

**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL REVISION CASE NO.1237 OF 2010****ORDER:-**

This Criminal Revision Case came to be filed on behalf of the petitioner, who is the petitioner in the Maintenance Case No.3 of 2008, on the file of the learned I Additional Judicial Magistrate of First Class, Tenali, challenging the order in the Criminal Revision Petition No.145 of 2009, dated 19.12.2009, whereunder the learned Judge, Family Court, Guntur, allowed the Criminal Revision Petition by setting aside the order, dated 14.09.2009 in M.C.No.3 of 2008 on the file of I Additional Judicial Magistrate of First Class, Tenali.

2) The parties to this Criminal Revision Case will hereinafter be referred as described before the trial Court for the sake of convenience.

3) The present petitioner filed M.C.No.3 of 2008, on the file of I Additional Judicial Magistrate of First Class, Tenali, by contending in substance that the petitioner is the legally wedded wife of the respondent and their marriage was performed on 11.02.2007 at Tirumala Tirupati Devasthanam, as per Hindu rights and customs. Four days after the marriage, respondent deserted the petitioner for no fault of her and began to demand

money from her parents. The respondent totally neglected and refused to maintain the petitioner. Respondent is doing private finance business and earns Rs.5,000/- per month. He is working as a cable operator by getting Rs.3,000/- per month. He has sufficient means to pay the maintenance at Rs.2,000/- to the petitioner, who is unable to maintain herself.

4) The respondent got filed a counter denying the averments and contending in substance that immediately after the marriage, the petitioner joined with him at his house and both of them lived only one day and after that, they went to the parents house of the petitioner, there both of them stayed for one day. Later, both of them came to his house for three days ceremony. Petitioner did not cooperate for cohabitation and told to him that she had no interest in marrying him and at the instance of her parents, she married him. So, she quarreled with the respondent and his family members and left voluntarily from her matrimonial home. He has no means to pay the maintenance to the petitioner. He is dependent on the mercy of his relatives. Hence, the petition is liable to be dismissed.

5) During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.P.1 and P.2

were marked. On behalf of the respondent, R.Ws.1 and 2 were examined.

6) The learned I Additional Judicial Magistrate of First Class, Tenali, on hearing both sides and on considering the oral as well as documentary evidence, allowed the maintenance case in part, directing the respondent to pay monthly maintenance of Rs.800/- to the petitioner from the date of filing of the petition in her savings bank account. Aggrieved by the same, the unsuccessful respondent filed the Criminal Revision Petition No.145 of 2009 before the Judge, Family Court, Guntur and the learned Judge, Family Court, Guntur on hearing both sides and on considering the evidence on record, allowed the Criminal Revision Petition, setting aside the order of the learned Magistrate. Aggrieved by the same, the wife, who is the petitioner in the maintenance case, filed this Criminal Revision Case.

7) Now, in deciding this Criminal Revision case, the point that arises for consideration is:

Whether the impugned order in Criminal Revision Petition No.145 of 2009, dated 19.12.2009, on the file of the Judge, Family Court, Guntur, suffers with any illegality, irregularity or impropriety and whether it is sustainable under law and facts?

**POINT:-**

8) The learned counsel Sri B.V. Anjaneyulu, representing the learned counsel for the petitioner, Sri Sreekanth Reddy Ambati, would contend that when the learned Magistrate on appreciation of the evidence granted maintenance of Rs.800/- per month to the petitioner, the learned Judge, Family Court, Guntur erroneously allowed Criminal Revision Petition filed by the husband, setting aside the order of the learned Magistrate. The learned Judge, Family Court, made certain comments which are not borne out by the record. The petitioner before the learned Magistrate was able to establish the neglect made by the respondent and her inability to maintain herself and capacity of the respondent to maintain her, as such, the Criminal Revision Case is liable to be allowed to set aside the order of the learned Judge, Family Court, Guntur in Criminal Revision Petition No.145 of 2009, dated 19.12.2009.

9) Sri N. Hari Nadh, representing the learned counsel for the first respondent, would contend that the order passed by the learned Magistrate was very cryptic without appreciating the evidence on record and the Judge, Family Court, rightly appreciated the evidence on record and allowed the Criminal Revision Petition filed by the first respondent herein, as such,

there are no grounds whatsoever to interfere with such an order.

10) In the light of the above, this Court has to see as to whether the petitioner in M.C.No.3 of 2008 on the file of the I Additional Judicial Magistrate of First Class, Tenali, was able to prove that the first respondent herein i.e., the husband neglected to maintain her and whether she was unable to maintain and that the husband had capacity to maintain herself.

11) The pleadings of the petitioner before the trial Court were that her marriage with the respondent in the maintenance case took place on 11.02.2007 at Tirumala Tirupati Devasthanam as per Hindu rights. Four days after the marriage, her husband deserted for no fault of her and began to demand money from her parents. Even before expiry of fortnight, her husband and other relatives subjected her to cruelty. The respondent filed O.P.No.48 of 2007, seeking divorce. She has no means to maintain herself and the respondent had means to maintain her. This is the substance of the allegations.

12) On the other hand, respondent seriously contested the case of the petitioner by contending in substance that it is true that the marriage between him and the petitioner was performed on 11.02.2007. Petitioner joined with the respondent

at his house and lived only one day and after that both of them went to her parents house and they were there only one day and subsequently they came to respondent's house for three days ceremony. She did not cooperate for cohabitation. When he questioned her, she replied that she is not interested to marry him, as such, she quarreled with him and his family members and created galata. The house owner, Sri Mohiddin Khan interfered and pacified the issue. Then the petitioner went to her parents house along with her cousin Tummala Ravi. This is the substance of the case of the respondent.

