

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.2217 of 2018

ORDER:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed by the petitioner/husband challenging the order, dated 10.06.2018, passed in CrI.M.P.No.111 of 2014 in M.C.No.12 of 2010 by the Judge, Family Court-cum-VI Additional District Judge at Khammam, whereby, on a petition filed by respondent Nos.2 to 4 herein/wife and minor children, under Section 127 Cr.P.C. seeking enhancement of maintenance to respondent No.2 @ Rs.10,000/- per month and respondent Nos.3 and 4 @ Rs.8,000/- per month each, the Court below enhanced the maintenance from Rs.5,000/- to Rs.10,000/- per month to respondent No.2/wife and Rs.5,000/- per month each to respondent Nos.3 and 4/minor children.

2. I have heard the submissions of Sri T.P.Acharya, learned counsel for the petitioner, Sri A.S.Narayana, learned counsel for respondent Nos.2 to 4 and perused the record.

3. The respondent Nos.2 to 4 herein/wife and minor children filed the subject CrI.M.P.No.111 of 2014 before the Court below seeking enhancement of maintenance contending that respondent

No.2 is the legally wedded wife of the petitioner herein. Respondent Nos.3 and 4 were born during their wedlock. When the petitioner was working as a Teacher at Z.P.S.S.School, Kamepally, he married respondent No.2. The petitioner forced the respondent No.2 to give divorce, so that he can marry the younger sister of respondent No.2, for which respondent No.2 refused, then the petitioner started harassment. In the meanwhile, the petitioner was promoted as Head Master. Respondent No.2, unable to bear the harassment of the petitioner, approached the elders and a panchayat was held. In the said panchayat, the petitioner agreed to look after the respondent Nos.2 to 4 well, but he did not keep up his promise and necked out the respondent Nos.2 to 4. Subsequently, respondent No.2 filed a criminal case against the petitioner of the offence under Section 498A of IPC and also the subject maintenance case, i.e., M.C.No.12 of 2010. In the said Maintenance Case, at the intervention of elders, the petitioner agreed to pay Rs.5,000/- to respondent Nos.2 to 4 for which, the respondent Nos.2 to 4 agreed. Accordingly, the criminal case filed for the offence under Section 498A of IPC was withdrawn. In view of the changed circumstances, since the amount agreed by respondent No.2 is not sufficient to meet the livelihood and educational expenses of respondent Nos.3 and 4 and since the

petitioner is working as Mandal Educational Officer and drawing salary @ Rs.70,000/- per month, under these compelling circumstances, respondent Nos.2 to 4 filed the subject CrI.M.P.No.111 of 2014 to enhance the maintenance as stated supra.

4. The petitioner filed counter in the subject CrI.M.P.No.111 of 2014 contending that respondent No.2 has adamant attitude and used to misbehave with the petitioner. The Maintenance Case filed against the petitioner was allowed on 09.09.2010 before Lok Adalat and an Award in LAC No.1001 of 2010 was passed by the Lok Adalat for an amount of Rs.5,000/- per month each to respondent Nos.2 to 4. The petitioner is paying the maintenance amount as per the Award of the Lok Adalat. Having entered into a compromise and having agreed to receive Rs.5,000/- per month towards their maintenance, filing of the subject CrI.M.P.No.111 of 2014 by respondent No.2 is only to harass the petitioner. The petitioner is also paying fees of Rs.34,000/- to respondent Nos.3 and 4 apart from arranging dresses to petitioners Nos.3 and 4.

5. On merits, the Court below enhanced the maintenance @ Rs.10,000/- per month to respondent No.2 and Rs.5,000/- per

month each to respondent Nos.3 and 4. Aggrieved by the same, this criminal revision case is filed.

6. Learned counsel for the petitioner/husband would submit that there are no changed circumstances to enhance the maintenance, as alleged. The Court below erred in accepting the contention of the respondent No.2 that she is paying school fees of respondent Nos.3 and 4, though she did not produce any receipts with regard to the same. The Court below totally ignored the receipts filed by the petitioner, which establish that he has been paying school fees of the children and purchasing books and dresses for them. The petitioner is regularly paying the monthly maintenance to respondent Nos.2 to 4 at the rate of Rs.5,000/- per month each as per the Award of the Lok Adalat. The petitioner is ready to meet all the educational expenses of respondent Nos.2 to 4, but however, he does not want to keep the amount in the hands of respondent No.2, inasmuch as, there is every possibility of misusing the amount by respondent No.2. The Court below erroneously enhanced the monthly maintenance payable to respondent Nos.2 to 4. The impugned order suffers from illegality, impropriety and irregularity, thus warranting interference by this Court by exercising the revisional jurisdiction under Sections 397

and 401 Cr.P.C. and ultimately prayed to allow the criminal revision case as prayed for.

7. *Per contra*, learned counsel for the respondent Nos.2 to 4 would submit that in view of the increase of standard of living, the Court below rightly enhanced the maintenance payable to respondent No.2. The petitioner, being a Government employee working as MEO, is gainfully employed and as such directing him to pay Rs.10,000/- per month towards monthly maintenance to respondent No.2 cannot be faulted. Respondent No.2 has no means to maintain herself and her children i.e., respondent Nos.3 and 4. Considering the totality of the circumstances, the Court below rightly enhanced the monthly maintenance payable to respondent No.2 without enhancing the monthly maintenance to respondent Nos.3 and 4. The order under challenge does not suffer from illegality or irregularity and ultimately prayed to sustain the order under challenge and dismiss the criminal revision case.

