

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL PETITION No.1526 of 2011

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C., by the petitioner (respondent in M.C.), to quash the order dated 30.12.2010 in Criminal Revision Petition No.17 of 2010 confirming the order dated 09.04.2010 in M.C.No.5 of 2008 on the file of the Judicial First Class Magistrate, Boath.

2. For the sake of convenience, the parties will hereinafter be referred to as they are arrayed in M.C.No.5 of 2008.

3. The facts leading to filing of the petition, in brief, are as follows: The marriage of the respondent was performed with Ramadevi long back. Out of lawful wedlock, the said Ramadevi and the respondent were blessed with two daughters i.e., petitioner Nos.1 and 2. The said Ramadevi died 13 years back while working as Government servant. Immediately after the death of the Ramadevi, the respondent got married another lady and blessed with children. Petitioner Nos.1 and 2 having no other alternative went to their maternal grandmother's house. Petitioner No.3, who is maternal grandmother of petitioner Nos.1 and 2, filed M.C.No.5 of 2008.

4. The contention of the respondent is that petitioner Nos.1 and 2 were never in the care and custody of petitioner No.3 at any point of time. Petitioner No.3 is not the natural guardian of petitioner Nos.1 and 2. Therefore, the petition is not maintainable under law.

5. In the trial Court, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.P.1 to P.3 were marked. On behalf of the respondent, RW.1 was examined and no documents were marked.

6. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the

respondent intentionally and willfully neglected to provide maintenance to petitioner Nos.1 and 2 and awarded maintenance of Rs.2,000/- per month each to petitioner Nos.1 and 2.

7. Feeling aggrieved by the order of the trial Court, the respondent filed Criminal Revision Petition No.17 of 2010 on the file of the Principal District and Sessions Judge, Adilabad. The learned Sessions Judge, after reappraising the oral and documentary evidence, arrived at a conclusion that petitioner Nos.1 and 2 are entitled to claim maintenance from the respondent and dismissed the petition on 30.12.2010 confirming the order of the trial Court. Hence, the petition.

8. The point for consideration is whether petitioner Nos.1 and 2 are entitled to claim maintenance from the respondent or not?

9. The following admitted facts can be culled out from the material available on record.

The marriage of the respondent was performed with Ramadevi long back as per Hindu rites and caste custom. Immediately after the marriage, the said Ramadevi joined with the respondent to lead happy marital life. Out of lawful wedlock, Ramadevi and the respondent were blessed with two daughters i.e., petitioner Nos.1 and 2. Unfortunately, the mother of petitioner Nos.1 and 2 died 13 years back while working in a Government department. Immediately after the death of Ramadevi, the respondent married another lady and blessed with children.

10. It is the duty of the petitioners to prove that the respondent having sufficient source of income, willfully and intentionally neglected to provide maintenance to them. The material available on record clinchingly establishes that petitioner Nos.1 and 2 have approached their grandmother i.e., petitioner No.3, immediately after death of their

mother. The material available on record clearly reveals that petitioner No.3 has been looking after the welfare and wellbeing of petitioner Nos.1 and 2. It is a known fact that maternal grandmothers will take care of their grandchildren more particularly in case of death of their daughters.

11. The only contention raised by the respondent is that petitioner No.3 has not obtained necessary orders from the District Court to act as guardian of petitioner Nos.1 and 2. The petition is filed by petitioner No.3 on behalf of petitioner Nos.1 and 2 claiming maintenance under Section 125 Cr.P.C. In such circumstances, non-obtaining of the permission from the District Court by petitioner No.3 to act as guardian of petitioner Nos.1 and 2 itself is not a valid and justifiable ground to dismiss the M.C. in *limini*. The very object of Section 125 Cr.P.C. is to provide some financial assistance to neglected wife and children. The Court is not supposed to decide rights of parties while disposing of the petitions under Section 125 Cr.P.C., which is summary in nature. Petitioner Nos.1 and 2 being minors have no other option except to look forward towards their father for necessary financial assistance. Absolutely, there is no material on record to establish that petitioner Nos.1 and 2 left the house of the respondent without justifiable reason. It is a known fact that a married woman may not treat her stepchildren on par with her natural children.

12. In view of the above stated facts and circumstances of the case, petitioner Nos.1 and 2 are justified in residing with their grandmother.

13. The contention of the respondent is that he has to look after the welfare of his second wife and children. There is a social and moral obligation on the part of the respondent to look after the welfare of his first wife's children. The recitals of Exs.P.1 to P.3 clinchingly establish that the respondent is having landed property in his name at Seethagondi Village and also working as private employee. The material placed before the Court clinchingly establishes that the

respondent is having sufficient means to provide maintenance to petitioner Nos.1 and 2.

14. The trial Court after taking into consideration the responsibility of the respondent towards his second wife and children granted maintenance of Rs.2,000/- per month each to petitioner Nos.1 and 2. Petitioner No.3 was aged about 75 years as on the date of filing of M.C.No.5 of 2008. In such circumstances, it may not be possible for petitioner No.3 to provide any financial assistance to petitioner Nos.1 and 2. By the time of filing of the petition, petitioner Nos.1 and 2 are students. An amount of Rs.2,000/- per month may not be sufficient for prosecuting the studies of petitioner Nos.1 and 2. An amount of Rs.2,000/- per month is hardly sufficient for sustenance of an individual. The trial Court has assigned cogent and valid reasons to its findings while granting maintenance to petitioner Nos.1 and 2. The revisional Court fully concurred with the findings recorded by the trial Court. The Courts below have assigned cogent and valid reasons to its findings.

15. As per the ratio laid down in **Padal Venkata Rama Reddy @ Ramu V Kovvuri Satyanarayana Reddy**^[1], *"In a proceeding under Section 482 Cr.P.C., the High Court will not enter into any findings of facts, particularly, when the matter has been concluded by concurrent finding of facts of two courts below."*

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is not a fit case to interfere with the well considered orders passed by the Courts below. Viewed from any angle, the petition is liable to be dismissed.

17. Hence, the Criminal Petition is dismissed.

18. Consequently, Miscellaneous petitions, if any, pending in this

criminal petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 31.07.2014

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[\[1\]](#) 2011 (2) ALD (Crl.) 948 (SC) = (2011) 12 SCC 437