

(1996) 07 AP CK 0009

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 2044 of 1996

T. Ravi

APPELLANT

Vs

T. Lakshmi Devi

RESPONDENT

Date of Decision: July 17, 1996**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 24, 9

Citation: (1997) 1 ALD 6 : (1996) 3 ALT 415 : (1997) 1 APLJ 414**Hon'ble Judges:** Motilal B. Naik, J**Bench:** Single Bench**Advocate:** A.T.M. Rangaramanujam, for the Appellant; P.S. Narayana, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Motilal B. Naik, J.

Order passed in I.A.No. 98 of 1995 in O.P.No. 57 of 1994 dated 1-3-1996 by the Principal Subordinate Judge, Tirupati is the subject matter of challenge in this Civil Revision Petition.

2. Petitioner is the husband who filed O.P.No. 57 of 1994 u/s 9 of Hindu Marriage Act against the respondent-wife, for restitution of conjugal rights. The respondent-wife on appearance in the said O.P., filed I.A.No. 98 of 1995 u/s 24 of the Hindu Marriage Act seeking interim maintenance as well as litigation charges. On hearing both the parties, the Lower Court awarded an amount of Rs. 500/- per month with effect from 30-1-1995 to be paid towards interim maintenance and also further awarded an amount of Rs. 1,500/- towards litigation charges, against which the present CRP is filed by the husband.

3. Sri A.T.M. Rangaramanujam, counsel for the petitioner states that the respondent-wife had earlier filed M.C.No. 25 of 1994 in the Munsif Magistrate Court,

Tirupati u/s 125 of Cr.P.C. seeking maintenance. On contest, the Court by an order dated 19-2-1996 (sic.) awarded Rs. 400/- as maintenance to the respondent-wife and Rs. 300/- to the child. Counsel further states, having obtained an order in M.C.No. 25 of 1994 on 19-2-1996 (sic), the respondent-wife ought not to have suppressed this fact to the Lower Court and the Lower Court ought to have taken notice of the award of maintenance by the competent Criminal Court granted in M.C.No. 25 of 1994, and rejected the application which was filed u/s 24 of the Hindu Marriage Act. Counsel also contends that when a competent criminal Court awards maintenance to the respondent-wife in MC No. 25 of 1994 u/s 125 of Cr.P.C., awarding further maintenance by the Civil Court on an application filed u/s 24 of the Hindu Marriage Act is not warranted and therefore states that granting of interim maintenance to the respondent-wife u/s 24 of the Hindu Marriage Act has to be set aside.

4. Sri P.S. Narayana, counsel for the respondent-wife on the contrary submits that the provisions u/s 24 of the Hindu Marriage Act are to be construed independently and the Civil Court is within its competence to award interim maintenance to the respondent-wife without regard to the grant of compensation u/s 125 of Cr.P.C. In support of his contention, the counsel relied on a decision in Varada Kota Satyanarayana v. Varada Parvathi 1986(1) ALT 201. Counsel further submits that the order of the Civil Court prevails over the order of the Criminal Court on maintenance granted to the wife.

5. In the wake of the rival contentions and in the light of the provisions contemplated u/s 125 of Cr.P.C. and u/s 24 of the Hindu Marriage Act, what is to be seen in this case is whether the powers vested in the Civil Court u/s 24 of the Hindu Marriage Act, the Civil Court is competent to grant interim maintenance pending litigation in the wake of the maintenance granted by the Criminal Court u/s 125 of Cr.P.C.?

6. In this case, it may be true that the respondent-wife has obtained maintenance u/s 125 of Cr.P.C. from a competent Civil (sic. Criminal) Court. The provision u/s 125 of Cr.P.C. itself is a measure to rehabilitate a person in destitution till permanent maintenance is obtained from a competent Civil Court. The petitioner-husband has filed O.P.No. 57 of 1994 u/s 9 of Hindu Marriage Act for restitution of conjugal rights. On notice, the respondent-wife has made application Under Section-24 of Hindu Marriage Act. Section 24 of the Hindu Marriage Act reads as under:

"Where in any proceeding under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding and monthly during the proceeding such sum as having regard to the petitioner's own income and the income of the respondent it may seem to the Court to be reasonable."

7. Thus, it is clear that the Court shall examine, in the set of circumstances whether the party seeking interim maintenance has sufficient income to maintain till the litigation is adjudicated upon. It may be true, in this case, the respondent-wife has obtained an order of maintenance from the competent Criminal Court for Rs. 400/- per month. This amount of Rs. 400/- per month cannot be a bar to the Civil Court to grant interim maintenance u/s 24 of the Hindu Marriage Act if in the opinion of the Civil Court the amount of Rs. 400 /- is not sufficient to the respondent-wife for her maintenance during pendency of litigation. Therefore, I am inclined to hold that though a party obtains maintenance from a competent Criminal Court, that does not preclude a Civil Court from granting maintenance to the said party u/s 24 of the Hindu Marriage Act.

8. The next question is what could be the sufficient income for the respondent-wife to support herself during pendency of the proceedings under the Hindu Marriage Act?

9. While considering the question of granting interim maintenance, the Court has to examine whether the party who seeks such maintenance has independent, sufficient income to maintain during the pendency of the litigation. Therefore, the obligation is on the Courts to examine on the question of granting maintenance, after satisfying, on the aspect of a party having sufficient independent income. Sufficient income shall mean to say that the party must lead a reasonable life during pendency of the litigation. While awarding maintenance, Courts are to take into account the status and income of the opposite party from whom maintenance is sought. Admittedly, petitioner-husband is said to be the last grade employee in Tirumala Tirupati Devasthanams, Tirupati, getting a monthly salary of Rs. 3,000/-. He has been directed to pay a monthly maintenance of Rs. 400/- in the maintenance case filed by the respondent-wife Under Section-125 Cr.P.C. to the respondent wife and also another sum of Rs. 300 /- to the child. In I.A.No. 98/95, the Lower Court has awarded Rs. 500/- in the petition filed u/s 24 of Hindu Marriage Act. In all, the petitioner would now have to part with an amount of Rs. 400 + Rs. 300 + Rs. 500 = Rs. 1200/- per month. Having regard to the facts and circumstances of the case and the monthly salary of the petitioner-husband, awarding of Rs. 500/- in I.A.No. 98 of 1995 by the Civil Court u/s 24 of the Hindu Marriage Act, in my view, seems to be excessive and therefore, taking into account, the other amounts awarded to the respondent-wife, the order passed by the Lower Court in I.A.No. 98 of 1995 could be modified suitably. In the set of circumstances. I am inclined to say, the petitioner-husband shall pay at the rate of Rs. 250/- per month as interim maintenance in these proceedings from 30-1-1995 i.e., the date of the petition, during the pendency of the litigation. The petitioner shall also pay an amount of Rs. 1,500/- as awarded by the Lower Court towards litigation charges.

10. The CRP is accordingly disposed of with the above modification. No costs.