

THE HONBLE Ms. JUSTICE B.S.BHANUMATHI

C.R.P. No.3352 of 2023

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the order, dated 17.10.2023, allowing I.A.No.85 of 2021 in H.M.O.P.No.35 of 2020 on the file of the Court of the Principal Senior Civil Judge, Rajampet, filed under Section 24 of the Hindu Marriage Act, 1955, to direct the respondent/petitioner to pay the arrears of maintenance amount of Rs.5,16,000/- to the petitioner/respondent or else to send him to prison.

2. Heard the learned counsel for the parties. The parties shall hereinafter be referred as they are arrayed in this revision petition.

3. The facts, briefly stated, are as follows:

(a) The revision petitioner herein is the husband and the respondent herein is the wife. Their marriage was solemnized on 26.08.2018 at Sri Rajarajeswari Kalyanamandapam, Kadapa, as per the Hindu rites and customs. At the time of marriage, the father of the revision petitioner gave Rs.6,00,000/- cash towards dowry apart from 20 tolas of gold ornaments to the respondent herein. Thereafter, at the instigation of his mother and sister, the revision petitioner started harassing the respondent for want of additional dowry of Rs.10,00,000/-. Their marriage was consummated and while the respondent herein was carrying, her parents took her to

their house to write B.Sc., final year examinations. After completion of the examinations, her parents asked the revision petitioner to take back the respondent for which the revision petitioner denied saying that he is going to perform second marriage. Several mediations held in the presence of elders were proved futile. The respondent gave birth to a male child on 27.07.2019 who, by birth, suffered urine problem and the parents of the respondent spent Rs.2,50,000/- towards treatment of the child. Neither the revision petitioner nor his parents paid any amount towards the medical expenses of the child. The doctors advised surgery for the child and as the respondent was not in a position to secure the said amount, she asked the revision petitioner to return the gold ornaments.

However, the revision petitioner did not return the ornaments. Having waited for a long period with a fond hope that the revision petitioner would change their behaviour, the respondent lodged a report before the Railway Kodur Police Station which was registered as a case in Crime No.152 of 2020 for the offences punishable under Section 498-A IPC and Sections 3 & 4 of the Dowry Prohibition Act. Subsequently, a charge sheet was filed in C.C.No.1 of 2021. She had also filed a maintenance case in M.C.No.2 of 2020 before the Court of the Judicial First Class Magistrate, Railway Kodur besides D.V.C.No.1 of 2020 and both the matters are pending adjudication. No amount was granted towards maintenance in those cases. The revision petitioner is leading luxurious life earning

Rs.60,000/- per month towards his salary and own a house worth Rs.30,00,000/- near railway station at Nandalur besides house sites at Kotha Madhavaram and near

Chennur bridge. Whereas, the respondent has no means to lead her life. The respondent requires Rs.30,000/- per month towards her maintenance and Rs.20,000/- towards the maintenance of her son. The revision petitioner filed H.M.O.P.No.35 of 2020 seeking dissolution of the marriage by grant of a decree of divorce and the respondent filed counter and is contesting the said HMOP. The present application under Section 24 of the Hindu Marriage Act has been filed seeking pendente lite maintenance and litigation expenses.

(b) The revision petitioner filed counter denying all the allegations in the petition and stating that the application is not maintainable. The respondent left the revision petitioner and joined her parents and refused to lead marital life. All the efforts to bring her back were went futile. The father of the respondent is working as a police constable and with his influence; she got foisted three criminal cases against him and his parents. The present application is not maintainable and there is no cause of action to file the petition. The petition is liable to be dismissed.

4. After considering the rival contentions, the trial Court allowed the petition directing the revision petitioner to pay a sum of Rs.20,000/- per month towards pendente lite maintenance during the pendency of H.M.O.P.No.35 of 2020 from the date of the petition and the respondent/revision petitioner was also directed to pay arrears of maintenance within 30 days from the date of the order, i.e.,17.10.2023, and future maintenance on or before 5<sup>th</sup> of every succeeding month.

5. Aggrieved thereby, the present revision is preferred by the revision petitioner.
6. Learned counsel for the revision petitioner submitted that the court below erred in allowing the petition even without filing the statement of assets and liabilities and further that the respondent herself deserted the petitioner and yet, sought maintenance, and therefore, she is not entitled to claim any interim maintenance. It is also submitted by him that without there being any evidence of income of the petitioner, the Court below granted interim maintenance of exorbitant amount, which is unsustainable. In support of his contentions, learned counsel placed reliance on the decision of the Supreme Court in *Rajnish Vs. Neha and others*<sup>1</sup>, wherein at paragraph No.99, it was held as follows:

“99. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrates Court, as the case may be, throughout the country.”
7. On the other hand, learned counsel for the respondent submitted that the petitioner has not raised any objection before the trial Court about the statement to be filed nor did he file any such statement. He further submitted that the petitioner herein did not dispute his income in the counter filed by him

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<sup>1</sup> AIR 2021 SC 569

and further, after considering the facts and allegations submitted on both sides, the impugned order was passed by the Court below, and therefore, the same does not require any interference.

8. Perused the record.
9. The petitioner herein has not raised any objection that the interim order cannot be granted in view of non-filing of such a statement by the respondent herein. As such, the trial Court had no opportunity to decide on that aspect. Hence, the petitioner cannot contend that the impugned order is illegal on that ground.
10. As rightly contended, the petitioner herein in his counter did not specifically deny his earnings and he merely stated that the respondent/wife did not file any proof in support of the income stated in the petition. Therefore, the trial Court has rightly taken the earning capacity of the revision petitioner into consideration while fixing the quantum of maintenance.
11. Insofar as the question of desertion by the respondent herein is concerned, it is a matter of enquiry after full-fledged trial and prima facie there is no material on record to support the contention of the petitioner herein that the respondent herself deserted the petitioner as contended.
12. For all these reasons, there is no impunity in the order challenged in this revision petition.
13. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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B.S.BHANUMATHI, J

05-02-2024  
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