13) Before the trial Court, she examined herself as P.W.1 and she deposed in tune with her pleadings. She further examined P.W.2, her grandmother and she deposed in support of the petitioner. R.W.1 before the trial Court is the respondent, who deposed according to the pleadings. He got examined R.W.2, Mohiddin Khan, in support of his case.

14) Before going to appreciate the evidence on record, it is pertinent to make a mention here that the order passed by the learned Magistrate in M.C.No.3 of 2008 on 14.09.2009 is very cryptic. After referring the pleadings and the evidence part, he gave finding that R.W.1 during the cross examination deposed that he cannot take P.W.1 and maintain her. Basing on

the above single sentence, without considering the entire deposition, he came to a conclusion that there is justifiable cause for the petitioner to stay away from the respondent. After that, referring on the evidence of R.W.2 that respondent used to pay Rs.600/- towards rent, the learned trial Court came to a conclusion that respondent has some source of income. With the above findings, he granted maintenance of Rs.800/- to the petitioner. That order was under challenge before the learned Judge, Family Court, Guntur in Criminal Revision Petition No.145 of 2009 and the learned Judge on appreciation of the evidence on record, allowed the same. This is order which is under challenge in the present Criminal Revision Case.

15) Now, I would like to deal with as to whether the reasons that are given by the learned Judge, Family Court are tenable? It is to be noticed that the case of the petitioner is specific that within four days after the marriage, the respondent began to demand dowry. This is denied by the respondent by contending that he and petitioner resided in his house for one day and after that, they went to in-laws house where they spent one day and after that they come back to undergo three days ceremony. During the cross examination. P.W.1 deposed that they returned to Tenali from Tirupati after marriage and

remained at Tenali and on the next day they went to her parents house to attend Satyanarayanaswamy Vratham. On the same day they returned to Tenali in the evening. She denied that she is not interested to live with the respondent and she did not cooperate to lead conjugal life. She further denied that Tummala Ravi took her after she made a galata. Virtually, the petitioner never pleaded in the petition as to when she departed to her parents house after spending four days time with the respondent. On the other than, the evidence of P.W.2, who is no other than the grandmother of petitioner means that immediately after marriage, P.W.1 joined with the respondent and both of them lived together happily for 10 days. So, this portion of evidence of P.W.2 is contradicting the evidence of P.W.1. The evidence of P.W.2 as if petitioner and respondent resided together for 10 days is absolutely incorrect.

16) Apart from this, the very allegations are so-called demand to meet demand of dowry. During the course of cross examination P.W.1 deposed that parents of the respondent presented gold ornaments worth of Rs.20,000/- to her at the time of marriage. When that is the case and when the parents of the respondent presented gold ornaments worth of Rs.20,000/-, it is rather improbable to assume that hardly within



four days from the date of marriage, she was subjected to any demand for dowry. Neither the pleadings of the petitioner nor the evidence adduced on her behalf, disclosed anything on which date she left to her parents house. There are no pleadings that she was driven out by the respondent. On the other hand, the respondent pleaded that when she quarreled with him and family members, R.W.2 intervened and pacified the issue. After that, the cousin of petitioner, Tummala Ravi took her to her house. R.W.2 in this regard fully supported the case of respondent.

17) The evidence of R.W.2 is such that on the second or third day after returning from Tirupati, disputes arose between the respondent and his wife and on the next day, the respondent in the maintenance case demanded for divorce and she sat in front of the house of respondent and agitated. The evidence of R.Ws.1 and 2 is consistent. They remains nothing in their evidence to discredit their testimony. In the absence of any pleadings from the petitioner that she was driven out by the respondent and in the absence of specifying date about on which date she was driven out, the case of the petitioner cannot be believed. The respondent pleaded in the counter explaining the

circumstances in which the petitioner departed from the house and his evidence has corroboration from the evidence of R.W.2.

18) Apart from this, it is borne out from the evidence that when the respondent issued Ex.P.2, legal notice prior to filing a divorce O.P., the petitioner did not choose to issue any reply whatsoever. So, after he filed divorce O.P. only, she filed the maintenance case. When these are all the facts which are borne out from the record attributing fault against the petitioner, the learned Magistrate on the ground that R.W.1 deposed in cross examination that he cannot take back the petitioner uphold the case of the petitioner. It is to be noticed that when the fault is against the petitioner and when the respondent filed a divorce O.P. he answered that she cannot take back the petitioner to maintain her. That should not have been a basis for the learned Magistrate to grant the maintenance. One can read the evidence in between the sentences. The entire deposition has to be read in tune with the pleadings.

19) Having regard to the above, I am of the considered view that, the learned Judge, Family Court, Guntur, rightly appreciated the evidence on record and rightly set aside the order of the learned I Additional Judicial Magistrate of First Class,

Tenali. In my considered view, the learned Magistrate basing on the fact that the respondent was paying rent of Rs.600/- per month assumed that he had source of income. Even otherwise, when the petitioner was not able to prove before the trial Court that the fault was on the part of the respondent, she is not entitled to claim any maintenance.

20) In view of the above, I am of the considered view, that the order of the learned Judge, Family Court, Guntur in Criminal Revision Petition No.145 of 2009, is absolutely maintainable under law and facts, as such, this Criminal Revision Case must fail.

21) In the result, the Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending, if any, shall stand closed.

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**JUSTICE A.V. RAVINDRA BABU**

Dt. 30.11.2022.  
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**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU**

**CRL.R.C.NO.1237 of 2010**

**Date:30.11.2022**

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