

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 411 of 2015

CRIMINAL PETITION No.2319 of 2015

&

CRIMINAL PETITION No.8422 of 2015

COMMON ORDER:

Since the criminal revision case and the criminal petitions are inter-connected, with consent of both the parties, the same are being disposed of by this common order.

2. Heard the petitioner/husband, who appeared in person, and also the learned counsel representing the respondents/wife and the minor child.

3. The facts in issue are as under :-

One Rani Suneela Rani, who is the wife of the petitioner, filed M.C. No.1 of 2012 under Section 125 of the Code of Criminal Procedure claiming maintenance. Another M.C.No.2 of 2012 was also filed under Section 125 Cr.P.C., by the daughter of the petitioner, who being minor was represented by the wife of the petitioner. Originally, the said M.Cs., were filed before the Court of Additional Judicial Magistrate of First Class, Amalapuram, which were numbered as M.C.Nos.13 of 2007 and 52 of 2007. Later, the same were transferred to the Court of Principal Junior Civil Judge, Amalapuram, and were re-numbered as M.C.Nos.1 of 2012 and 2 of 2012, respectively. By an order, dated

08.10.2014, the learned Principal Junior Civil Judge allowed M.C. No. 2 of 2012 and awarded maintenance of Rs.2,000/- per month to the second respondent herein(daughter) from the date of the order. Challenging the same, the daughter, represented by her mother, preferred CRL.R.P.No.120 of 2014, for enhancement of the maintenance. The husband also preferred CRL.R.P.No.126 of 2014, questioning the very grant of maintenance to his daughter. CRL.R.P.No.120 of 2014, filed by the daughter, was allowed, on 10.02.2015, by ordering payment of maintenance from the date of application, whereas CRL.R.P. No.126 of 2014, filed by the husband/father, was rejected, on 10.02.2015. Challenging the order passed in CRL.R.P.No.120 of 2014, the husband/father filed Crl.R.C.No.411 of 2015, questioning the grant of maintenance from the date of application and he also filed Crl.P.No.2319 of 2015, seeking modification/alteration of the order in CRL.R.P.No.126 of 2014.

4. Along with Crl.R.C.No.411 of 2015, the petitioner/husband, who is appearing in person, also filed Crl.R.C.M.P. Nos.636 of 2015 to dispense with filing of C.C. of order, dated 08.10.2014, in M.C.No.2 of 2012; Crl.R.C.M.P.663 of 2015 to permit the petitioner to submit pleadings; Crl.R.C.M.P.664 of 2015 to permit the petitioner to submit pleadings in the chamber premises; Crl.R.C.M.P.665 of 2015 to suspend the order dated 10.02.2015 issued in CRL.R.P.No.120 of 2014; Crl.R.C.M.P.666 of 2015 to club the hearing dates of all civil and criminal matters pending before the court; Crl.R.C.M.P.900 of 2015 to permit the petitioner to

continue payment of Rs.300/- to Rs.400/- per month until final disposal of M.C.No.2 of 2012; Crl.R.C.M.P.1781 of 2016 to post the matter in top ten items in the cause list; Crl.R.C.M.P.2010 of 2016 to post the matter in top ten items in the cause list; Cr.R.C.M.P.3237 of 2016 to recognize the consequence of legality from the furnished particulars and consequently dispose of the Crl.R.C.No.411 of 2015; Crl.R.C.M.P.4033 of 2015 to expedite the proceedings; and SR.No.30805 of 2016 to post the matter in top ten items of cause list.

5. Along with Crl.P.No.2319 of 2015 the petitioner/husband also filed Crl.P.M.P. Nos.2525 of 2015 to permit the petitioner to submit the pleadings in chambers; Crl.P.M.P.2526 of 2015 to suspend the order, dated 10.02.2015, passed in CRL.R.P.No.126 of 2014; Crl.P.M.P.8245 of 2016 to post the matter in top ten items in the cause list; Crl.P.M.P.11577 of 2015 to expedite the hearing; 13510 of 2016 to dispose of the petition at an early date; Crl.P.M.P.14074 of 2016 to recognize the consequence of legality from the furnished particulars and to dispose of the Crl.P.No.2319 of 2015.

6. The wife filed M.C.No.13 of 2007, under Section 125 of Cr.P.C., claiming maintenance @ Rs.8,000/- per month, which was subsequently re-numbered as M.C.No.1 of 2012 on the file of the Principal Junior Civil Judge, Amalapuram. By its order, dated 08.10.2014, the Principal Junior Civil Judge, dismissed the same. Against which, she filed CRL.R.P.No.120 of 2014, which was also rejected by the Revisional Court, on 10.02.2015.

