
(2021) 11 TEL CK 0034

In the Telangana High Court

Case No : Criminal Revision Case No. 73 Of 2007

V.Nagesh Dayal Raju

APPELLANT

Vs

Namratha Jaiswal And 3 Others

RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 397, 401

Citation : (2021) 11 TEL CK 0034

Hon'ble Judges : Dr. G. Radha Rani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This criminal revision case is filed by the petitioner - respondent in M.C. No.254 of 2004, challenging the orders dated 18.09.2006 passed in the said case by the Additional Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case cum Additional Family Court at Hyderabad.

2. The 1st respondent is the wife and the respondents No.2 and 3 are the son and daughter of the petitioner, aged 9 and 7 years, respectively, by the date of filing of the petition. The 1st respondent filed a petition under Section 125 Cr.P.C. claiming maintenance of Rs.3,000/- to her and Rs.2,500/- each to the respondents 2 and 3. As per her contention, she was married with the petitioner No.1 on 14.07.1994. As the petitioner was addicted to drinking and used to harass her, she lodged a report with the Superintendent of Police, Medak District on 22.12.2003, but even after the warnings by the police, the petitioner did not change his behaviour and on 25.4.2004 he had driven the respondents out of the house to meet his illegal demand of dowry. Due to fear, the 1st respondent was living in her parents' house. The petitioner was running a chemical factory at Patancheru and was earning Rs.25,000/- per month and also got a godown and was getting an amount of Rs.15,000/- per month towards rent.

3. The petitioner denied the said allegations and contended that the 1st

respondent was in the habit of deserting him without any valid reason and the counselling centre also found fault with the 1st respondent. He contended that due to heavy financial loss, he was unable to run the chemical factory and incurred debts of Rs.3,00,000/- from private financiers. He denied that he was owning a godown and getting a rent of Rs.15,000/- per month and that he was having means to maintain the respondents 1 to 3. He further contended that the 1st respondent was working in the Development Credit Bank, Secunderabad and earning Rs.6,000/- per month and that she was having sufficient means to maintain herself.

4. The 1st respondent examined herself as PW.1 and also got examined her father as PW.2 and another witness as PW.3 and got marked Exs.P1 to P.7. The petitioner examined himself as RW.1 and got examined the Branch Manager of DCB Bank as RW.2 and got marked EXs.R1 to R6 on his behalf.

5. On considering the evidence on record, the learned trial Judge allowed the M.C. partly, awarding an amount of Rs.1,500/- each to the respondents 1 to 3 towards monthly maintenance from the date of the petition i.e. 05.11.2004 and directed the petitioner to pay the maintenance to the respondents 2 and 3 till they attain majority.

6. Aggrieved by the said order of awarding maintenance, the petitioner filed this revision contending that the learned Judge failed to see that the 1st respondent voluntarily left the company of the petitioner, she herself issued a legal notice dated 07.10.2004 which would show the demand made by her. There was absolutely no documentary evidence to show that the petitioner was having income of Rs.25,000/- per month through chemical business and erred in holding that the burden would lie on the petitioner to prove that he was not having any income. He contended that he closed the business in the year 2000 due to heavy financial loss. The 1st respondent was having sufficient means to maintain herself. The petitioner was willing to take the custody of the children and ready to look after their welfare and prayed to allow the petition.

7. Heard the learned counsel for the petitioner and the learned Public Prosecutor. There is no representation by the learned counsel for the respondents 1 to 3 though notice was served on them as per the proof of service of notice filed by the learned counsel for the petitioner dated 13.11.2019.

8. Now the point for consideration is whether there is any illegality in the order of the Court below in granting maintenance to the respondents 1 to 3 herein?

