

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Criminal Revision Case No.1823 of 2011

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC', for brevity) by the respondent in the maintenance case is directed against the orders dated 08.03.2011 of the learned Judge, Family Court, Secunderabad passed in M.P.No.130 of 2009 in M.C.No.83 of 2004 filed under Section 127 of the CrPC.

2. I have heard the submissions of the learned counsel for the revision petitioner who is the husband of the 1st respondent and the father of the respondents 2 and 3 herein. The 4th respondent herein is the State. The parties in this revision shall hereinafter be referred to as the revision petitioner and the respondents as arrayed in this revision case for convenience and clarity.

3. The basic facts necessary for consideration, in brief, are as follows: 'The revision petitioner is the husband of the 1st respondent. The respondents 2 and 3 are their minor children said to be aged 13 years and 8 years by the year 2011. They are students. On account of some serious disputes between the spouses, there was estrangement. By orders dated 03.11.2005, an amount of Rs.3,000/- and Rs.2,000/- per month was respectively awarded as monthly maintenance to the respondents 2 and 3 herein, who are the minor children of the petitioner and the 1st respondent.

However, by the said orders, the request of the 1st respondent for award of maintenance was rejected. Both the parties had filed criminal revision petitions against the said orders in the maintenance case. Both the said criminal revision petitions were dismissed by this Court on 21.11.2007. The petitioner's application for custody of the children was dismissed by a competent court. In this factual background, a miscellaneous petition in M.P.No.130 of 2009 was filed by the two minor children represented by the mother for enhancement of the maintenance granted to them. The case of the

minor children/the respondents 2 and 3 herein, in support of the said request for enhancement of maintenance, in brief, is as follows: 'The petitioner had married another woman and is staying with her. He had purchased number of properties in the name of one Sunitha and had also executed a General Power of Attorney in favour of a third party. He is getting Rs.50,000/- per month as rents from properties situated at Karmanghat, Saroornagar and Meerpet. He is also earning Rs.1,50,000/- from his profession by running two nursing homes at Balapur and Saroornagar. He is having real estate business. He had purchased a luxurious car. Therefore, the petitioner is having capacity to pay the required maintenance to the respondents 2 and 3. The 1st respondent is getting Rs.8,000/- per month. She is paying Rs.5,000/- out of the said income towards rent. She is not in a position to maintain her children by spending Rs.30,000/- per month. The respondents 2 and 3 had filed a suit for partition and the same is pending before a civil court in Ranga Reddy District. The petitioner had disposed of major portion of his properties and had earned an amount of Rs.71,62,500/- by virtue of the said sale transactions. The 1st respondent had incurred amounts of Rs.12,000/- and Rs.19,000/- respectively towards school admission fee of the respondents 2 and 3 and had spent Rs.10,000/- on the medical expenses of the 3rd respondent during the previous year and Rs.20,000/- during the year 2009. Hence, the respondents 2 and 3 are entitled for enhancement of maintenance and award of enhanced maintenance at the rate of Rs.15,000/- per month each.'

4. *Per contra*, the case of the petitioner, as stated in his counter before the trial Court, in brief, is this: 'This Court while dismissing the revisions in CRP Nos.2056 and 2075 filed by both the sides, had considered the circumstances of the case and had held that the maintenance granted by the trial court was reasonable. After a gap of three years from the date of the said dismissal order, the present petition is filed by the respondents 2 and 3 herein claiming enhancement of the maintenance. No iota of evidence was produced by the respondents 1 to 3 to show that there is an increase in the income of the petitioner and therefore, there are circumstances warranting

enhancement of the maintenance already awarded to respondents 2 and 3.

The 1st respondent having made several complaints against this petitioner had made his life miserable. She has been filing false cases. He had stopped running his nursing home at Saroornagar. He is not having any other income other than the rental income. He is not paying any income tax as his income is low. He is not able to concentrate on his profession and pursue his avocation. He has no capacity to pay the enhanced maintenance. He has to look after his parents and also has to pay the maintenance already awarded to the respondents 2 and 3, who are his children. No document is filed by the 1st respondent to show that she is getting an income of Rs.8,000/- per month. In fact, she is getting Rs.30,000/- per month. The petitioner is not having a four wheeler/car. Hence, the petition seeking enhancement of maintenance filed by the minor children be dismissed confirming the maintenance already awarded.'

5. During the course of enquiry before the trial Court, exhibits A1 to A123 and exhibits B1 to B16 were marked. No oral evidence was adduced. On merits, the trial Court had enhanced the maintenance awarded to the respondents 2 and 3 from Rs.3,000/- per month and Rs.2,000/- per month respectively to Rs.10,000/- and Rs.6,000/- per month respectively from the date of the order, i.e., 08.03.2011. Therefore, the aggrieved husband had filed this revision petition.

