

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

CRIMINAL PETITION No.7866 of 2015

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., questioning the award of interim maintenance in CrI.M.P.No.153 of 2015 in M.C.No.309 of 2014 on the file of the Additional Family Court, Hyderabad.

2. By order dt.19.06.2015, the learned Judge, Family Court awarded interim maintenance of Rs.4,000/- to the 2nd respondent/wife, and Rs.2,500/- to the 3rd respondent/son. The contention of the petitioner is that not only the quantum of interim maintenance at the rates awarded is excess, but also the learned Judge has granted the maintenance from the date of the petition, and not from the date of the order. The learned counsel for the petitioner submits that the petitioner is working as a daily wage worker in a jewellery shop and earning only an amount of Rs.12,000/- per month, and therefore the petitioner cannot afford an amount of Rs.6,500/- per month to the wife and son, since he is also responsible of maintaining his own aged mother.

3. The learned counsel for the Respondents submits that the conduct of the petitioner is such that he has been indulging in all sorts of harassment and subjecting the wife to cruel treatment, and, as a matter of fact, when the 2nd Respondent/wife was gainfully employed, he used to enjoy her salary. The learned counsel submits that he has produced the documentary evidence to show that the petitioner/husband is earning an amount of Rs.25,000/- per month by working as Accountant in Sri Jewelers,

Jubilee Hills, Hyderabad, apart from having agricultural income, and not working as daily wage labour.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the Respondents, and considered the material on record.

5. The allegations with regard to cruelty are not germane to decide at this stage. What is required to be seen is whether the grant of interim maintenance at the rate of Rs.6,500/- to both the respondents is reasonable or whether is it excessive. In view of the submissions made by both the learned counsel and in view of the documentary evidence showing the monthly income of the petitioner/husband, the grant of interim maintenance at Rs.6,500/- per month towards the maintenance of the Respondents 2 & 3, who are the wife and son of the petitioner herein, cannot be said to be, in any way, excessive. Considering the present day cost of living, the amount so awarded is just and reasonable.

6. The next aspect of the matter is as to from what date the interim maintenance could be awarded. In **SHAIL KUMARI DEVI AND ANOTHER v. KRISHAN BHAGWAN PATHAK**^[1] after referring to various authorities on the subject, the apex Court held as under:-

“We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our Judgment, no

such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect.”

7. It is clear from the above that the maintenance can be awarded from the date of the order or if so ordered from the date of the application filed for maintenance. In the instant case, the main Maintenance Case is filed on 10-11-2014. The petition for interim maintenance is filed on 15-12-2014. The learned Judge of the Family Court passed the orders on 19-06-2015 directing the interim maintenance to be paid from the date of filing of the Criminal Miscellaneous Petition. No reasons are recorded for ordering the maintenance from the date of petition instead of from the date of the order. The totality of the facts and circumstances have to be considered while ordering the payment of interim maintenance either it be from the date of filing the petition or from the date of the order. In the instant case, the admitted case is that the wife was gainfully employed both prior to and subsequent to the marriage and till the birth of the son. It was a love marriage which developed at a time when both the wife and husband were pursuing their course in an institute. It is also on record that the wife was working in a Company and used to earn Rs.10,000/- per month and out of her salary, she used to maintain the family since the husband was not employed at that time. The other allegation is that the husband used to take away the salary of the wife and used to consume alcohol and he used to harass the wife. Subsequently, however, it appears that the husband got a job in jewellery shop as an Accountant.

8. Taking into consideration the above facts and circumstances and the dates of filing the petition and passing the

order, I feel it just and proper to direct the interim maintenance awarded by the Court below to be payable to the wife and son from the date of the order i.e., 19-06-2015 but not from the date of the petition i.e., 15-12-2014.

9. Subject to the above modification, the Criminal Petition is dismissed accordingly. However, the Court below is directed to dispose of the main case expeditiously, preferably within a period of six months from the date of receipt of this order. Consequently, pending miscellaneous applications, if any, shall stand closed.

M.S.K.JAISWAL,J

Date: 07.09.2015

Kv/Smr

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

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CRIMINAL PETITION No.7866 of 2015

COMMON ORDER

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