9. This petition is filed under Sections 397 and 401 Cr.P.C. and the scope of the revision is to satisfy itself as to the correctness, legality or propriety of any finding or order passed by the Court below. The petitioner is contending that the 1st respondent left his company on the demand to shift the respondents to Hyderabad for which he did not agree in view of his parents' health condition and that the Court below failed to consider the same. But, on perusal of the order under revision, the Court below discussed the evidence of PW.1 and RW.1 and

basing on the same only, observed that PW.1 had given a vivid account as to how she was subjected to physical and mental cruelty in the hands of the petitioner and no material was brought by the petitioner to disbelieve the testimony of PW.1 in her cross examination. The Court below considered that the petitioner himself produced Ex.R-5 an undertaking given by him before the Counselling Centre that he would give up his drinking habit and would not beat and abuse PW.1 and would not harass her physically and mentally and would provide food and ration to the respondents and observed that only on account of the harassment caused by the petitioner, the 1st respondent was living in her parents' house with the minor children. The Court below further observed that the copy of the report given by her to the Superintendent of Police proved the harassment and the admission of the petitioner about the dowry harassment case pending against him supported the case of the 1st respondent that she was harassed by the petitioner. The Court below also observed that PW.1 issued a legal notice dated 07.10.2004 to the petitioner to take her back along with children. Thus, the said legal notice was not useful to the petitioner to support his case, but would support the case of the 1st respondent only.

10. The other contention of the learned counsel for the petitioner was that the petitioner was not having income of Rs.25,000/- through the chemical business and the learned Judge wrongly placed the burden on the petitioner to prove that he was not having chemical business.

11. The impugned order would disclose that the Court below observed that the 1st respondent failed to prove the income of the petitioner at Rs.25,000/- per month and that he was getting rent of Rs.15,000/- per month from the godown. Basing on the admission of the petitioner in his counter and in the evidence that he was doing chemical business, the learned Judge accepted the evidence that the petitioner was doing chemical business, but as the petitioner pleaded that he wound up his business due to loss, he observed that the burden would lie upon the petitioner to prove that he was not carrying the said business at present. This Court finds no illegality or incorrectness in the said finding by the Court below. After observing that except his bald assertion, no acceptable legal evidence was adduced by the petitioner herein to prove that he wound up his business, the Court below concluded that he was doing business and considered his income at Rs.10,000/- per month. Thus, there is no illegality in the finding of the Court below in the said regard.

12. The other contention taken by the learned counsel for the petitioner was that the 1st respondent was having sufficient means to maintain herself. On this aspect the petitioner herein got examined the Branch Manager of the Development Credit Bank, Secunderabad as RW.2. On considering the evidence of RW.2, the Court below observed that the said evidence would prove that subsequent to filing of the petition, the respondent No.1 joined in the said bank on 01.07.2006, but only worked for 17 days and thereafter, she had not attended the job. On considering the evidence of RW.2, coupled with the suggestion given

by the learned counsel for the petitioner to PW.2, father of the respondent No.1, the Court below observed that the respondent No.1 was not doing any job and that she had no means to maintain herself. Hence, the Court below observed that the evidence of RW.2 did not support the case of the petitioner.

13. As the maintenance was awarded to the respondents herein basing on the evidence on record and as there is no illegality in arriving at the said conclusion, this Court finds no merit in the revision case filed by the petitioner.

14. In the result, the Criminal Revision Case is dismissed confirming the order dated 18.09.2006 passed in M.C. No.254 of 2004 by the Additional Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case cum Additional Family Court at Hyderabad.

15. The conditional interim order of stay granted by this Court on 23.01.2007 directing the petitioner to pay Rs.3,000/- per month is vacated. The petitioner is directed to deposit the arrears of maintenance within one month from the date of receipt of a copy of this order and to continue to pay the maintenance to the respondent No.1 on or before 10th of every month without fail, as directed by the trial Court. As the respondents No.2 and 3 might have become majors, the arrears of maintenance due to them, if any, is directed to be deposited till the date they attained the age of majority.

Miscellaneous petitions pending, if any, shall stand closed.