agreed to pay Rs.10,00,000/- to the respondents for separation. All the efforts were made by the elders to pacify the disputes could not yield any results and thereby the respondent filed a complaint against the petitioner for the offences under Sections 495, 498-A of Indian Penal Code and under Section 4 and 6 of Dowry Prohibition Act. She started living separately and she has no source of income and the respondent has got means of income and he is owner and proprietor of Dr.Ambedkar Paramedical Junior College, Tandur. During the pendency of the main case in M.C.No.320 of 2008, the petitioner/wife has filed M.P.No.1576 of 2008 for interim maintenance.

04. On considering the said petition, the trial Court gave a finding that the petitioner has no means to survive and that the respondent is a private medical practitioner, till enquiry is completed in the main case, interim maintenance of Rs.3,000/- per month was granted.

05. Aggrieved by the same, the present Criminal Revision Case on the following grounds:

- i. The learned trial Judge ought to have seen that the petitioner is a medical practitioner in a remote area and that the interim maintenance is liable to be reduced to an amount of Rs.1,000/-.*
- ii. The trial Court ought to have seen that the petitioner has to look after his old aged parents and their medical treatment.*
- iii. The trial Court ought to have observed that the respondent/wife is not interested to come and join the company of the petitioner/husband.*

06. 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.

07. Now the point for determination is:

Whether the Order dated 17.09.2009 in M.P.No.1576 of 2008 in M.C.No.320 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 interim maintenance of ₹3,000/- to
the first respondent till disposal of the main
maintenance case, is liable to be set side?***

P O I N T:

08. This petition is filed challenging the grant of interim maintenance of Rs.3,000/- per month until the main maintenance case is disposed of by the trial Court, which is of the year 2008. By this time, the main case itself could have been disposed of by the trial Court.

09. The petitioner has not disputed that he is working as Private Medical Practitioner. No proof is required to show that he is earning money through his practice as private medical practitioner. Even otherwise, the trial Court has granted meagre amount of Rs.3,000/- per monthly towards interim maintenance. For a person to meet his basic necessities like food, clothing, shelter, educational and medical expenses, Rs.3,000/- is not sufficient. To submit on the above aspect, the petitioner failed to appear before this Court, which gives an impression that main maintenance case could have been disposed of and cause does not survive.

10. 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 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

¹ Judgment dated 09.08.2011 in CrI.A.No.219 of 2007 of Hon'ble Apex 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.”

11. 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.

12. In view of the above discussion, the finding of the trial Court in Order dated 17.09.2009 in M.P.No.1576 of 2008 in M.C.No.320 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 interim maintenance of ₹3,000/- to the first respondent till disposal of the main maintenance case, cannot be interfered with and this Criminal Revision Case is liable to be dismissed.

13. 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: 07-Nov-2022
KHRM

DR. D.NAGARJUN, J

THE HONOURABLE DR. JUSTICE D.NAGARJUN

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