8. In view of the above rival contentions, the point that arises for determination in this criminal revision case, is as follows:

“Whether the order dated 10.06.2018 passed in CrI.M.P.No.111 of 2014 in M.C.No.12 of 2010 by the learned Judge, Family Court-cum-VI Additional District Judge at Khammam, suffers from illegality, impropriety or irregularity,

so as to interfere with the same in exercise of powers under Sections 397 and 401 Cr.P.C.?"

POINT:

9. Admittedly, respondent No.2 herein is the legally wedded wife of the petitioner herein and respondent Nos.3 and 4 are their legitimate children. There are allegations and counter allegations with regard to the marital disputes between the parties and the respondent No.2 filed criminal case against the petitioner for the offence under Section 498-A of IPC and also the subject Maintenance Case. In the subject Maintenance Case, the petitioner agreed to pay Rs.5,000/- each to the respondent Nos.2 to 4 herein for which respondent Nos.2 to 4 herein agreed to receive the same and accordingly, the criminal case was withdrawn. Subsequently, respondent Nos.2 to 4 filed the subject CrI.M.P.No.111 of 2014 under Section 127 Cr.P.C. seeking enhancement of maintenance to respondent No.2 @ Rs.10,000/- per month and respondent Nos.3 and 4 @ Rs.8,000/- per month each. The core contention of the petitioner herein before the Court below was since the subject M.C.No.12 of 2010 was compromised before the Lok Adalat in LAC No.1001 of 2010 wherein the petitioner agreed to pay Rs.5,000/- each to the respondent Nos.2

to 4 and which was agreed by them, now the respondent Nos.2 to 4 cannot contend that due to increase of cost of living, an amount of Rs.5,000/- each being paid by the petitioner herein is not sufficient to meet their expenses. Admittedly, respondent Nos.3 and 4, i.e, the minor sons are residing with the respondent No.2/wife. The object of Section 125 Cr.P.C. is meant to relieve destitution and beggary and with that end, to enforce the marital duty of a person whose action produce such a situation creating social problems and vices leading to an unjust social order. Further, Section 127 Cr.P.C. mandates that on proof of a change in the circumstances of any person receiving monthly maintenance granted under Section 125 Cr.P.C., the Magistrate may make such alteration in the allowance as he thinks fit. In the instant case, it is not the case of the petitioner that the respondent No.2 is gainfully employed and is able to maintain herself and respondent Nos.3 and 4. The Lok Adalat Award has been passed on 09.09.2010. Adverting to the same, the Court below held as follows:

“By that time, the age of petitioner Nos.2 and 3 is 4 years and 1 year respectively. Now the present petition is filed under Section 127 Cr.P.C. for enhancement of maintenance. Petitioner Nos.2 and 3 are attending school studies and as such there are

changed circumstances and there is hike in the cost of living and petitioners could not get their daily needs and educational expenses of petitioner Nos.2 and 3 at Rs.5,000/- which was granted by way of Lok-Adalat Award."

The Court below further held that there is hike in cost of living from 2010 to 2018; respondent Nos.3 and 4 are aged about four years and one year respectively by the time of passing of the Award; now their age is about 17 and 14 years respectively. In such circumstances, the amount of Rs.5,000/- per month each granted under the Award is not sufficient to meet the expenses of respondent Nos.2 to 4; in such circumstances, as per Ex.P1 salary statement, the petitioner is drawing Rs.58,083/- per month; as such, the petitioner is drawing sufficient salary to meet the living expenses of respondent Nos.2 to 4; in such circumstances, it is a fit case to enhance the maintenance to the respondent No.2 to Rs.10,000/- and respondent Nos.3 and 4 to Rs.5,000/- per month each from the date of filing of this petition.

10. The Court is in agreement with the findings recorded by the Court below, which are based on sound reasoning. In view of the facts and circumstances of the case, this Court is not inclined to interfere with the order under challenge. Further, it is well settled

law that revisional Court has to confine itself to the legality and propriety of the findings of the subordinate Court as to whether the subordinate Court acted within its jurisdiction. The revisional Court has no jurisdiction to set aside the findings of facts recorded by the learned Judge and substitute its own findings. Sections 397 and 401 of Cr.P.C. confer only limited power on the revisional Court to the extent of satisfying about the legality, propriety or regularity of the proceedings or orders of the lower Court and not to act like appellate Court for other purposes including the recording of new findings of fact on fresh appraisal of evidence. In the instant case, I do not find any illegality, impropriety or irregularity in the judgment under challenge, so as to interfere with the same by exercising revisional jurisdiction under Sections 397 and 401 Cr.P.C. None of the contentions raised on behalf of the petitioner merit consideration. The criminal revision case is devoid of merits and is liable to be dismissed.

11. Accordingly, the Criminal Revision Case is dismissed confirming the order, dated 10.06.2018 passed in CrI.M.P.No.111 of 2014 in M.C.No.12 of 2010 by the learned Judge, Family Court-cum-VI Additional District Judge at Khammam.

Miscellaneous petitions pending, if any, shall stand closed.

JUVVADI SRIDEVI, J

Date: 13.03.2023
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