

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 2557/2021

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, "Cr.P.C.") / Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, "BNSS") by the petitioner/husband, challenging the order dated 05.11.2020 passed in Crl.R.P. No.19 of 2020 by the learned II Additional District and Sessions Judge for Trial of Offences against Women, Srikakulam. By the said order, the revision petition filed by the petitioner was dismissed with costs of Rs.5,000/-, thereby confirming the order in M.C. No. 7 of 2015, wherein maintenance of Rs.3,000/- per month was granted to respondent No.2, while the maintenance claim of respondent No.1/wife was dismissed.

2. Sri Vinod Kumar Tarlada, learned counsel for the Petitioner submits that the order passed by the learned Judicial Magistrate of First Class, Kothur, in M.C. No.07 of 2015 dated 03.01.2020, granting maintenance of Rs.3,000/- to the 2nd Respondent, is illegal and unsustainable. It is contended that the 1st Respondent is not the legally wedded wife of the Petitioner and that both of them lived together only as man and wife without any valid marriage. It is further submitted that due to disputes between them, the matter was resolved in the presence of village elders, wherein the 1st Respondent agreed to live separately after receiving clothes and a sum of Rs.60,000/- towards permanent alimony and undertook to maintain the 2nd Respondent. Learned counsel further submits that the said fact was also admitted by the 1st

Respondent in her cross-examination before the learned Trial Court. In spite of it, the learned Trial Court, without properly appreciating the evidence on record, granted maintenance to the 2nd Respondent. It is also contended that the Petitioner is eking out his livelihood by doing mason work at Chennai and is already maintaining his present wife, two children and aged mother, and therefore he is not in a financial position to pay the maintenance amount as ordered by the Court below. Hence, the order of the Court below is liable to be set aside.

3. *Per contra*, Sri. Taddi Nageswara Rao, the learned counsel for Respondent Nos.1 & 2 and the learned Assistant Public Prosecutor argued that the learned Trial Court correctly appreciated the factual circumstances of the case and properly upheld the judgment of the learned Trial Court. It is submitted that there are no infirmities, no material irregularities, and no valid grounds to quash the order passed by the learned Trial Court.

4. Respondent No.1, being the alleged wife of the petitioner, filed M.C. No. 7 of 2015 on the file of the learned Judicial Magistrate of First Class, Kothuru, Srikakulam District, seeking maintenance of Rs.8,000/- per month for herself and Rs.5,000/- per month for respondent No.2. However, only Rs.3,000/- was granted to respondent No.2. The relationship between the petitioner and respondent Nos.1 and 2 though disputed, no proof was filed and established. Thus, the petitioner is the husband of respondent No.1 and the father of respondent No.2.

5. Before the learned Magistrate, four witnesses were examined on behalf of the petitioner, and three witnesses were examined on behalf of respondent Nos.1 and 2. Five documents were marked on the behalf of the petitioner/husband. However, no documents were marked on behalf of the petitioner.

6. The present Criminal Petition is confined only to the order granting maintenance of Rs.3,000/- per month to respondent No.2. Even that amount, in the considered view of this Court, is a very meager sum. This Court, while exercising jurisdiction under Section 482 Cr.P.C./Section 528 BNSS, cannot re-appreciate the evidence on record. Respondent No.2 was about 8 years old at the time of disposal of the M.C. The petitioner, being the father of respondent No.2, who was of tender age, is legally bound to maintain his daughter. He cannot abdicate his responsibility in such a callous and negligent manner.

7. There is no proof to establish that no relationship of wife and husband between the petitioner and Respondent Nos.1 & 2. As seen from the orders of the learned Trial Court and there are no infirmities, let alone any material infirmities, in appreciating the evidence of both parties.

8. Indeed, the Hon'ble Apex Court in **D. Velusamy v. D. Patchaiammal**¹, at para Nos.23, 31 and 32 held as under:

23. In USA the expression "palimony" was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him (see "palimony" on Google). The first decision on palimony was the well-known

¹ (2010) 10 SCC 46

decision of the California Superior Court in *Marvin v. Marvin* [(1976) 18 Cal 3d 660 (California SC)] . This case related to the famous film actor Lee Marvin, with whom a lady Michelle lived for many years without marrying him, and was then deserted by him and she claimed palimony. Subsequently in many decisions of the courts in USA, the concept of palimony has been considered and developed. The US Supreme Court has not given any decision on whether there is a legal right to palimony, but there are several decisions of the courts in various States in USA. These courts in USA have taken divergent views, some granting palimony, some denying it altogether, and some granting it on certain conditions. Hence in USA the law is still in a state of evolution on the right to palimony.

31. In our opinion a “relationship in the nature of marriage” is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(See “Common Law Marriage” in Wikipedia on Google.)

In our opinion a “relationship in the nature of marriage” under the 2005 Act must also fulfil the above requirements, and in addition the parties must have lived together in a “shared household” as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a “domestic relationship”.

32. In our opinion not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a “keep” whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage.

9. Further, the Hon’ble Apex Court in **Chanmuniya v. Virendra Kumar Singh Kushwaha**², at para Nos.38 and 39 held as under:

² (2011) 1 SCC 141

38. Most significantly, the Act gives a very wide interpretation to the term “domestic relationship” as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of “domestic relationship” under Section 2(f) of the Act. Therefore, women in live-in relationships are also entitled to all the reliefs given in the said Act.

