

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CRL.R.C.No. 289 of 2010

ORDER:

This Criminal Revision Case is directed against the order, dated 22.12.2009, passed by the learned Principal Sessions Judge, Khammam, in CrI.R.P.No.16 of 2009, whereby the learned Judge, while setting aside the order of maintenance granted to the 3rd petitioner-daughter (petitioner herein), confirmed the order of maintenance granted to the 2nd petitioner-daughter at the rate of Rs.500/- per month, by the Special Judicial Magistrate of First Class, Prohibition and Excise Court, Khammam, in M.C.No.45 of 2006 dated 30.04.2007.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the trial Court.

The wife and children (petitioners 1 to 3) filed the aforesaid M.C.No.45 of 2006 seeking maintenance at the rate of Rs.2,000/- per month from the 1st respondent-husband herein. In the petition, it is stated by the 1st petitioner that originally, the respondent married one Chandrakala and thereafter he developed illicit intimacy with the 1st petitioner being a neighbour, with a promise to marry her and that the respondent married the 1st petitioner, when she was aged about 17 years, by tying thali in his residence before Anjaneya Swamy Photo and had physical relationship with her and thereby the 1st petitioner became pregnant and gave birth to petitioner No.2 on 20.02.2001. When the 3rd petitioner was in her womb, the respondent harassed the 1st petitioner to go for abortion and when the 1st petitioner refused to do so, she was sent away from the house and that she was residing at her mother's house

along with 2nd and 3rd petitioners. It is further stated that when the 1st petitioner reported the matter before the village elders, the respondent deposited an amount of Rs.30,000/- in the name of the 2nd petitioner and after one year, the respondent again used to come to her and treated her as his wife and lead usual life. Thereafter, the respondent used to ill-treat, neglect and refused to maintain her and her children and as such the 1st petitioner got issued a legal notice to him and when there was no reply from him, she filed the aforesaid Maintenance Case seeking maintenance at Rs.2,000/- per month to each of the petitioner. It is further stated that the respondent is having house, house site and he is an employee getting Rs.8,000/- per month and he is running finance business and as such he has got sufficient means to pay maintenance to the petitioners.

The respondent-husband filed a counter, *inter alia*, contending that the petition filed by the petitioners under Section 125 Cr.P.C. is not maintainable either in law or on facts and as such it is liable to be dismissed as there is no relationship between him and the petitioners. It is contended that he is a Laskar and is getting very meagre salary and the same is used for his family welfare and the maintenance claimed by the petitioners is very high and as such he requested the Court to dismiss the petition.

On behalf of the petitioners, P.Ws.1 to 4 were examined, but no document was marked. On behalf of the respondent, R.Ws.1 and 2 were examined and got marked Ex.R1-agreement dated 08.10.2001.

The trial Court, after an analysis of the entire evidence available on record, awarded monthly

maintenance at the rate of Rs.500/- each to the 2nd and 3rd petitioners payable by the respondent-husband, however, the petition against the 1st petitioner-wife was dismissed, vide order dated 30.04.2007.

Aggrieved by the aforesaid order, the respondent-husband filed the aforesaid Crl.R.P.No. 16 of 2009 and the learned Sessions Judge by order, dated 22.12.2009, while setting aside the order awarding maintenance to the 3rd petitioner, confirmed the order awarding maintenance to the 2nd petitioner at the rate of Rs.500/- per month.

Aggrieved by the aforesaid order dated 22.12.2009, the 3rd petitioner-daughter filed the present criminal revision case, *inter alia*, contending that the learned Judge erred in rejecting maintenance to the petitioner herein on basis of Ex.R1, which is not binding on her. It

is further contended that the petitioner herein was born through the 1st respondent herein and mere denial without there being any evidence is not a ground to refuse maintenance to the 3rd petitioner.

Heard both sides and perused the entire material placed on record.

The 1st petitioner in the aforesaid Maintenance Case stated that initially, the respondent married one Chandrakala and subsequently he developed physical relationship with the 1st petitioner and married her and that she begotten two children i.e., 2nd and 3rd petitioners through the respondent. Since the 1st petitioner failed to prove her marriage with the respondent and that there is no valid marriage between the 1st petitioner and the respondent, the trial Court

rightly held that the 1st petitioner is not entitled to get maintenance from the respondent.

Except Ex.R1-agreement entered into between the 1st petitioner and the respondent in the presence of village elders on 08.10.2001, no other document was filed before the Court by the respondent. It seems, after the birth of the 2nd petitioner when she was carrying the 3rd petitioner, the respondent refused to maintain her and as such he approached the caste elders and at their instance, Ex.R1-agreement was entered into between the parties on 08.10.2001. As per the said agreement, the respondent agreed to give Rs.50,000/- to the 1st petitioner, but he had deposited only Rs.30,000/-. The main contention of the respondent is that as per the agreement dated 08.10.2001, he had already deposited the agreed amount and as such he need not pay any

maintenance to the petitioners. Admittedly, an amount of Rs.50,000/- was agreed to be paid for the maintenance of the 2nd petitioner. The appellate Court held that the 3rd petitioner was born on 28.08.2005 i.e., four years after the alleged agreement dated 08.10.2001. In the agreement, it was agreed that from the date of agreement both parties should not reside together and that the 3rd petitioner is not the daughter of the respondent as she was born on 28.08.2005 and as such she is not entitled for maintenance. However, the 1st petitioner stated that even after execution of the agreement, the respondent again continued to live with her and thus she gave birth to the 3rd petitioner. Later, when he neglected to maintain her, she got issued a legal notice to the respondent and thereafter filed the aforesaid Maintenance Case. If at all there is valid marriage between the 1st petitioner and the respondent,

the Court can raise a presumption under Section 112 of the Evidence Act. But, in this case, there is no valid marriage between the 1st petitioner and the respondent. The learned Counsel for the revision petitioner requested the Court to remand the matter to the trial Court so that they can file an application for DNA to prove the paternity of the child. The reasoning of the appellate Court is that when there was an agreement between the parties regarding severance of the tie between the 1st petitioner and the respondent, it cannot be presumed that even after the agreement, the 1st petitioner continued the physical relationship with the respondent and begotten petitioner No.3. As per the agreement, the respondent admitted the physical relationship between him and the 1st petitioner and also paternity of the 2nd petitioner. The 1st petitioner also stated that even after the agreement, the respondent

continued the physical relationship with her and as such she gave birth to the 3rd petitioner. Even the illegitimate children are entitled for maintenance under Section 125 Cr.P.C. Merely because the respondent denied the paternity of the 3rd petitioner, it cannot be said that he is not liable to pay maintenance to her.

For the aforesaid reasons, I do not find any ground to interfere with the order of the trial Court in granting monthly maintenance at the rate of Rs.500/- each to the petitioners 2 and 3, payable by the respondent from the date of order i.e., 30.04.2007. Since the maintenance granted by the trial Court was only Rs.500/- per month, which is very meagre, this Court finds that the matter cannot be remanded back to the trial Court.

In the result, the CrI.R.C. is allowed by setting aside the order of the appellate Court dated 22.12.2009,

passed in Crl.R.P.No.16 of 2009 and confirming the order of the trial Court dated 30.04.2007 passed in M.C.No.45 of 2006.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE P.SREE SUDHA

01.02.2023
Gsn