

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.830 and 5764 of 2015

COMMON ORDER :

Crl.P.No.830 of 2015

This Criminal Petition is filed by Petitioner/Respondent under Section 482 Cr.P.C seeking to set aside the orders dated 04.06.2013 passed in Crl.M.P.No.44 of 2013 in F.C.M.C.No.10 of 2012 on the file of the learned Judge, Family Court-cum-Additional District Judge, Anantapur.

Crl.P.No.5764 of 2015

2) This Criminal petition is filed by the petitioners to enhance the maintenance granted vide order dated 04.06.2013 in Crl.M.P.No.44 of 2013 in F.C.M.C.No.10 of 2012 on the file of the learned Judge, Family Court-cum-Additional District Judge, Anantapur.

3) Heard the learned counsel for the petitioners as well as the respondents and perused the material on record. Undisputedly F.C.M.C.No.10 of 2012 is pending for disposal and interim maintenance was ordered in Crl.M.P.No.44 of 2013 at Rs.5,000/- per month to the wife and Rs.3,000/- per month to the minor daughter.

4) The contention before the trial Court for passing

the above order is that as per the wife, the husband is doing job and earning more than Rs.40,000/- per month apart from Rs.15,000/- per month through rents and other income from the properties at Bangalore. The contention of the husband is that he is not doing any job and he is searching for job and as per the lower Court's order there is an admission that he was in job and claimed that he was terminated from the job because of the cases filed by his wife from which he was subjected to harassment.

Under Section 106 of the Indian Evidence Act, 1872, the burden on him to establish by filing a cogent evidence regarding he was terminated from the job. Needless to say if at all he was resigned to presume for securing better employment. Though regarding the properties and income not proved by positive evidence by wife so far as earnings of her husband at Rs.40,000/- per month that was taken consideration by the trial Court in the factual matrix supra there is nothing to interfere. Even coming to his claim that his wife is earning Rs.40,000/- to Rs.50,000/- per month but there is no record admittedly filed was also regarding owning of properties, getting income from Anantapur property assets. The trial Court thereby not giving consideration for no proof placed.

5) Having regard to the above, what the trial Court awarded towards interim maintenance undisputedly the order is co-terminus with final disposal in the maintenance case to protect the wife and child from destitution. It no

way takes away the right of the husband to prove by facing enquiry in the main M.C proceedings regarding he lost his job or terminated and regarding his means and job of his wife and in the meantime there is nothing to interfere with the quantum either to enhance or reduce.

6) Accordingly both the criminal petitions are disposed of with the observation that the observations made in this order no way influence the mind of the trial Judge in deciding the maintenance case and decide the same from the evidence being adduced by parties. No order as to costs. As a sequel, miscellaneous petitions pending, if any, in the above criminal petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

02.07.2015
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