

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

Criminal Revision Case No. 353 of 2013

Order:

This Criminal Revision Case is directed against the orders, dated 06.12.2012, passed in Crl.M.P. No. 636 of 2012 in M.C. No.192 of 2012 by the learned Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad, whereby and whereunder the learned Judge has awarded a sum of Rs.2,000/- per month towards interim maintenance to the first respondent herein, contending that in the parallel proceedings initiated by the revision petitioner in OP No.1671 of 2010 on the file of the Family Court, City Civil Court, Hyderabad, for dissolution of the marriage, the first respondent herein filed IA No.750 of 2011 claiming interim maintenance, wherein the learned Judge has awarded a sum of Rs.3,000/- per month towards interim maintenance to her, which he is paying regularly and, in spite of that, the learned Judge, in the MC proceedings, has awarded further maintenance of Rs.2,000/- per month. It is submitted that the revision petitioner-husband is a poor mechanic and he cannot afford to pay Rs.3,000/- per month in OP and Rs.2,000/- per month as awarded in the maintenance case.

Heard both the learned counsel and perused the material on record.

A perusal of the record would go to show that in OP No.1671 of 2010, which is said to be a petition filed by the revision petitioner-husband for dissolution of marriage, the first respondent herein filed IA No.750 of 2011 claiming interim maintenance and in the said petition the learned Judge, Family Court, has awarded a sum of Rs.3000/- per month towards interim maintenance to the first respondent herein. The first respondent-wife also filed MC No.192 of 2012 for grant of maintenance and by the impugned order passed in Crl.MP No.636 of 2012 in MC No.192 of 2012 the learned Judge has awarded a sum of Rs.2,000/- per month towards interim maintenance. It is noticed from the impugned order that the factum of filing OP No.1671 of 2010 and granting of interim maintenance in that OP was

brought to the notice of the Court below and in spite of that interim maintenance is awarded in the maintenance case. Both the proceedings in OP as well as in the maintenance case are still pending. Granting maintenance by way of interim arrangement can be in either of the proceedings, but there cannot be interim maintenance in both the cases i.e., one initiated under the Hindu Marriage Act and other under the Code of Criminal Procedure. However, in the proceedings initiated under Section 125 Cr.P.C., if ultimately, it is found that the first respondent-wife is entitled to the maintenance over and above the maintenance granted by the Family Court she can be awarded maintenance while disposing of the matter, but granting interim maintenance, more particularly when the amount of Rs.3,000/- has already been granted to the wife in the OP, may not be proper. It is also represented that the revision petitioner-husband is regularly paying Rs.3,000/- per month as awarded by the Family Court. Therefore, I am of the considered view that the order under challenge is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed and the impugned order is set aside. However, it is open to the learned Judge, Family Court, to consider MC No.192 of 2012 on its own merits uninfluenced by any of the observations made herein by this Court.

As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 10.06.2015

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