6. The learned counsel for the petitioner had contended as follows: 'The learned Judge, Family Court had erred in enhancing the maintenance awarded to the respondents 2 and 3 even though no evidence was produced for awarding the enhanced maintenance to them. The trial Court ought to have seen that exhibits A1 to A23 are not relevant. The trial court ought to have seen that no oral evidence was let in and the contents of the said exhibits are not proved. The judgment of the court below is based on surmises and conjectures. The court below did not consider in proper perspective, the facts and circumstances of the case. There was no discussion and there are no reasons in the judgment of the trial Court in

support of its findings. The trial Court ought to have seen that no evidence was adduced by the petitioners to show that there was an increase in the income of the petitioner after 1997. The trial Court ought to have seen that the 1st respondent, who is the mother of the minor children is earning Rs.30,000/- per month and she has also a legal and moral responsibility to maintain the children and her contention that she is not able to maintain the children shows that she is not interested in the welfare of the children. The petitioner is regularly paying the maintenance to the credit of the account of the 1st respondent and there are no arrears. The petitioner is also complying with the interim orders of this Court by paying Rs.5,000/- per month each to the respondents 2 and 3 by depositing the same into the account regularly.

The order of the court below, which is illegal and erroneous, is liable to be set aside and the maintenance originally awarded to the respondents 2 and 3 in the maintenance case is to be restored.'

7. On the other hand, the learned counsel for the respondents 1 to 3 would contend as follows: 'The petitioner had married another woman and is living with her. His application for custody of the children was dismissed. There is ample evidence produced in the form of documentary evidence and there are also admissions on the part of the petitioner to show that he is getting substantial income and his economic condition is good. He had executed a General Power of Attorney in the name of a third party and he had purchased number of properties in the name of one K. Sunitha, whom he had married during the subsistence of his marriage with the 1st respondent herein. He had sold a major part of his properties and had received more than Rs.71 lakhs under the said sale transactions. There is an increase in not only the values of the properties but also the rental income, which the petitioner is receiving. There is also increase in the cost of living. Two minor children have come up of age and are now pursuing higher primary/high school education. They have to be educated keeping in view the status and economic condition of the family and also their future interests. The maintenance awarded to the children shall be adequate for sustenance, food, clothing and shelter. In case of children, it takes in its compass the

educational expenses also of the children. The trial court had considered the facts and the evidence in proper perspective and had rightly enhanced the maintenance. There is no merit in any of the contentions of the petitioner and hence, the revision is liable to be dismissed.'

8. Now the only point for consideration is – 'whether the enhanced maintenance awarded to the respondents 2 and 3, who are minor children of the petitioner, @ Rs.10,000/- and Rs.6,000/- per month respectively is not just and fair in the facts and circumstances of the case, as contended by the petitioner? And, whether the order impugned is unsustainable and calls for interference?

9. The admitted facts, the contentions and the rival contentions are already stated supra. The respondents 2 and 3 are the minor children of the petitioner and the 1st respondent; and they are aged about 13 years and 8 years respectively by the year 2011. The law is well settled that in so far as the children, who are the minors, the petitioner/father is obliged under facts and law to pay a reasonable amount of monthly maintenance. The maintenance awarded shall be adequate for sustenance, food, clothing and shelter and must also take in its compass the educational expenses of the children. There is no dispute that by orders dated 03.11.2005 passed in M.C.No.83 of 2004, the learned Judge, Family court had originally awarded a maintenance of Rs.3,000/- per month to the 2nd respondent and Rs.2,000/- per month to the 3rd respondent. The said orders were confirmed in revisions filed before this Court earlier. By the impugned order, the said maintenance amounts awarded to the respondents 2 and 3 were enhanced to Rs.10,000/- per month and Rs.6,000/- per month respectively. The pleadings and the facts which are not in dispute would show that the petitioner is a doctor and he owns immovable properties and is getting rents from some of his properties. Though he is contending that he is unable to concentrate on his profession and is not continuing his avocation, the case of the respondents herein is that he is running two nursing homes at Balanagar and Saroornagar and earning a huge income. *Ex facie*, from the record, it is clear that he is

having good social status and his economic condition is good. Exhibit A3 is the salary certificate of the 1st respondent for the month of June 2010. The impugned order was passed in March 2011. The same would show that she is getting a net income of Rs.10,722/- only. Therefore, the contention of the petitioner that the salary of the 1st respondent is Rs.30,000/- per month cannot be countenanced. Even as per the admitted case of the petitioner, he is getting rental income. He had categorically admitted that he is getting rental income and no other income. He did not say as to what is his rental income. Therefore, in the absence of denial and a specific pleading as to what is his rental income, the contention of the respondents that he is getting a rental income of Rs.50,000/- per month can be accepted. Exhibit A1, the certified copy of the order in the maintenance case would show that the petitioner is an income tax assessee. In the maintenance proceedings, his income tax return was marked as exhibit B1. If really, his contention that he is not continuing his legal profession is true, he ought to have filed his current and relevant income tax returns. The income tax returns are the best form of proof to show that the monthly income/annual income at the relevant time.

