

**IN THE COURT OF THE I ADDL. METROPOLITAN SESSIONS
JUDGE, VISAKHAPATNAM.**

Present : Sri.V.V.Srinivasa Murthy
I Addl. Metropolitan Sessions Judge,
Visakhapatnam.

Friday, this the 10th day of August, 2018

Crl.R.P.1/2018

Between :

Pothala Rama Rao, S/o Polayya, Hindu, aged 35 years,
residing at Door No.6-43, Kannampeta Village, Amalapuram
Post, Narsipatnam Mandal, Visakha District presently
working as School Assistant, D.Yerravaram Village, Z.P.High
School, Visakhapatnam District.

... Revision Petitioner

And :

Pothala (Adigarla) Varalakshmi, D/o A.Nooka Raju, Hindu,
aged 33 years, residing at Srirampuram Village, Jogumpeta
Post, Golugonda Mandal, Visakha District.

... Respondent

This Revision Petition has come up on 06-07-2018 for
hearing before me in the presence of Sri.S.S.Reddy, Advocate for
Revision Petitioner and of Sri.S.V.Ratnakara Rao, Advocate for
Respondent and the matter having stood over for consideration till
this day and this Court delivered the following :

ORDER

1. Revision petitioner is respondent in the proceedings of
M.C.1/2016 before Addl. Junior Civil Judge's Court, Narsipatnam.
Respondent is wife of revision petitioner. Respondent filed
M.C.1/2016, U/Sec.125 of Cr.P.C. claiming monthly maintenance
and the said petition was allowed directing revision petitioner
herein for payment of Rs.15,000/- per month. Revision petitioner
preferred revision. Parties are described as stated by trial Court.

2. **Facts of the case :-** The marriage of petitioner and
respondent was performed on 11-02-2004 at the temple of
Annaram. Respondent is a distant relative of petitioner. Even

before their marriage they had relationship. Subsequent to the marriage, respondent got Government job as School Assistant at Z.P.High School. Thereafter, he used to ill-treat the petitioner. Petitioner and respondent resided at M.B.Patnam. There also respondent used to misbehave with his students. Respondent necked out the petitioner and later she was left at Kannampeta where her parents house is located. She gave report to Narsipatnam Police on 26-11-2008. Respondent executed an undertaking on 17-12-2008 and accepted to look after the welfare of the petitioner. Later when petitioner was ill-treated, she gave report to Police Golugonda on 17-08-2015. Respondent showed some papers and expressed that he got an exparte divorce decree from Family Court, Visakhapatnam in F.C.O.P.1210/2014 on 09-02-2015. Petitioner came to know that respondent got an exparte decree showing her fake address. Thereafter, she filed petition to set aside the exparte decree. Respondent is getting salary of Rs.70,000/- per month. He has refused and neglected to maintain the petitioner. Hence, she filed the maintenance case.

3. Respondent filed counter stating he has to clear number of debts of his family. His contention is that petitioner used to call him as impotent and she wanted to lead luxurious life; and in the year 2008, when the parents of respondent fell sick, she blindly refused to do service to them. His further contention is that petitioner demanded Rs.8,00,000/- towards final settlement; and respondent refused for the same; and petitioner is getting Rs.1,500/- towards pension from the Government under handicapped quota and he never created any troubles to petitioner and she has not heard the advice of respondent; and

the petition is not maintainable.

4. Before trial Court, petitioner got her examined as PW.1. PW.2 was examined and Ex.P1 to Ex.P9 were marked on the side of the petitioner. Respondent got him examined as RW.1, his father was examined as RW.2. After hearing the parties and after perusing the record the trial Court has observed that respondent has neglected and refused to maintain the petitioner and directed the respondent to pay monthly maintenance of Rs.15,000/-.

5. Respondent preferred revision on the ground that the trial Court has not appreciated the evidence of witnesses; and the respondent has to look after his aged parents; and the mother of the respondent filed P.L.C.407/2016 and maintenance was awarded; and the landed property is in the name of parents of respondent and respondent depends upon his salary; and petitioner has got means to maintain her.

6. The learned counsel of respondent has submitted that respondent gets meager salary and there are many deductions; and respondent has been paying Rs.10,000/- per month to his aged parents and he has to pay housing loan of Rs.22,500/- per month; and the trial Court has not considered the pension amount that is being received by petitioner; and there was negligence on part of the petitioner also; and the petitioner has not filed any application U/Sec.9 of Hindu Marriage Act for restoration of conjugal rights; and the order passed by the trial Court has to be set aside.