Aggrieved by the same, she preferred CrI.P.No.8422 of 2015 seeking quashing of the order in CRL.R.P.No.121 of 2014 and consequently to grant maintenance @ Rs.8,000/- per month.

7. Along with CrI.P.No.8422 of 2015 the respondent/husband also filed CrI.P.M.P. No.8244 of 2016 for posting the matter in top ten items of cause list; CrI.P.M.P. 10756 of 2015 to attach the petition schedule movable and immovable properties and amount deposited at Rs.8,650/- before the II Additional District and Sessions Judge, Amalapuram; CrI.P.M.P. 11057 of 2015 to permit the petitioner to submit the pleadings; CrI.P.M.P. 11576 of 2015 to issue reasonable orders as desired; CrI.P.M.P. 11633 of 2015 to expedite the hearing of the petition; CrI.P.M.P. 13509 of 2016 to dispose of CrI.P.No.8422 of 2016 at an early date and CrI.P.M.P. 14072 of 2016 to recognize the consequence of legality from the furnished particulars and consequently dispose of CrI.P.No.8422 of 2015. The petitioner/wife also filed CrI.P.M.P.No.8445 of 2016 to grant interim maintenance at Rs.8,000/- per month.

8. Since the main Criminal Revision Case and the Criminal Petitions are heard finally, it may not be necessary to pass interim orders or directions in the CrI.P.M.Ps., filed along with CrI.R.C., and Criminal Petitions.

9. For the sake of convenience, the parties hereinafter will be referred to as arrayed in CRL.R.P.No.120 of 2014, which is the impugned order in CrI.R.C. No.411 of 2015.

10. The brief facts of the case are as under:-

The marriage between the first petitioner/wife and the respondent/husband took place on 14.08.2015 at Sri Veera Venkata Satyanarayana Swamy Temple at Annavaram. The second petitioner is their daughter, who born on 18.07.2007, at Amalapuram. Both of them lived together happily for some time at Hyderabad, as the respondent/husband was working there. It is said that after she joined her husband, her mother-in-law and sister-in-law started harassing her physically and mentally. The matter was placed before the elders but there was no change in their attitude. Thereafter, on 17.01.2007, the respondent is alleged to have deserted the first petitioner. Pursuant to which, a report was lodged, which came to be registered as Crime No.148 of 2007, for the offence punishable under Section 498-A IPC. The respondent filed Divorce Petition against the first petitioner viz., O.P.No.57 of 2007 before the Senior Civil Judge, R.R. District, at L.B.Nagar. The first petitioner filed M.C., against the respondent seeking maintenance vide M.C.No.13 of 2007 before the Additional Judicial Magistrate of First Class, Amalapuram. Since the respondent remained exparte, the Court granted maintenance @ Rs.4,000/- per month. But, the said order was set-aside on the ground that no notice was served on the respondent. Later, the said M.C., was re-numbered as M.C.No.1 of 2012. It is alleged in the petition that the respondent is working as Service Engineer in Pam-Pac associated Capsules Ltd., drawing a salary of Rs.18,000/- per month. It is her case that the respondent

was sent on camps to other companies where he was paid Rs.2,000/- per each camp as allowances. It is further said that the respondent owns a house near Hitech city, worth about Rs.80,00,000/-; one house at Kukatpally; and another house at Narendrapuram of Ambajipeta, apart from having huge amounts in his Bank accounts.

11. Respondent/husband filed counter denying the averments made except to the extent of marriage between himself and the first petitioner. In his counter, he submits that he is a Diploma holder in Electronics and used to work in Pam Pac, Hyderabad (pune based industry), and his wife studied M.Com., M.A., and worked as Sanskrit Lecturer in Amalapuram. It is his case that, after marriage, himself and his wife started to live at Hyderabad in a rented house and thereafter the first petitioner started neglecting the respondent and his old age ailing mother. The first petitioner pressurized him to purchase Ac.0.18 cents of coconut garden belonging to one D.Nagabhushana Rao at Machavaram, in her name, which is worth about Rs.2,50,000/- for the purpose of providing livelihood to her parents, for which he refused. In the said coconut garden, there is a house, in which one Korlapati Bujji is running a ration shop. It is alleged that he came to know that the first petitioner is having more acquaintance with said Bujji and with a view to allow Bujji to carry on relationship in the house, she was pressurizing to purchase the property. Since then, the first petitioner started quarrelling with him and also his ailing mother for one reason or the other. It is further stated that since his wife is a Sanskrit Pandit, she