39. We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 CrPC. It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.

10. The Respondent No.1 submitted that she was unable to maintain herself and her minor daughter, who was nine years of age at the time. It is contended that the petitioner possesses Ac.2.00 cents of land worth about Rs.15,00,000/- and he is getting income of Rs.60,000/- through landed property and also having one slab-house. Further the petitioner is also doing interest business and he is getting an income of Rs.15,000/- per month., towards interest business. The petitioner is a masen worker by his profession and getting more than Rs.300/- per day.

11. The learned Trial Court did not grant the full amount as sought for towards maintenance to Respondent Nos.1 and 2; it only awarded Rs.3,000/- to Respondent No.2. In the present times, even this amount is undeniably meagre to maintain respondent No.2, even as per the below standards of living in the present-day society.

12. In this context, it is apposite to refer the Judgment of the Hon’ble Apex Court in **Sanjeev Kapoorv. Chandana Kapoor**³ at paragraph No.32, held as under:

³2020 Supreme(SC) 180

“32. The High Court did not commit an error in rejecting the application filed by appellant under Section 482 Cr.P.C. The inherent powers of the High Court given under Section 482 Cr.P.C. are to be exercised to secure the ends of justice...”

13. A learned Single Judge of this Court in **C.Ravi Kiran Yadav v. State of**

A.P.⁴ at paragraph Nos.6 & 7, held as under:

“6. A bare perusal of Section 482 makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; (i) to give effect to any order under the Code or, (ii) to prevent abuse of the process of any Court or, otherwise (iii) to secure ends of justice. A court while sitting in Section 482 jurisdiction is not functioning as a court of appeal or a court of revision. It must exercise its powers to do real and substantial justice, depending on the facts and circumstances of the case. These powers must be invoked for compelling reasons of abuse of process of law or glaring injustice, which are against sound principles of criminal jurisprudence.

7. It is settled position that inherent power under Section 482 Cr.P.C. cannot be used to negate or subvert the statutory provision. It is no doubt true, that one can approach this Court by filing a petition under Section 482 against the order only under exceptional circumstances and in rarest of the rare cases. The provision of Section 482 is not a routine remedy against any order by the party. In the present case, the order of the learned Magistrate transpires, that while passing the order, the learned Magistrate exercised his judicial discretion, having taken into account the source of income of the petitioner/husband and the other materials brought on record, which were also considered by the learned Judicial Magistrate and he has judiciously exercised his discretion and granted interim maintenance, as such, this Court does not find any fault with such order. Hence, this petition in my considered view does not fall in the category of the rarest of the rare cases, requiring interference under Section 482 Cr.P.C.. In such circumstances to meet the ends of justice, the impugned order does not require any interference. There is no illegality, impropriety and incorrectness in the impugned order and also there seems to be no abuse of court's process.”

14. The inherent powers of the High Court under Section 482 of ‘the Cr.P.C.’ are extraordinary in nature and must be exercised sparingly, only to prevent abuse of the process of law or to secure the ends of justice, and not as a substitute for appellate or revisional jurisdiction. Hence, this Court cannot re-appreciate evidence or interfere with concurrent findings of fact unless there is manifest illegality, glaring irregularity, or perversity in the orders of the

⁴2024 Supreme(AP) 717

Trial Courts below, making the scope under Section 482 'of the Cr.P.C'., strictly limited.

15. In the present case, the Court held that the inherent jurisdiction under Section 482 of 'the Cr.P.C.', is extraordinary and cannot be exercised as if it were an appellate or revisional forum. The power is reserved only for situations involving abuse of the process of law or glaring injustice, and not for re-appreciation of evidence or revisiting concurrent findings of fact recorded by the learned Trial Court. Since the Court below had examined the evidence, considered the financial position of the Petitioner, and arrived at well-reasoned conclusions, this Court finds no manifest illegality, irregularity or perversity in their orders. Therefore, the petition did not fall into the category of "rarest of the rare" cases that would justify interference under Section 482 of 'the Cr.P.C.'

16. This Court further observes that the learned Magistrate had judiciously exercised discretion while granting maintenance to the wife and minor daughter, taking into account the petitioner's occupation mansion, his agricultural lands, income, and other material brought on record. Since the maintenance awarded, Rs.5,000/- to the wife and Rs.3,000/- to the child, was modest and supported by evidence, and given that the respondent-wife was unable to maintain herself and her minor daughter, this Court finds no illegality, impropriety, or incorrectness in the decisions of the learned Courts below. Consequently, as there was neither abuse of Court process nor any

injustice caused, this Court concluded that no interference was warranted under Section 482 of 'the Cr.P.C.'

17. The order of the learned Court below does not suffer from any illegality, irregularity, or infirmity. There are no merits in this Petition. Hence, the criminal petition is liable to be dismissed.

18. In the result, the Criminal Petition is dismissed.

As a sequel, Miscellaneous petitions, if any pending, shall stand closed.

DR. Y. LAKSHMANA RAO, J

Date: 12.03.2026
KMS

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION No.2557 of 2021

Date:12.03.2026

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