

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2161 of 2014

ORDER:

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The present revision is filed under Sections 397 and 401 Cr.P.C. aggrieved by the judgment dated 13.08.2014 passed in CrI.A.No.428 of 2014 on the file of the Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar.

The facts in issue are as under:

The first respondent herein filed D.V.C.No.5 of 2014 on the file of the VII Metropolitan Magistrate, Cyberabad at Hayathnagar, claiming various reliefs under Section 12 of the Protection of Women from Domestic Violence Act, 2005. Pending the said proceedings, the first respondent also filed CrI.M.P.No.216 of 2014 seeking interim maintenance for herself and her son. By an order, dated 01.05.2014, the learned Magistrate awarded maintenance @ Rs.10,000/- per month to the first respondent and Rs.15,000/- per month to the second respondent herein from the date of filing of the petition. Challenging the same, the petitioner herein filed CrI.A.No.428 of 2014 on the file of the Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar, which was dismissed, confirming the order passed by the learned Magistrate. Aggrieved by the same the present revision is filed.

Learned counsel for the petitioner mainly submits that the quantum of maintenance awarded by the learned Magistrate is on higher side as the learned Magistrate presumed that the petitioner was earning Rs.1.00 lakh per month. He placed on record the salary certificate issued by his employer in support of his contention.

Learned counsel for the respondents filed counter opposing the same. According to him, the petitioner is the Principal Scientist working

in a well reputed pharmaceutical company heading a team of 20 Scientists drawing monthly salary of Rs.1.1 lakhs. He submits that no documentary evidence has been produced by the petitioner disputing the same. Having regard to the said circumstance, he submits that since both the Courts have concurrently held that the petitioner was earning morethan one lakh per month, the order under challenge warrants no interference. Since the main D.V.C. is still pending for consideration, it may not be proper for this Court to go into the merits of the case.

The short point that arises for consideration is whether the interim maintenance granted to respondent Nos.1 and 2 herein is just and reasonable or on higher side?

The order passed by the learned Magistrate indicates that neither the petitioner nor the wife adduced any evidence. On perusal of the petition, counter and oral submissions made across the bar the learned Magistrate awarded the said amount.

A perusal of the order of the trial Court would show that the petitioner addressed a letter dated 21.01.2014 to the Director General of Police, wherein it is mentioned that the petitioner is working as Scientist in a reputed pharmaceutical company heading of team of 20 Scientists and drawing a monthly salary of Rs.1.1 lakh, but the same was denied by the petitioner herein. The order indicates that the petitioner did not produce any documentary evidence to show that his income was not Rs.1.1 lakh.

Learned counsel for the petitioner submits that though the salary certificate was filed along with the bunch of papers but the same was not looked into by the trial Court. He places on record the salary certificate issued by his employer namely Novartis Healthcare Private Limited showing his gross salary at Rs.91,898/-. He submits that a sum of Rs.10,823/- is deducted towards income tax and Rs.18,550/- towards Mediclaim, apart from deducting Rs.5,499/- towards provident fund. After deductions the net pay which the petitioner gets is only

Rs.56,876/- In view of the above, he submits that his parents and other family members are dependent on him, granting Rs.25,000/- per month to the wife and child is on higher side.

Learned counsel for respondent Nos.1 and 2 opposing the same. Deductions cannot be taken into consideration while awarding maintenance. In any event he submits that the deductions made are annual deductions and not monthly deductions.

The issue as to whether the deductions are taken into consideration or not is came up for consideration before the Apex Court in *Bhushan Kumar Meen v. Mansi Meen @ Harpreet Kaur*^[1], it was a case where the trial Court granted a sum of Rs.10,000/- per month as interim maintenance, which was confirmed by the Sessions Court as well as the High Court. The argument advanced by the learned counsel for the husband before the Apex Court was that he was receiving a sum of Rs.9,000/- after deductions. In the said case, monthly salary of the husband was Rs.34,900/- out of which Rs.21,329/- was deducted towards home loan. After deductions, his carrying home salary was Rs.9,000/-. Having regard to the said circumstances and since the wife in the said case was educated lady who will be in a position to maintain herself in future, the Apex Court reduced the interim maintenance from Rs.10,000/- to Rs.5,000/-.

In case on hand the income certificate which is placed on record show the total gross salary of the petitioner at Rs.91,898/-. It is to be noted that out of the said amount, only income tax and provident fund gets deducted monthly. Even assuming that Mediclaim deduction was done monthly, the income of the petitioner was around Rs.56,876/-.

From the judgment of the Apex Court referred to above, though the take home salary of the husband therein was Rs.9,000/- the Apex Court awarded a sum of Rs.5,000/- instead of Rs.10,000/- which is almost just less than above half of his carry home salary. One of the grounds, raised before the Apex Court was that the wife in the said case was an

educated lady and she has capacity to maintain herself.

The material placed on record would show that the dependents of the petitioner namely his father and also mother who are aged people are taking treatment in various hospitals. He placed on record the receipts issued by Asian Institute of Gastroenterology and also the amounts spent while taking treatment in Apollo Hospital, Jubilee Hills, Hyderabad. Definitely the documentary evidence which is placed on record do show some expenditure incurred by the petitioner towards treatment to his parents. At this stage, it may not be proper to brush aside the same. Having regard to the said circumstances, while confirming the interim maintenance awarded to the child, the quantum of interim maintenance awarded to the wife is reduced from Rs.10,000/- to Rs.5,000/-. It is made clear that the findings given in this order are only for the purpose of deciding the case on hand and the same shall not influence the proceedings in main D.V.C. which shall be dealt with basing on the evidence available on record and the learned VII Metropolitan Magistrate, Cyberabad at Hayatnagar, Ranga Reddy District, is hereby advised to dispose of the D.V.C. as expeditiously as possible preferably within a period of six months to one year.

Accordingly, the Criminal Revision Case is allowed in part by reducing the interim maintenance awarded to the wife from Rs.10,000/- to Rs.5,000/-. The amount awarded to the child is hereby confirmed.

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

JUSTICE C. PRAVEEN KUMAR

25.02.2015

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^[1] (2010) 15 SCC 372