

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15906 OF 2016

ORDER:

This criminal petition, under Section 482 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C.'), is filed challenging the Order dated 24.08.2016 in Cr1.R.P.No.70 of 2013 passed by the XI Additional District & Sessions Judge, Gudivada, whereby affirming the Order dated 18-11-2013 in M.C. No.46 of 2010 passed by the Judicial Magistrate of First Class, Gudivada.

The present revision is filed on two grounds. The first ground is that the second respondent voluntarily deserted the company of the petitioner, which is a ground to deny the maintenance under Section 125(4) Cr.P.C. and the second ground is that second respondent own and possessed half acre of land and earning substantial income, which is sufficient to her daily necessities. Therefore, she does not require any maintenance.

The contention of the petitioner that both the trial court and revisional court did not consider these two points and committed an error in awarding maintenance.

It is the case of respondents 2 and 3, being the wife and daughter of the petitioner, that they filed an application under Section 125 Cr.P.C. claiming maintenance at Rs.5,000/- each alleging that second respondent is legally wedded wife of the petitioner and the third respondent is their daughter born during wed lock, but the petitioner allegedly subjected the second respondent to cruelty for her failure to meet illegal demand. The second respondent further contended that the

- 2 -

petitioner used to come back to the house in late night about 2.00 AM and used to beat her without any reasonable cause, she specifically contended that the petitioner is working as Teacher and he was allotted 0.25 cents of house site and Ac.0.12 cents of house site in Silknagar and Ac.15-00 of Mango garden, tobacco field and wet land, two house sites at Nuzividu and two houses at Hanuman Junction, also purchased one acre of house site at Nellore. Thus, the petitioner own sufficient means to maintain respondents 2 and 3, but they did not possess any independent source of income to meet their daily necessities and unable to maintain themselves and prayed to grant maintenance.

The petitioner herein (respondent before the trial court) fled counter raising several contentions mainly contending that the second respondent herself deserted his company without any reasonable cause and that he did not possess any property to maintain himself. She also filed DVC before the competent court and it is pending and that the respondents filed a petition for custody of third respondent and therefore, he never refused and neglected both the respondents.

During enquiry, second respondent alone was examined as P.W.1 and marked Ex.P.1 and the petitioner herein was examined as RW1.

Upon hearing argument of both the counsel, considering the oral and documentary evidence, the learned Magistrate granted an amount of Rs.3,000/- to the first petitioner,

- 3 -

respondent herein and Rs.5,000/- to the second petitioner towards maintenance.

Aggrieved by the order, the CrI.R.P.No.70 of 2013 is filed, whereby the learned District Judge by his order dated 24.08.2016 affirmed the order in MC No.46 of 2010.

Now the question before this court is,

Whether the second respondent deserted the company of the petitioner herein voluntarily?

Since the third respondent is a minor and petitioner being the father, under his legal obligation to provide maintenance, the alleged desertion will not come in the way to award maintenance to the third respondent/ minor child.

If the alleged voluntary desertion of the company of the petitioner by the second respondent without any reasonable cause is proved, certainly, she is disentitled to claim maintenance under Section 125(4) Cr.P.C.

Here the allegation made in the maintenance case is that, the petitioner herein subjecting the second respondent to cruelty and returning to home late in the night about 2 AM in drunken state and beating her without any reasonable cause. In such case, it is difficult for her to stay with him and therefore, she left the company of the petitioner on account of subjecting her to cruelty as such alleged desertion cannot be said without reasonable cause. Hence, the petitioner is not entitled to claim benefit under Section 125(4) Cr.P.C. to deny maintenance to the second respondent.

The quantum of maintenance can be decided based on the income of the petitioner. Here it is an undisputed fact that the

petitioner is a Teacher in Z.P. School and earning Rs.20,000/- per month, besides possessing both movable and immovable property including Mango Garden, Wet Land etc, as per the oral evidence on record.

During hearing, learned counsel for the petitioner conceded that the petitioner is working as a Teacher in ZP school. But the trial court and appellate court did not record about the neglect of wife and children while deciding the petition under Section 125 Cr.P.C. The conduct of the petitioner must also be taken into consideration, more particularly, when wife made serious allegations subjecting her to cruelty including beating etc.

Here the petitioner failed to take any steps to restore conjugal society of the second respondent, though alleged that she deserted the company of the petitioner without any reasonable cause and did not take steps for several years even to take custody of the minor child. All these circumstances pointing out refusal or neglect to maintain respondents 2 and 3, who are wife and child. This itself suffice to conclude that the petitioner refused and neglect to maintain the respondents 2 and 3. Hence, failure to record finding would not debar this court to confirm the order passed by both the courts.

Respondents 1 and 2 are expected to lead same standard of life which the petitioner is leading. Hence, the amount awarded by the trial court and affirmed by the revisional court is just and reasonable basing on the present standard of living and price index.

- 5 -

Therefore, I find no ground warranting interference of this court with the order dated 24.08.2016 in CrI.R.P. No.70 of 2013 passed by the learned XI Additional District Judge whereby confirmed the order dated 18.11.2013 in M.C. No.46 of 2010 passed by the Judicial Magistrate of First Class, Gudivada and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10.11.2016

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