

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1348 OF 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 29.05.2015 passed in M.P.No.27 of 2013 in M.C.No.11 of 1989 on the file of the Judge, Family Court at Secunderabad.

2. The contention of the learned counsel for the petitioner is two fold: (1) The trial Court has not considered the financial status of the petitioner and allowed the petition, and (2) The findings recorded by the trial Court are perverse; therefore, it is a fit case to set aside the order of the trial Court.

3. *Per contra*, the learned counsel for the first respondent submitted that as per Ex.A.2 – Salary Certificate, the petitioner was drawing a gross salary of Rs.29,122/- and net salary of Rs.22,398/- per month. He further submitted that there is no illegality or irregularity in the order of the trial Court; therefore, the present revision is not maintainable under law.

4. The facts leading to filing of the present revision are briefly as follows:

The marriage of the petitioner (husband) was performed with the first respondent (wife) long back. Out of their lawful wedlock, the petitioner and the first respondent were blessed with one son. For one reason or other, disputes arose between the petitioner and the first respondent. The first respondent has been residing separately since long time. The first respondent filed M.C.No.11 of

1989 on the file of the Judge, Family Court at Secunderabad under Section 125 of Cr.P.C. seeking maintenance from the petitioner. After affording a reasonable opportunity to both parties, the Family Court allowed M.C.No.11 of 1989 on 26.10.1990 by granting maintenance of Rs.300/- per month to the first respondent. While things stood thus, the first respondent filed M.P.No.27 of 2013 in M.C.No.11 of 1989 under Section 127 of Cr.P.C. for enhancement of maintenance amount from Rs.300/- to 10,000/- per month. The petitioner herein opposed the petition by filing counter.

5. During the course of trial, on behalf of the first respondent, no oral evidence was adduced, but Exs.A.1 to A.5 were marked. On behalf of the petitioner, no oral or documentary evidence was adduced.

6. The trial Court after taking due consideration to the documentary evidence available on record, allowed the petition by granting maintenance of Rs.10,000/- per month to the first respondent. Feeling aggrieved by the order dated 29.05.2015 passed in M.P.No.27 of 2013 in M.C.No.11 of 1989, the petitioner (husband) preferred the present revision.

7. Now the point that arises for consideration is whether the first respondent is entitled to file a petition for enhancement of maintenance amount or not.

8. There is no dispute with regard to the *inter se* relationship of the parties. By the time of filing of M.C.No.11 of 1989, the petitioner was working as a Railway employee and drawing a salary of Rs.1,320/- per month. The trial Court basing on the material

available on record, granted maintenance of Rs.300/- per month to the first respondent. After 22 years, the first respondent filed M.P.No.27 of 2013 in M.C.No.11 of 1989 under Section 127 Cr.P.C. seeking enhancement of the maintenance. The fact remains that the petitioner has been working in South Central Railway.

9. On 16.07.2015 this Court passed the following order:

“There shall be interim suspension on condition of the petitioner depositing 50% of the arrears of maintenance awarded by the Court below to the respondent No.1 calculating at the rate of Rs.5,000/- per month to the respondent No.1 within a period of three months from today, and continuing to pay the maintenance to the respondent No.1 at Rs.5,000/- per month on or before 10th of every succeeding month, till disposal of the revision.”

10. Learned counsel for the first respondent submitted that the petitioner has not complied with the order of this Court dated 16.07.2015. This Court is very much conscious that mere non-compliance of the orders of this Court by itself is a valid ground to dismiss the revision.

11. A perusal of Ex.A.2 – Salary Certificate clearly reveals that the petitioner is getting gross salary of Rs.29,122/- and net salary of Rs.22,398/- per month. There is a social and moral obligation on the part of the petitioner, who is the husband of the first respondent, to provide reasonable amount towards maintenance of the first respondent. The first respondent is legitimately entitled to lead the life basing on the financial status of the petitioner. The petitioner is aged about 56 years and the first respondent is aged about 53 years. Absolutely there is no material on record to establish that the first respondent is having sufficient means or

source of income to maintain herself. The material placed before this Court, clinchingly establishes that the petitioner is having sufficient means and source of income to provide maintenance to the first respondent. The trial Court taking into consideration the financial status of the petitioner, granted maintenance of Rs.10,000/- per month to the first respondent i.e., less than 50% of the gross salary. The finding recorded by the trial Court is based on material available on record.

12. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the trial Court are perverse. It is a settled principle of law that if there is any illegality, irregularity or impropriety in the orders passed by the trial Court, this Court can set aside the same by exercising the revisional jurisdiction under Section 397 of Cr.P.C. As observed earlier, there is no illegality, irregularity or impropriety in the order of the trial Court which warrants interference of this Court. Hence, the revision lacks merits and *bona fides*.

13. Accordingly, the Criminal Revision Case is dismissed.

14. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.10.2016
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