used to abuse them in filthy language. The first petitioner is alleged to have moved closely with her male friends and she also used to go to her parental house oftenly against his wish. It is stated that though the first petitioner used to treat her parents with love and affection, she disliked the respondent as he was treating his mother with love and affection, as the endeavour of the first petitioner is that he should not see his mother with love and affection. It is the allegation of the respondent that whenever the first petitioner supplied Tea to him, she used to charge its value and also she demands amount as a servant maid whenever she used to wash his clothes. It is further alleged that one Korlapati Bujji used to contact the first petitioner over phone and when he questioned the same, she used to give evasive reply. It is further averred that, on 12.11.2006, the respondent and his two sisters along with the first petitioner went to the house of D.Nagabhushanarao to inform him about the harassment of the first petitioner and she did not care for it but created a scene in his house. Further, on 14.11.2006, the first petitioner, by calling her father and Korlapati Bujji to Hyderabad, lodged a complaint before the Station House Officer, L.B.Nagar, with false allegations. Basing on those false allegations, the police called him and his family members to police station. Even at the police station, the first petitioner quarrelled with the respondent. All these things perturbed the mind of the respondent and as such could not concentrate on his job and perform his duties to the satisfaction of his superior officers. Then the management advised the respondent to get his family

disputes settled at first and then only come and join the job. The same was also informed to the first petitioner but she did not change her mind. Under those circumstances, the respondent was forced to submit resignation to his job on 31.01.2007. Since then, the respondent did not have any source of income and his elder sister has been maintaining him. Thus, the first petitioner is responsible for his loss of job. It is further alleged that the first petitioner used to quarrel with him without any reason and abuse him in filthy language questioning his potency. It is also stated that, on 16.01.2007, the first petitioner threatened him stating that she will commit suicide if he goes to office and also slapped and manhandled. Further, on 17.01.2007, while the respondent was going on a tour to Pune on office work, informed the same to the first petitioner over phone and in turn the first petitioner enquired the same with the office. The said behaviour of the first petitioner disturbed the mind of the respondent, which made him not to join her. Thereafter, the respondent filed O.P.No.57 of 2007 before the Senior Civil Judge, Ranga Reddy District, L.B. Nagar, on 23.01.2007, against the first petitioner, seeking divorce. It is stated that the first petitioner lodged a complaint, u/s.498-A IPC, against the respondent and his elder sister and old mother. The complaint was registered as Crime No.148 of 2007 and subsequently numbered as C.C.No.672 of 2007 on the file of the court of the Metropolitan Magistrate, Cyberabad. Further, on 23.03.2007, the first petitioner filed transfer petition before the Hon'ble High Court contending that she was in advanced pregnancy and could not attend the

court. In spite of resistance made by the respondent, the transfer petition was allowed and O.P.No.57 of 2007 was transferred to the court of Senior Civil Judge, Amalapuram, and re numbered as O.P.No.109 of 2007. While the proceedings are pending, the first petitioner filed M.C.No.13 of 2007 claiming maintenance for her, and M.C.No.52 of 2007 claiming maintenance for her daughter. It is contended that Rs.50,000/- was given to the respondent towards dowry and 5 sovereigns of gold and 15 sovereigns of silver and saree samans were given and in spite of that the respondent is demanding for additional dowry. Further, the contention of the first petitioner that she did not have any income and the respondent is doing job and earning Rs.18,000/- per month and Rs.2,000/- per each camp is absolutely false and created for the purpose of the petition. It is stated that the respondent is not responsible for a separate living of the first petitioner, as the respondent went to Pune on 17.01.2007 on office work and when he returned, the first petitioner went to Machavaram by taking all the household articles and also the articles belonging to the respondent secretly. The respondent states that there is no neglect or refusal on his part to maintain the first petitioner as she herself deserted the respondent. It is also further averred that since the respondent lost his job and did not have sufficient means to maintain, the question of providing maintenance would not fall for consideration and hence prayed for dismissal of the petition.

12. During the course of trial, the first petitioner examined herself as P.W.1 and another as P.W.2 and no documents were marked on

her behalf. On the other hand, the respondent got examined himself as R.W.1 and got marked Exs.R-1 to R-44 on his behalf.

13. After considering the oral and documentary evidence, adduced by both the sides, an amount of Rs.2,000/- p.m., was granted to the daughter, towards maintenance , while the request of wife was rejected.

