

HONOURABLE SRI JUSTICE M.S.K.JAISWAL

CRL.P.No.1321 of 2011

ORDER:

This Criminal Petition is filed by the Petitioner-wife to quash the order passed in CrI.R.P.No.7 of 2009 on the file of the VI-Additional Sessions Judge, (Fast Track Court), Vikarabad, dated 30.11.2010, confirming the order dated 18.04.2009 passed in M.C.No.28 of 2004 on the file of the Judicial Magistrate of First Class, Vikarabad.

The petitioner-wife filed the aforesaid M.C.No.28 of 2004 against the 1st respondent-husband seeking maintenance at the rate of Rs.3,000/- per month. The trial Court, after an analysis of the entire evidence available on record, partly allowed the said M.C., by order dated 18.04.2009, directing the 1st respondent-husband to pay monthly maintenance of Rs.2,000/- to the petitioner-wife from the date of that order. Dissatisfied with the said monthly maintenance, the petitioner-wife preferred CrI.R.P.No.7 of 2009 and the learned VI-Additional Sessions Judge, Vikarabad, after re-assessing the entire evidence, dismissed the said revision. Aggrieved by the same, the present criminal petition is filed by the petitioner-wife.

Learned Counsel for the petitioner-wife submitted that the maintenance awarded by the Courts below is inadequate that too awarding maintenance from the date of order is erroneous in law. He further submitted that the finding of the

appellate Court that reasons have to be recorded for awarding maintenance from the date of the petition is contrary to the judgment of the Apex Court in *Shail Kumari Devi V. Krishan Bhagwan Pathak*^[1]. He further submitted that the Courts below failed to consider the aspect that there was delay of more than five years in disposal of the M.C. and during the said period, no interim maintenance was paid to the petitioner-wife by the 1st respondent-husband.

Having considered the submissions made by the learned Counsel for the petitioner and having perused the impugned orders of the Courts below, this Court is of the view that there is no dispute with regard to the relationship between the petitioner and the 1st respondent. It is evident from the evidence of the 1st respondent-husband, who was examined as R.W.1. that, in the divorce O.P. filed by him, an order was passed by the learned Senior Civil Judge directing him to pay interim maintenance at the rate of Rs.2,000/- per month to the petitioner-wife. However, the petitioner-wife did not take any steps to execute the said order. In fact, the trial Court as well as the revisional Court have considered the entire evidence available on record and the financial capacity of the 1st respondent-wife and also the cost of living on those days in coming to the conclusion that the petitioner-wife is entitled to maintenance at the rate of Rs.2,000/- per month from the date of the order.

In the aforementioned decision cited by the learned Counsel for the petitioner, the Hon'ble Apex Court held as

under:

“43. 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.”

A bare reading of Section 125 Cr.P.C. discloses that discretion is given to the Magistrate to grant maintenance either from the date of order or from the date of application. As per the aforesaid decision, for awarding maintenance from the date of the application, express order is necessary and no special reasons, however, are required to be recorded by the Court. The order to pay maintenance from the date of application must require material showing the dire need of money for the purpose of maintaining the petitioner herself. In the instant case, no such plea has been raised by the petitioner. In the absence of the same, it cannot be held that awarding maintenance from the date of order is erroneous in law. I do not find any ground to interfere with the impugned order of the appellate Court.

Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL, J

26-06-2015

Gsn

[\[1\]](#) (2008) 9 Supreme Court Cases 632