

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7664 of 2015

ORDER :

This Criminal Petition is filed by the petitioner by name V.Hanuman Prasad Babu, no other than husband of 1st respondent and father of 2nd respondent, to quash the order passed in Crl.M.P. No.160 of 2014 in M.C. No.17 of 2014 dated 11.06.2015 on the file of Judge, Family Court-cum-Additional District Judge, Ananthapuram against the petitioners.

2) The petitioner herein is the respondent in Crl.M.P. No.160 of 2014 and in M.C.No.17 of 2014, the respondents herein are the petitioners in Crl.M.P. No.160 of 2014 and in M.C.No.17 of 2014 on the file of Judge, Family Court-cum-Additional District Judge, Anantapuram)

3) Pending disposal of the main M.C, the petitioners therein filed Crl.M.P.No.160 of 2014 under Section 125 (2) Cr.P.C for the interim maintenance @ Rs.10,000/- per month in favour of both of them claimed against the respondent therein/ quash petitioner herein, with the contentions that though the 1st petitioner and respondent belong to different communities and their marriage took place about 13 years back and out of their wedlock, they blessed with a female child i.e., 2nd MC petitioner; that the respondent started her ill treating for additional dowry, more particularly, after the birth of 2nd MC petitioner and he also developed contacts with other woman. The 1st petitioner therein lodged a complaint on 06.11.2012 which is registered as Crime No.57 of 2012 for the offence punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961 for ill treating she mooted and was driven out from staying with her aged parents on their mercy; that the respondent being affluent failed to pay anything to them for their survival, thereby they require the interim maintenance claimed supra for survival.

4) The same was opposed by counsel for MC respondent to the interim maintenance in the petition (supra) and the averments of the counter are that the MC

1st petitioner (his wife) is getting Rs.30,000/- per month by running medical agency and is capable to maintain herself and her child; that he is not doing any job and not capable of maintaining himself, and he is not able to pay the maintenance to the petitioners. He stated that he has no any properties either at Kurnool or Madanapalli and has no source of income; that due to harassment meted in the hands of wife, he joined in Service Oriented Ashram, Madanapalli to get on.

5) It is from the said rival contentions, the learned Magistrate observed in the order granting maintenance at Rs.2,000/- per month to each petitioner i.e., wife and daughter from the date of petition i.e., 11.10.2014, till the disposal of the main MC without prejudice to the contention of both the parties; with the observation that the relationship is not in dispute and the 1st petitioner claimed as house wife and the respondent claimed as not an employee, however, being able-bodied otherwise he is bound to maintain his wife and daughter and it is not believable that he is not having minimum source of income to maintain his wife and daughter. Impugning the same, the petitioner filed the quash petition and this Court granted interim order on 04.09.2015 is as under:

“Heard.

There shall be interim stay, of enforcement of Crl.M.P. No.160 of 2014 in M.C. No.17 of 2014 on the file of learned Judge, Family Court-cum-Additional District Judge, Anantapuramu, subject to payment/ deposit of half of the amount, for a period of five weeks.

The arrears shall be paid within five weeks, if not already paid out of said amount and for paying the balance to the maximum of half of the amount out of the said Rs.4,000/- p.m and ultimately to consider to repay the maintenance to the daughter in the event of the 1st petitioner not entitled to maintenance as contended by the learned counsel for the petitioner from her running medical shop standing in her name under the name and style of Sai Shruthi Medical Agency with Form 21-B licence valid upto 02.05.2016 and also the VAT Registration for it, she obtained.

Notice.

Learned counsel for the petitioner is permitted to take out personal notice to serve on the respondent Nos.1 and 2 and file proof of service within three weeks.

Post after four weeks.

Needless to say the learned Judge of the Family Court shall make every endavou to dispose of the main M.C. within three months from today.”

6) Pursuant to the above even notice served on 1st respondent for herself and on behalf of 2nd respondent—her minor daughter, who are MC petitioners failed to attend, hence taken as heard and heard the learned counsel for petitioner and also 3rd respondent—State represented by learned public prosecutor and perused the material on record.

7) As referred from the interim order of this Court dated 04.09.2015 and the additional material including VAT registration certificate obtained by MC 1st petitioner from Anantapur Circle-II on 01.07.2011 for the medical business with name Sai Shruthi Medical Agencies with business premises at 6-5-640, Shop No.5, NH.7, Rudrampet By Pass, Anantapur Town and the copy of statement of account of SBH bearing No.62233261387 of Sai Shruthi Medical Agencies showing bank particulars from 08.06.2012 to 11.07.2014 along with ledger copy from 01.01.2013 to 04.04.2014 and the Sai Shruthi Medical Agencies' receipt bearing No.015, showing the receipt of Rs.1500/- received from Sai Laxmi Medicals, Rayadurg on 27.06.2014 and the address at Shop No.4, Naik Nagar, Krishnadevaraya Nagar, Anantapuramu District, it is evident that the MC 1st petitioner is not a mere house wife but a business woman holding the post of proprietor of Sai Shruthi Medical Agencies. The Forms 21-B and 20-B issued by Assistant Director, Drugs Control Administrator & District Licensing Authority, Anantapur District, the name of Smt.V.Adilakshmi is clearly shown as Proprietor, thereby the interim maintenance awarded in so far as the 1st petitioner, who is wife of respondent, is unsustainable, but the 2nd petitioner—daughter entitled to interim maintenance. Thereby, to that extent the petition is liable to be allowed. It is needless to say that the issue with regard to quantum of amount of Rs.2,000/- per month to the MC 2nd petitioner, which now argued as hardly sufficient, is left open for adjudication in the main MC through proper claim. It is needless to say the observations herein setting aside the order of granting maintenance to MC 1st petitioner—wife no way prejudice her right to the maintenance claim, if she is able to show the comparison of her income from the said medical business and the income of respondent/ husband and able to show entitlement to some amount towards maintenance. It is needless to say by direction of this Court dated 04.09.2015, the learned Judge, Family Court was directed to dispose of the MC within three months and by upholding the Criminal petition is

partly allowed to the extent of setting aside the maintenance awarded to the 1st petitioner only in Crl.P. No.160 of 2014.

8) Miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.07.11.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:07.11.2015

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