7. The learned counsel of petitioner has submitted that the respondent is bound to maintain his wife; and respondent is not supposed to rely upon the collusive orders obtained by him

under Ex.A2 in P.L.C.407/2016 before Mandal Legal Services Authority. The learned counsel has also submitted that respondent has sufficient means to maintain him and he has been getting more than Rs.60,000/- per month as Government teacher. According to the learned counsel, petitioner is unable to attend any work and she depends upon the financial assistance provided by her parents as respondent neglected her and petitioner has filed F.C.O.P.13/2008 before Senior Civil Judge's Court, Narsipatnam and the present revision does not lie.

8. Basing upon the respective contentions, **the following points would arise for consideration :-**

- 1. Whether the respondent-husband has refused or neglected to maintain the petitioner-wife having got means to pay maintenance ?***
- 2. Whether petitioner has means to maintain her ?***
- 3. Whether the order passed by the trial Court needs any interference ?***

9. **Points 1 and 2 :** The present petition is filed U/Sec.125 of Cr.P.C. Sec.125 of Cr.P.C. reveals about order for maintenance of wife, children and parents. It reads - if any person having sufficient means negligence or refused to maintain his wife unable to maintain herself, a Magistrate of the First Class may upon proof of such neglect or refusal, or order such person to make monthly allowance of maintenance of his wife. The Explanation reveals that wife includes a woman, has been divorced by or has obtained divorce from her husband and has not remarried.

10. The case of petitioner-wife is that her husband is her

distant relative and he started having physical relationship with her even prior to their marriage; and subsequently respondent married her at Annavaram on 11-02-2014 to the knowledge of their elders and their marriage was consummated. Her further contention is that respondent started ill-treating her stating that she is physically handicapped and he started misbehaving with his girl students and he necked out her. She has further mentioned that she has given police report on two occasions and respondent has undertaken at first occasion to look after her welfare; and on the second occasion he has shown an exparte divorce decree obtained by him against her before Family Court, Visakhapatnam and thus the respondent has refused and neglected to look after her welfare. The contention of respondent is that petitioner has not co-operated with him in leading martial life; and she refused to do service to his aged parents; and petitioner always intended to lead luxurious life. The trial Court has observed that respondent has got means and petitioner is unable to maintain her and finally concluded that respondent has neglected to maintain the petitioner.

11. The evidence of petitioner is that she has no knowledge about filing of divorce petition by respondent before Family Court; and she is physically handicapped even by birth. She is suggested that she obtained physically handicapped certificate in order to have pension from Government. She has admitted that respondent and her younger brother used to reside in a room during their education time at Narsipatnam. Such evidence reveals that respondent had opportunity to meet the petitioner even during his education period. The parents of

respondent have not attended at the time of marriage of petitioner and respondent. After the marriage, petitioner and respondent resided at the parents house of respondent at Srirampuram till November, 2005. Later respondent got Teacher post in Z.P.School, M.B.Patnam. She has also admitted that a motor cycle was presented to respondent after her marriage by her parents. She is suggested that her parents wanted the respondent to reside as illatom son-in-law. However, petitioner and respondent started living at M.B.Patnam, she had two miscarriages in the year 2006 and in the year 2007. But, it is admitted about giving report to Narsipatnam Police in the year 2008 when the respondent has harassed her. Respondent used to attend Kannapeta Village occasionally in the year 2008 to look after the petitioner. Petitioner and respondent used to reside at the place of job of respondent except in the year 2008. From the year 2009, petitioner and respondent reside at D.Yeravaram village.

