

HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL REVISION CASE Nos.1338 and 1340 OF 2013

COMMON ORDER:

These two Revisions are filed challenging the correctness of the order in M.C. No.51 of 2012 dated 13.06.2013 on the file of the Court of the learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

2. The parties shall be referred to as wife and husband.

3. The brief facts of the case are as under: The wife filed M.C. No.51 of 2012 claiming maintenance of Rs.20,000/- per month on the ground that she herself requires Rs.10,000/- and two other petitioners, who are the sons, require Rs.5,000/- each and that the respondent-husband is doing private job and also having rental income, and therefore, sought for grant of maintenance. The grounds for living away from the husband are that when she was living in the matrimonial home, she was subjected to harassment, for which several cases, including one under Section 498-A I.P.C. and also the proceedings under D.V.C, have been initiated. The contention of the husband had been that without any just and sufficient cause, the wife had left the consortium and has been living separately. It is submitted that as a matter of fact the wife wanted the husband to stay with the parents of wife and when he refused, the wife went away with the children. In spite of his best efforts, the wife is not coming forward to live with him, however, no legal steps, whatsoever, have been taken by the husband to secure the presence of wife and children.

4. During the course of enquiry, the wife examined herself as P.W.1 and produced Xerox copies of school fee receipts, which were marked as Ex.P.1, evidencing that the two sons are school going children. The husband examined himself as R.W.1. After considering the entire material on record, the learned Judge, Family Court, held that the husband is having rental income and hence he is bound to pay the maintenance and quantified the same at Rs.2,500/- per month for each petitioner, thus totaling to Rs.7,500/- per month, to the wife and two sons. The learned Judge, however, awarded the maintenance from the date of the order.

5. Aggrieved by the said order, while the wife and children filed Criminal R.C. No.1340 of 2013 claiming enhancement in quantum of maintenance and also for making the order of maintenance effective from the date of petition, the husband filed Criminal R.C. No.1338 of 2013 contending that the amount awarded by the learned Judge is excessive and that he has absolutely no income whatsoever and it is impossible for him to pay the maintenance at Rs.7,500/- per month to the wife and children.

6. Having heard the submissions of both sides and on perusal of the material available on record, it is evident that there is no dispute insofar as the relationship between the parties is concerned. It is also not in dispute that their marriage took place on 13.05.2004 and the couple had two sons, who are now school going children. Due to some differences and disputes right from 02.04.2009, the wife and children are living separately from the husband. The husband is said to be living with his mother. He had three other brothers and they had a house and, in division, an extent of 100 square yards said to have been fallen to the share of

husband, whereas the remaining three shares went to his brothers.

7. The learned counsel for husband vehemently contended that the wife has failed to produce any oral or documentary evidence to show that the husband is having any income so as to pay maintenance.

8. It is no doubt true that except her own statement though the wife has not produced any evidence to show that the husband is having any permanent or regular source of income, that itself do not absolve the liability of husband to maintain his wife and children. What all required is that there should be just and sufficient cause for the wife to live separately. If the petitioners-wife and children can prove the same, the husband is bound to provide maintenance to them, which should befit the status of parties, and the wife and children are entitled to lead a life, which they would have led, had they been in the company of husband. Merely because the wife could not produce any documentary or other evidence in proof of income of the husband, that cannot be taken as a ground for refusal to award maintenance. Having taken into consideration the evidence, by the learned Judge, Family Court, that the husband had been doing private job and is also having a rental income, the amount awarded is just and reasonable. It is neither a pittance nor is a bounty in the present day's cost of living. The maintenance at the rate of Rs.2,500/- per month per person and, more particularly, of a women, aged about 26 years, and two school going kids, is the just and reasonable maintenance, which the husband is bound to pay. Having perused the material on record, I see no reason whatsoever to interfere with the finding of the learned Judge that the maintenance be fixed

at Rs.7,500/- per month to three petitioners.

9. With regard to Revision, filed by the wife, seeking enhancement of maintenance, what is noticed is that in the absence of there being any clinching evidence to show the income of the husband in awarding maintenance beyond what has been awarded by the Court below may not be proper. With regard to request of the wife to make the order operational from the date of petition, what is noticed is that during the pendency of maintenance case, there was an order by way of interim arrangement, under which the husband was called upon to pay maintenance of Rs.2,500/- per month to each of the persons, which the husband is said to have paid. Therefore, the learned Judge had exercised the discretion by ordering the maintenance to be payable from the date of order. On this aspect also, I see no reason to interference with the said finding. Hence, there are no merits in both the revisions and the same are liable to be dismissed.

10. In the result, both the Criminal Revision Cases are dismissed.

Miscellaneous petitions pending, if any, in these Criminal Revision Cases shall stand closed.

M.S.K.JAISWAL, J

Date: 25.06.2015

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HON'BLE SRI JUSTICE M.S.K. JAISWAL

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