

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15414 of 2016

ORDER:

This Petition is filed under Section 482 Cr.P.C. to quash the Order dt. 30.03.2016 in CrI.M.P.No.568 of 2016 in MC No.09 of 2015 on the file of Additional Junior Civil Judge, Chilakaluripet, granting maintenance of Rs.2000/- per month to each petitioner Nos. 1 to 3 from the date of filing of Petition i.e., 15.03.2016.

2. The case of the respondents herein before the trial Court is that the petitioner married respondent No.1 on 21.01.2007 at her parental home, according to Hindu rituals, and the marriage was consummated. At the time of marriage, the parents of respondent No.1 presented four sovereign of gold besides Rs.80,000/- as dowry and presentation of house hold articles worth Rs.25,000/-. After the marriage, they lived happily for some time and later they were blessed with two children i.e., respondent Nos. 2 and 3 and thereafter petitioner started harassing respondent No.1 due to her failure to meet his alleged demand for payment of additional dowry.

3. On 25.02.2015 the petitioner took the respondent Nos. 1 to 3 to the parental house of respondent No.1 and left there and warned her not to return to his house, unless

she complied his demand. Despite several mediations, no fruitful purpose was served and that respondent No.1 is suffering from ill-health and unable to maintain herself, besides her children i.e., respondent Nos. 2 and 3 as she is not in a position to attend any work to earn any income to meet her livelihood.

4. It is also contended that the petitioner is running a hotel and earning Rs.25,000/- per month besides cool drinks shop, by which, he is earning Rs.15,000/- per month. Thus, he was earning Rs.40,000/- per month. He also possessed house property worth Rs.50 lakhs and therefore, respondent Nos. 1 to 3 sought Rs.3,000/- per month to each towards interim maintenance.

5. The petitioner/respondent filed Counter before the trial Court raising several contentions. It is the specific contention of the petitioner is that respondent No.1 herself deserted the petitioner without any reasonable cause and thereby, she is disentitled to claim any maintenance from the petitioner. The alleged income from different sources is false and respondent No.1 is earning sufficiently by sale of eatables obtaining loan from Cooperative Urban Bank and earning sufficient income for her livelihood and she also own and possessed a house property consisting of two portions and one of the portion belong to her mother and

the other belongs to her. Therefore, there is no need to grant any amount towards interim maintenance and prayed for dismissal of the petition.

6. The trial Court, upon hearing argument of both the counsel, passed the above said Order though no evidence was adduced before the trial Court either oral or documentary.

7. The present petition is filed to quash the said Order on several grounds, mainly contending that respondent No.1 is earning sufficiently to meet her daily necessities by sale of eatables, obtaining loan from Cooperative Urban Bank and that she herself deserted the company of petitioner subjecting the petitioner to cruelty and that the amount awarded by the trial Court towards maintenance is excessive.

8. At the stage of admission, Smt Marella Radha, learned counsel for petitioner, contended that the amount awarded by the trial Court is excessive and that respondent No.1 possessed sufficient means to meet her necessities.

9. It is the case of the respondents that respondent Nos. 2 and 3 are the children born to the petitioner and respondent No.1 and the petitioner is legally bound to maintain the children born to the petitioner and respondent

No.1, but the petitioner did not took any steps to claim custody of the children to maintain themselves and no amount is being paid to them though he is a legal guardian to them and he is liable to provide food and shelter besides maintenance etc., and therefore, the petitioner cannot avoid payment of maintenance on any ground to the children, viz., respondent Nos. 2 and 3.

10. So far as respondent No.1 is concerned, the only contention before this Court is that she is carrying on business by obtaining loan from Cooperative Rural Bank and earning sufficiently. She also possessed a house portion for her shelter and the respondent No.1 herself deserted the petitioner without any justifiable or reasonable cause.

11. A similar contention was urged before the trial Court, but no iota of evidence is produced before the trial Court to conclude that respondent No.1 is carrying business obtaining loan from Cooperative Urban Bank and earning any income for her maintenance. In the absence of any evidence, it is difficult to accept the contention while deciding a petition for grant of interim maintenance. Therefore, the trial Court rightly disbelieved the contention of the petitioner regarding independent source of income allegedly possessed by respondent No.1 and granted interim maintenance.

12. The other contention of learned Counsel for petitioner herein is that she wantonly deserted the company of the petitioner. But, that cannot be decided at this stage, in the absence of any evidence. Therefore, it is left open to the petitioner to raise such contention in the maintenance case and on raising such contention, the trial Court is directed to decide whether respondent No.1 is entitled to claim maintenance on the ground of desertion without any justifiable or reasonable cause and pass appropriate orders in accordance with law while deciding the main case. Therefore, the contention of the petitioner cannot be decided at this stage.

13. It is settled law that respondent Nos. 1 to 3 being the wife and children are supposed to lead the same standard of life which the petitioner herein/husband is leading and it is not his contention that he has no means to maintain the respondents. Therefore, an amount of Rs.2,000/- to each respondent Nos. 1 to 3 would meet the ends of justice in view of the present price index. Therefore, it is difficult to reduce the amount awarded by the trial Court towards interim maintenance, taking into consideration of standard of life of the petitioner herein and the present price index. Accordingly, I find no grounds to interfere with the Order

passed by the trial Court. Hence, this Criminal Petition is liable to be dismissed.

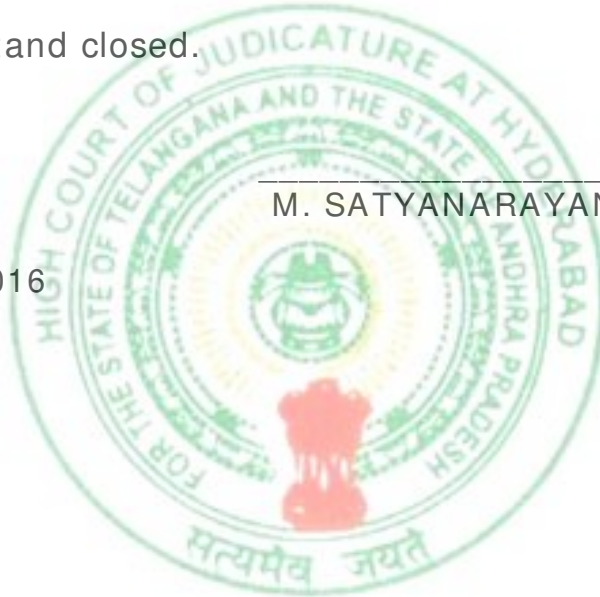
14. With the direction in para No.12, this Criminal Petition is dismissed. However, the learned Magistrate is directed to decide the matter as early as possible, but not later than three months, uninfluenced by the observations, if any, made in this Order. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 31-10-2016

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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CrI.P.No.15414 of 2016

Dt. 31.10.2016

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