14. As seen from the record and the evidence adduced by both sides, there is no dispute with regard to the marriage between the parties and also the paternity of the child.

15. The only dispute in the present case is with regard to quantum of maintenance to be granted and also as to whether it should be granted from the date of petition or from the date of order?

16. In fact, the husband, who is appearing in person, fairly states that he is neither disputing the relationship nor paternity of the child, but is disputing only the quantum of maintenance and the date from which the maintenance has to be paid. It is his case that he has no means to pay the maintenance awarded to the daughter and that he is eking out his livelihood by begging. He submits that he has been spending money towards travelling charges from Hyderabad to Amalapuram at Rs.300/- or Rs.400/- and as such the quantum of maintenance granted to the daughter is on higher side. Insofar as awarding maintenance to the wife, he submits that she is educated and working as Lecturer in Sanskrit having capacity to maintain herself. It is his case that the admissions

made and evidence adduced amply establish that the wife is not entitled for maintenance.

17. Coming to the first issue viz., as to whether the maintenance can be granted to the minor daughter?, it is to be noted that an obligation is cast on the respondent/husband to give a decent living to his daughter. The record shows that the respondent is a Diploma holder in Electronics; working in Pam-Pac associated Capsules Ltd., and drawing a salary of Rs.18,000/- per month. Even assuming, for the sake of argument, that the respondent has no income or that the income was just sufficient to meet his needs, but he being a able-bodied person having capacity to work should give a decent living to his daughter. In fact the order passed in M.C.No.2 of 2012 clearly shows that the husband is said to have stated that he has no objection to maintain his minor child and that it is his obligation to maintain the minor child. Taking into consideration the facts and circumstances of the case and also the status of the parties, awarding Rs.2,000/- per month towards payment of maintenance to the child, who is now aged about 7 years, cannot be said to be on higher side.

18. As stated earlier, the husband did not dispute the identity of the child. Therefore, a duty is cast upon him to provide a decent living though she is living with her mother. Merely because the child is living with her mother, the onus of maintaining the child does not shift on to the mother even assuming that the mother is a earning member. The burden is heavily on the husband to provide sufficient means for her

sustenance and living. Therefore, the amount of Rs.2,000/-, which has been awarded, cannot be said to be on higher side. The record discloses that since the birth of the child i.e., in the year 2007, she was with her mother. May be the petty amounts, which are deposited in the Court, are not withdrawn by the mother but that by itself cannot lead to an inference that the mother had sufficient earnings and that she is able to maintain the daughter of the respondent.

19. The next question is whether maintenance should be awarded from the date of petition or from the date of order.

20. Section 125 Cr.P.C., does not anywhere say as to the date from which the maintenance has to be paid. The court has to choose as to from which date i.e., either from the date of order or from the date of application; the maintenance has to be paid. While doing so, it would be appropriate if some reasons are given for awarding maintenance from the said date.

21. In **Shail Kumari Devi v. Krishan Bhagwan Pathak**¹, the Apex Court held that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance.

22. Similar such issue came up for consideration before the Apex Court in **Jaiminiben Hirenbai Vyas and another v. Hirenbai**

¹ (2008)3 SCC (Cri)839

Rameshchandra Vyas and another², wherein the Apex Court, while deciding the said issue, held that if the Magistrate intends to pass an order of granting maintenance, from the date of application, he is required to record reasons in support of such order. It has also been held that for awarding maintenance from the date of the application, express order is necessary.

23. In the instant case, the trial court awarded maintenance from the date of order, whereas the revisional Court awarded maintenance from the date of application. The M.C., was filed in the year 2007 and the same was getting postponed or delayed on one pretext or the other. The record shows that when an interim order could not be complied with, the respondent was sent to imprisonment. As seen from the orders passed in M.C., rightly no reasons were given, while ordering maintenance from the date of order. But, the Revisional court in CRL.R.P. No.120 of 2015 gave substantial reasons and ordered maintenance from the date of application.

24. In order to appreciate the findings arrived at, it would be useful to refer to the relevant paragraphs in **Shail Kumari Devi's case (1 supra)**, which are as under :-

40. In our considered opinion, the High Court is not right in holding that as a **normal rule**, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order. As observed in K. Sivaram, reasons have to be recorded in both the eventualities. The Court was also right

² (2015)2 Supreme Court Cases 385

in observing that wherever Parliament intended the Court to record special reasons, care had been taken to make such provision by requiring the Court to record such reasons.

41. Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, this Court in Savitri held that in absence of prohibition to grant 'interim' maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to unable wife to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose.

42. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a **moral obligation** but is also a **legal duty** cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by sub-section (6) of Section 354 of the Code in support of the order passed by him.

43. We, therefore, hold that while deciding an application under Section 125 of the code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our Judgment, no such requirement can be read in sub section (I) of Section 125 of the Code in absence of express provision to that effect."

25. Section 125 Cr.P.C., must be construed with sub-section (6) of Section 354 Cr.P.C., which reads as under:-

"354. Language and contents of judgment-

(6) Every order under Section 117 or sub-section(2) of Section 138 and every final order made under Section 125, Section 145 or Section 147 shall contain the point

or points for determination, the decision thereon and the reasons for the decision."

(emphasis supplied)

26. Therefore, every final order, under Section 125 Cr.P.C., must contain points for determination, the decision thereon and the reasons for such decision. In fact, it appears that Section 125 Cr.P.C., and Section 354(6) Cr.P.C., must be read together.

27. In **Jaiminiben Hirenbbhai Vyas and another v. Hirenbbhai Rameshchandra Vyas and another**³, the Apex Court held as under :-

"5. Section 125 Cr.P.C., therefore, impliedly requires the court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the court may choose either date. It is neither appropriate nor desirable that a court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) Cr.P.C., the court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the court must apply its mind to the options having regard to the facts of the particular case."

28. Even if the wife has sufficient source of income, the responsibility lies on the respondent/husband to maintain his daughter. The word "maintenance", as contemplated under Section 125 Cr.P.C., means providing a decent living. Since the child is in custody of the mother, the order granting maintenance from the date of application, cannot be said to be illegal or improper. Moreover, the Revisional Court after considering the quantum of maintenance granted and the fact that the second petitioner is a minor child of the respondent, and to meet the ends of justice, it was ordered that the respondent should pay

³ (2015)2 Supreme Court Cases 385

maintenance amount awarded in the petition from the date of the petition.

29. In view of the above, CrI.R.C.No.411 of 2015 and CrI.P.No.2319 of 2015, which have been filed questioning the very grant of maintenance, are dismissed. However, having regard to the fact that the respondent has to clear arrears of maintenance, at the above mentioned rates, it would be just and proper to give three months time to him to clear all the arrears.

30. Insofar as CrI.P.No.8422 of 2015, as observed earlier, the same was filed by the petitioner/wife against the orders rejecting maintenance to her. Both the courts i.e., the Trial court as well as the lower appellate Court concurrently found that the petitioner in the said criminal petition i.e., the petitioner/wife is having sufficient means to maintain herself, which is clear from the documentary evidence placed by the respondent/husband. Exs.R-13 to R-19, which was obtained under Right to Information Act, shows that the wife is a working woman getting a good salary. Ex.R-13 reveals that the wife attended spot valuation for Sanskrit subject as Junior Lecturer of Vidyanidhi Junior College, Amalapuram. A certificate issued by Regional Inspection Officer, Board of Intermediate Education, Rajahmundry, proves the same. In fact, the certified copy of the counter filed in O.P.No.109 of 2007, which is marked as Ex.R-4, without any objection also shows that the wife was working as Lecturer in a Junior College at Amalapuram, before marriage. After marriage, she was working as a Sanskrit Lecturer in Narayana

Junior College, Dilsukhnagar, and drawing a salary of Rs.10,000/- per month. It is of common awareness that only persons working in Government or private colleges normally go for spot valuation. Even for the sake of argument, Ex.R-3 is to be excluded, still the material on record established that the first petitioner is a Graduate and worked as a Sanskrit lecturer subsequent to the marriage. The counter allegations in O.P.No.109 of 2007, which are marked without any objection from the petitioner/wife, show that she is able to maintain herself. Both the courts have concurrently held that the first petitioner and respondent can maintain themselves. Though a plea was sought to be raised that the wife on her own deserted the husband, but the same appears to be incorrect since the evidence on record clearly discloses that the husband left the house by representing that he is going to Pune but failed to return back.

31. Viewed from any angle, this Court is of the view that there are no merits in the Criminal Petition and the same is liable to be dismissed.

32. Accordingly, CrI.R.C.No.411 of 2015, CrI.P.No.2319 of 2015 and CrI.P.No.8422 of 2015 are dismissed. In view of the final orders passed in the main cases, no further orders are required to be passed in Miscellaneous Petitions and as such all the Miscellaneous Petitions in all the three cases shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Dt:17.09.2016
GM

