

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO

CRIMINAL REVISION PETITION No.68 OF 2016

C/W

CRIMINAL REVISION PETITION No.1002 OF 2015

IN CRL.RP No.68/2016

BETWEEN:

SRI.MOHAMMED RAFI
AGED ABOUT 42 YEARS
S/O LATE N.K.ABDUL SATTAR
R/AT BANAGIJARA BEEDHI
NAGAMANGALA TOWN
MANDYA DISTRICT-571 432

... PETITIONER

(BY SRI.DINESH KUMAR K.RAO, ADVOCATE)

AND:

1. SMT.NAJIDA BHANU
W/O HAFEEZ ULLAKHAN
AGED ABOUT 26 YEARS
2. SANIYA FIRDOSE
D/O HAFEEZ ULLAKHAN
MINOR
REP.BY RESPONDENT NO.1
BOTH ARE RESIDING AT
NO.75, RENUKAMBA ROAD
CHENNARAYAPATNA

HASSAN DISTRICT-573116

... RESPONDENTS

(BY SRI.G.K.SHIVAPRAKASH, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 r/w 401 CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 04.12.2014 IN CRL.MISC.NO.442/2007 ON THE FILE OF PRL.CIVIL JUDGE AND JMFC AT CHENNARAYAPATNA AND IN CRL.A.NO.07/2015 DATED 07.08.2015 ON THE FILE OF THE HON'BLE IV ADDL.DIST.AND S.J., AT CHENNARAYAPATNA.

IN CRL.RP No.1002/2015

BETWEEN:

1. SMT.NAJEEDA BANU
W/O MOHAMED RAFEE
AGED ABOUT 26 YEARS
2. SANIYA FIRODOSA
D/O MOHAMED RAFEE
AGED ABOUT 9 YEARS
SINCE MINOR REPRESENTED BY
NATURAL GUARDIAN MOTHER

BOTH ARE RESIDING AT
NO.75, RENUKAMBA ROAD
CHENNARAYAPATNA
HASSAN DISTRICT-573 116

... PETITIONERS

(BY SRI.G.K.SHIVAPRAKASH, ADVOCATE)

AND:

MOHAMMED RAFEE
S/O LATE ABDUL SATTAR
AGED ABOUT 42 YEARS
BANAGIGAR STREET
NAGAMANGAL TOWN

MANDYA DISTRICT-571 401

... RESPONDENT

(BY SRI.DINESH KUMAR K. RAO, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 CR.P.C PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 07.08.2015 IN CRL.A.NO.7/2015 PASSED BY THE IV ADDL. DIST. AND S.J., CHENNARAYAPATNA.

THESE CRIMINAL REVISION PETITIONS COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Learned counsel for the petitioner in Crl.RP No.68/2016 and respondent in Crl.RP No.1002/2015 is present. Learned counsel for the respondents in Crl.RP No.68/2016 and petitioners in Crl.RP No.1002/2015 submits that he could not talk with the respondents/petitioners and seeks for issuing of Court notice. The request of learned counsel is rejected and the matters are taken up for disposal in accordance with law.

2. These two petitions are directed against the judgment dated 07.08.2015 passed in Criminal Appeal No.7/2015 by the learned IV Additional District and Sessions Judge, Channarayapatna, wherein the said appeal filed by the respondent-husband came to be allowed in part and the

maintenance amount granted by the trial Court was reduced from Rs.10,000/- to Rs.5,000/- in respect of the wife, So far as the compensation amount is concerned, the Appellate Court directed the respondent-husband to pay Rs.2,00,000 to his daughter and Rs.3,00,000/- to his wife as against Rs.10,00,000/- ordered by the trial Court. The trial Court also directed the respondent-husband to pay the house rent for the residence of the claimant.

3. Crl.RP No.68/2016 is filed by the husband seeking to set-aside the order of the trial Court passed in C.Misc.No.442/2007 dated 04.12.2014 and Crl.A.No.7/2015 dated 07.08.2015.

4. Crl.RP No.1002/2015 is filed by the wife and daughter seeking to set-aside the order passed in Crl.A.No.7/2015 dated 07.08.2015.

5. Learned trial Judge on the basis of oral and documentary evidence allowed the petition in part directing the first respondent to pay a sum of Rs.10,000/- per month and to

pay rent and also to pay compensation of Rs.10,00,000/- to the petitioner therein.

6. The appeal filed against the said Judgment is allowed in part and modified the order passed by the trial Court as mentioned above. Aggrieved by the same, these petitions are filed.

7. In order to avoid confusion and overlapping, the parties are addressed in accordance with their ranks and status as stood in the trial Court.

8. The substance of the case of the petitioner is that the petitioner Smt.Najeeda Banu and the respondent Sri.Mohammed Rafee married each other on 23.01.2005 as per Muslim religion and formalities. The petitioner claims that at the time of marriage, gold ornaments, dowry and other articles were given to the groom. The couple started residing at Nagamangala town. The husband used to quarrel with the wife and was torturing her physically and mentally. The husband is stated to be a Moulvi and does not have independent source of income.

The parties with the marriage begot a female child who is stated to be a minor.

9. The husband appeared through his counsel and filed objections admitting the marital relationship, however, contended that he has given Talak and therefore, he is not liable to pay the maintenance.

10. Learned counsel for the husband - respondent before the trial Court submits that the husband Mohammed Rafee is a Moulvi and has no permanent or regular source of income and he is suffering from poverty. As the husband has not justifiably deserted him, she is not entitled for maintenance. Further, she has prevented the petitioner from having access to the child.

11. The petitioner-wife before the trial Court is respondent No.1 and the respondent No.1 - husband is the petitioner before this Court in Crl.P.No.68/2016. The petitioner-wife before the trial Court is petitioner No.1 in this petition and the respondent No.1- husband is the respondent before this Court in Crl.P.No.1002/2015.

12. Learned counsel for the petitioner husband-Mohammed Rafee submits that he has pronounced 'Talak'. Thus, divorced the wife under the Mohammaden Law. The matrimonial relationship is not disputed nor the paternity of the child.

13. It is submitted by the learned counsel for the wife and the child that, the minor daughter is suffering from tumor. He also submits that the wife is not having knowledge of the divorce given by her husband. It is also brought to the notice of the Court by the counsel for the wife that the husband is having foot-ware show room at Nagamangala and also has formed a lay-out and is getting sufficient income.

14. However, it is denied by the counsel for the respondent - husband and submitted that he has married for the second time.

15. In the over all context and circumstances and also in skyrocketing of the prices, I find that the amount of maintenance at Rs.10,000/- for both mother and daughter fixed by the trial

Court is justifiable and the Appellate Court erred in reducing it. I agree with the finding of the trial Court.

16. Both the petitions are ***allowed in part***. The Judgment and order passed by the Appellate Court reducing compensation from Rs.10,00,000/- to Rs.3,00,000/- and Rs.2,00,000/- to the wife and the child is confirmed. However, reducing the maintenance from Rs.10,000/- to Rs.5,000/- by the Appellate Court is set-aside confirming Rs.10,000/- awarded by the trial Court.

**Sd/-
JUDGE**

GH