12. The evidence of respondent is that he and petitioner lived together for about eight years and led conjugal life. Such evidence reveals that there were no disputes between petitioner and respondent till the year 2012. The respondent might have caused pressure on petitioner to have a settlement. Respondent has suggested the petitioner that she has demanded Rs.8,00,000/- towards full and final settlement. Filing of divorce O.P. by the respondent reveals that he is not interested in leading conjugal life with the petitioner. It is for the respondent to persuade his wife and lead conjugal life. As petitioner could not conceive, the respondent might have caused pressure on her,

then Police report was given to Police, Narsipatnam Rural. Respondent has undertaken to look after the petitioner. But, subsequently the incidents so happened in their family, the respondent has chosen to file divorce petition. He is suggested that he has beaten the petitioner by using stick on 03-05-2014 and petitioner has sustained fracture of her hand. Respondent has concluded in his evidence that she is not willing to take back the petitioner. Respondent has not stated the reasons for avoiding the conjugal life with the petitioner. His contention is that petitioner used to harass him mentally and has not led the conjugal life. It has to be looked with suspicion as respondent has not alleged earlier prior to the year 2012 about not leading conjugal life by the petitioner. Respondent does not want to lead life along with petitioner and that made him to make allegations against his wife.

13. RW.2-Polayya is the father of respondent. He has admitted that there are no issues to them. His evidence is that in the year 2014, petitioner left for her parental home but he has not conducted any panchayat or mediation. He has admitted that respondent has never conducted any mediation and the petitioner has mediated in the presence of elders of Amalapuram. Such evidence reveals that respondent has not taken steps for smooth running of conjugal home. From the evidence of petitioner, respondent and their elders, it can be concluded that respondent has not taken steps for getting on with his conjugal home and he has refused and neglected to maintain the petitioner.

14. The further contention of the respondent is that petitioner is getting monthly pension under physical handicapped

quota but it is a meager amount and that too it depends upon the availability of funds under such quota and depends upon the release of funds by the Government. Respondent is teacher and he has been getting monthly salary around Rs.60,000/-. Respondent has to provide such standard of life in par with the standard of life that is led by him. In that view also, it can be concluded that respondent has refused and neglected to maintain the petitioner. ***These points are decided in favour of the petitioner.***

15. **Point 3 :** The trial court has ordered for payment of monthly maintenance of Rs.15,000/- and directed the respondent to pay the same from the date of filing of the petition. Respondent's contention is that he has to maintain his aged parents; and he has to pay monthly deductions towards housing loan etc.

16. Respondent intended to base upon Sec.125 (4) of Cr.P.C. it reads that no wife shall be entitled to receive allowance from her husband if without any sufficient reason she refused to live with her husband. But in this case, respondent himself has admitted that he does not want to continue conjugal life with the petitioner. Hence, he cannot base upon U/Sec.125 (4) of Cr.P.C. The quantum of maintenance has to be fixed in such manner that petitioner-wife has to lead a life as wife of a Government teacher. The minimum amount of pension obtained by her is not sufficient to lead life with such status. The respondent has to pay monthly maintenance to lead such standard of life on par with the standard of his life. The trial Court has recorded that respondent is getting monthly salary of Rs.52,000/- and odd. Basing on such

amount of salary, it has fixed monthly maintenance of Rs.15,000/- to the petitioner. In this revision petition, the respondent has shown, he has been paying monthly maintenance to his aged parents in the Lok Adalat case 407/2016 before Mandal Legal Services Authority, Narsipatnam. In P.L.C.407/2016, respondent has agreed to pay Rs.10,000/- per month to his mother. He has also to meet the medical expenses of his aged parents besides making payments towards housing loan. It is the burden of the respondent to provide shelter to his parents also. As the petitioner is getting little amount of pension, the respondent can easily pay Rs.10,000/- per month to the petitioner. Petitioner can as well pray for enhancing of the maintenance as and when the salary of the respondent is increased. Considering such fact and the other facts of the case the respondent can be directed to pay Rs.10,000/- as monthly maintenance to the petitioner from the date of petition. ***This point is answered accordingly modifying the order passed by the trial Court.***

17. In the result, revision petition is partly allowed. The order of trial Court, dt.16-11-2017 in M.C.1/2016 by the Addl. Junior Civil Judge, Narsipatnam is modified. Respondent is ordered to pay Rs.10,000/- (Rupees ten thousand only) per month to the petitioner from the date of filing of the petition and to pay monthly maintenance on or before 5th of every succeeding month.

Dictated to the Stenographer Grade-II, transcribed by her, corrected and pronounced by me in the open Court, this the 10th day of August, 2018.

Sd/- V.V.SRINIVASA MURTHY
I Addl. Metropolitan Sessions Judge,
Visakhapatnam.

Copy to :- The Addl. Junior Civil Judge, Narsipatnam.