The petitioner purposely did not file the said documents. The order under exhibit A1 would show that his annual income was Rs.1,38,000/-. No evidence to the contra was produced to show the decrease, if any, in the income. The earlier order for maintenance was passed in the year 2005, i.e., about a decade back. In these ten years period the values of immovable properties had increased multi fold and the rental values have increased cannot be disputed. It is not in dispute that the cost of living is increasing day by day.

10. The petitioner had filed exhibits B3, B4 and B7 to show that the lease agreements were in the name of another doctor, but not in his name. Exhibits A109 and A117 are the sale deeds dated 24.12.2007 and 29.01.2008 where under one K.Sunitha sold the properties in favour of U.A Rao and K.V.Rao respectively. Exhibit A118 is a sale deed executed on 25.10.2007 by the petitioner in favour of D.Chandra Reddy. Exhibit A110 is the sale deed, dated 10.05.2006 executed by said Sunitha in favour of one Snehalatha,

exhibit A111 is the sale deed dated 19.05.2008 executed by the respondent in favour of K.Madhura, exhibit A112 is the sale deed dated 28.08.2006 executed by B.Uday Singh in favour of M.Sunitha, exhibit A113 is agreement of sale-cum-GPA by K.Sunitha in favour of K.Vijaya Rao, exhibit A114 is sale deed dated 13.03.2006 executed by K.Sunitha in favour of Linga Reddy, exhibit A115 is sale deed dated 24.01.2008 executed by Rambha Appa Rao through GPA Sunitha in favour of Smt. D.Nirmala, exhibit A116 is sale deed executed by K.Chandrasekhar Reddy in favour of J.Sudershan Reddy, dated 25.10.2007, exhibit A117 is sale deed executed by K.Sunitha in favour of K.Vijaya Rao dated 29.01.2008. Exhibit A118 is sale deed dated 25.10.2007 executed by K.Chandrasekhar Reddy in favour of D.Chandra Reddy. Under the said document, four shops at Meerpet village of Saroornagar revenue mandal of Ranga Reddy district were sold for a consideration of more than eight lakhs of rupees. Exhibit A119 is sale deed dated 07.11.2007 executed by K.Chandrasekhar Reddy in favour of Chunnilal. Under the said document, two shops of the Meerpet village of Saroornagar revenue mandal of Ranga Reddy district were sold for a consideration of Rs.9,86,0000/-. The respondents have also exhibited the medical record showing the treatment received by the 3rd respondent/minor son and the expenses incurred for his treatment. The 3rd respondent is suffering from ill-health and he requires constant treatment for his ill-health is not in dispute. Exhibits A 118 and A 119 on a perusal would show that the petitioner herein had sold his properties under the said documents to third parties and had received considerations worth lakhs of rupees. The trial Court had taken into consideration the fact that the earlier order for maintenance was passed in the year 2005 and had therefore, awarded enhanced maintenance keeping in view the changed circumstances prevailing in the year 2011. The trial Court had also noted that it is difficult for the 1st respondent to maintain children with the maintenance that was awarded in the year 2005. Considering the facts admitted and established and also the evidence brought on record, this court is satisfied that the award of enhanced maintenance to the respondents 2 and 3 at the rate of Rs.10,000/- and Rs.6,000/- per month each from the

date of the order of the court below is just and fair, in the well-considered view of this Court. Having analytically examined the facts and the evidence in juxtaposition, this court finds that the contentions of the petitioner in this revision are devoid of merit and that the well-reasoned order of the court below does not call for interference.

11. In the result, the Criminal Revision Case, which is devoid of merit, is accordingly dismissed. The petitioner is granted two months time from the date of receipt of a copy of this order to pay the arrears of maintenance. The maintenance amounts, if any, paid or deposited as per the interim orders of the court shall be given credit. However, he shall continue to pay the current maintenance at the enhanced rates regularly every month without fail.

Miscellaneous petitions, pending if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

20th March 2015
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