

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

CRIMINAL REVISION CASE No.932 of 2009

ORDER:

This Criminal Revision Case is filed against the orders of the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad in M.P.No.820/2008 in M.C.No.78 of 2005, dated 12.03.2009, by and under which, the learned Judge enhanced the maintenance already granted to the respondents 2 to 4 from the date of the order i.e. from 12.03.2009.

2. Heard the learned counsel appearing for the revision petitioner/husband, learned counsel appearing for the respondents 2 to 4 and the learned Additional Public Prosecutor, representing the State.

3. The admitted fact is that the revision petitioner is the husband of the 2nd respondent/wife. The 2nd respondent/wife filed M.C.No.78/2005 seeking maintenance to herself and her two children and the Court below vide orders dated 31.01.2007 allowed the said petition granting maintenance @Rs.1,500/- per month each to respondents 2 to 4. The 2nd respondent filed M.P.No.820/2008 stating that the children have grown up and expenses towards education, transport, hospital and for food was substantially increased and therefore sought for enhancement of monthly maintenance from Rs.1,500/- to Rs.5,000/- each.

4. Though the petitioner/husband received notice, he did not choose to appear before the Court below and he was *set ex parte*. The 1st respondent/wife examined herself as PW 1 and reiterated the contents of the petition and she further stated about the earning capacity of the petitioner/husband. Considering the evidence on

record in all respects, the Court below enhanced the monthly maintenance to the 1st respondent/wife from Rs.1,500/- to Rs.2,000/- and to respondents 3 & 4/children from Rs.1,500/- to Rs.3,000/- each.

5. Questioning the said order, the petitioner/husband filed the present revision contending that the impugned order is an *ex parte* order and the same was passed behind his back without giving any opportunity of being heard. It is contended that though he instructed his counsel, his counsel did not appear in the above case and after knowing the passing of the impugned order, the petitioner/husband filed MP.(SR) No.2914/2008 on 03.08.2008 before the Court below and the same was returned and his counsel resubmitted the same, but again the same was returned for the second time on 17.09.2008 and he came to know that his counsel did not represent the same. The petitioner/husband further contends that the Court below without considering his earning capacity, erroneously enhanced the maintenance to the respondents 2 to 4.

6. The relationship between the parties is not in dispute. The 2nd respondent is the wife and respondents No.2 and 3 are the two daughters of the petitioner. For the last 14 years they are living separately. Husband filed divorce O.P., which was dismissed and the appeal is said to be pending. The wife filed M.C.No.78 of 2005 and by order dated 31-01-2007, the Court granted maintenance @ Rs.1,500/- per month to each of the respondents viz., wife and two daughters. Subsequently, the wife and daughters filed M.P.No.820 of 2008 for enhancement of the compensation on the ground that the cost of living has been increased, the expenses for education of two daughters has gone up considerably, for the sake of convenience of the daughters, she has to take a house near the school on rent and she also requires to pay money towards medicines and that a total maintenance of Rs.4,500/- per month to the wife and two daughters is grossly inadequate and hence the same needs to be enhanced.

7. The petitioner/husband remained *ex parte* and the Court below after taking into consideration the evidence on record, enhanced the maintenance to the wife to Rs.2,000/- per month and to the two daughters @ Rs.3,000/- each per month.

8. The contention of the petitioner is that the same facts which were before the Court when it granted the original maintenance in January, 2007, were prevalent and there is no change in the circumstances and the Court below erred in enhancing the maintenance. It is further contended that the petitioner/husband is earning Rs.7,000/- per month, out of which he has to maintain his aged and sick mother.

9. As PW.1, the 2nd respondent/wife has given the details as to why there is a considerable increase in the expenses of two grown-up daughters. They are now aged about 15 years. The change of circumstances that is required to be seen is about the needs of the destitute wife and children but not that of the husband. The grant of maintenance should neither be a pittance nor a bounty and the overall circumstances have to be taken into consideration.

10. In the instant case, admittedly the wife and daughters are residing in Hyderabad whereas the petitioner is living in Visakhapatnam. Grant of maintenance at Rs.2,000/- per month to the wife cannot in any way said to be excessive or exorbitant. Similarly, Rs.3,000/- per month to each of the two daughters, who are aged about 15 years, cannot be said to be excessive or exorbitant. Merely because there was no change in the circumstances, insofar as the husband is concerned, it cannot be said that the wife and children are not entitled to enhancement if they can make out reasonable grounds therefor. In the instant case, the wife has established that she needs enhancement of the maintenance and the Court below has appreciated the material on record and awarded maintenance to the wife at Rs.2,000/- per month and to each of the two daughters at

Rs.3,000/- per month.

11. Upon perusing the material on record, I see no reason to interfere with the said findings. Needless to mention that the present enhancement of the maintenance will not automatically imply that the wife and daughters are entitled to enhancing maintenance in future irrespective of the fact as to whether there is any change of circumstances insofar as they are concerned. If the wife or daughters need further enhancement, they have to make out a case therefor and if according to the husband, the wife and daughters are not entitled to maintenance, it is always open to him to approach the appropriate forum.

12. In the result, the revision case is dismissed. The arrears, if any, till date, shall be cleared by the petitioner by the end of January, 2016, failing which, the respondents are at liberty to approach the appropriate Court for recovery of arrears.

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

M.S.K.Jaiswal, J

December, 2015
dsr/smr