

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15851 OF 2016

ORDER:

This petition is filed under Section of 482 Cr.P.C. to quash the orders passed on 11th July, 2016 in Criminal Revision Petition No.128 of 2015 on the file of I Additional District and Sessions Judge, East Godavari at Rajahmundry whereunder learned I Additional District Judge reduced the maintenance ordered to the respondents 1 to 3 and fixed the same at the rate of Rs.1500/- per month to the first petitioner-wife and Rs.1,000/- to the 2nd and 3rd respondents-children before the Additional Judicial Magistrate of First Class, Ramachandrapuram passed by the learned Magistrate granting monthly maintenance to them at the rate of Rs.2,000/- to the 1st petitioner-wife and Rs.1,500/- each to the 2nd and 3rd respondents-children therein respectively and awarded Rs.3,500/- per month in total to all the petitioners who are wife and children respectively before the trial court and respondents before this court.

Petitioner herein is husband and 1st respondent herein is wife and respondents 2 and 3 are their children.

Respondents 1 to 3 herein who are wife and two children filed petition under Section 125 of Cr.P.C. for grant of maintenance alleging that they have no means to maintain themselves whereas the petitioner-husband herein is carpenter by profession earning sufficient amount from his carpentry work, and prayed to award maintenance to them since the petitioner-husband neglected to

maintain them by not providing anything to daily necessities including food, clothing and shelter.

Petitioner-husband filed counter admitting the relationship between him and his wife and children while denying payment of dowry etc., He also denied alleged harassment for her failure to pay illegal demand but admitted filing of a case for the offence punishable under Section 498-A of I.P.C. by the wife and admitted that the children were born to them. He specifically contended that he filed petition under Section 9 of Hindu Marriage Act in O.P.No.19 of 2014 pending before Judge Family Court, Rajahmundry for restitution of conjugal rights and on the other hand, he contended that he has no source of income except carpentry work.

During enquiry, before the trial court, P.Ws.1 and 2 were examined on behalf of petitioner and R.W.1 was examined on behalf of respondent.

Upon hearing arguments of both counsel, trial court awarded an amount of Rs.2,000/- to the wife and Rs.1,500/- each to the two children.

In the revision before 1st appellate court, the amount of maintenance awarded by the trial court was reduced to Rs.1500/- to the wife and Rs.1,000/- to each of the two children, taking into consideration of the income of the husband before being carpenter.

Now the present petition is filed contending that the maintenance awarded by the trial court and reduced by the 1st appellate court is excessive and since the petitioner-husband is a

carpenter, it is difficult to pay the maintenance awarded by the Additional District and Sessions Judge, Rajahmundry, besides that he has to maintain his aged parents and prayed to set aside the order passed by the trial court and confirmed by the District and Sessions Judge reducing the amount of maintenance.

During hearing, learned counsel for the petitioner reiterated the contentions raised before the trial court and 1st appellate court.

Admittedly, the petitioner is the husband of the 1st respondent-wife and father of respondents 2 and 3 who are children born to them aged 5 and 2 years respectively by the date of filing of the petition in M.C.No.4 of 2014, by now, they are aged about 9 and 4 years respectively.

Petitioner being father of respondents 2 and 3-children is legally bound to maintain his children and in the event of his failure to provide maintenance to them, they are entitled to claim maintenance through process of court but there is no excuse for the petitioner-husband for failure to provide maintenance to the respondents 2 and 3 who are the children of the petitioner but in case of the wife-first respondent, the contention of the petitioner-husband is that she herself deserted by the petitioner-husband and living separately and therefore, he was constrained to file an application under Section 9 of the Hindu Marriage Act pending in O.P.No.19 of 2014 pending on the file of Judge, Family Court, Rajahmundry. But as seen from the allegations made in the counter itself, the first respondent-wife lodged a complaint and the same was

registered as a case and police investigated into the same, filed the charge sheet and registered the case in the year 2012 for the offence punishable under Section 498-A of I.P.C. as she was subjected to cruelty, for her failure to meet the illegal demand allegedly. When she was subjected to cruelty, it is just and reasonable for her separate living and therefore, on the ground of alleged desertion, maintenance cannot be denied to the first respondent-wife.

As far as the quantum is concerned, petitioner-husband is carpenter by profession and the income of the carpenter now a days is more than Rs.500/- as per minimum wages notified by Government per day as contended by him but the contention of the petitioner-husband is that he was earning only Rs.150/- per day is without any basis and substance.

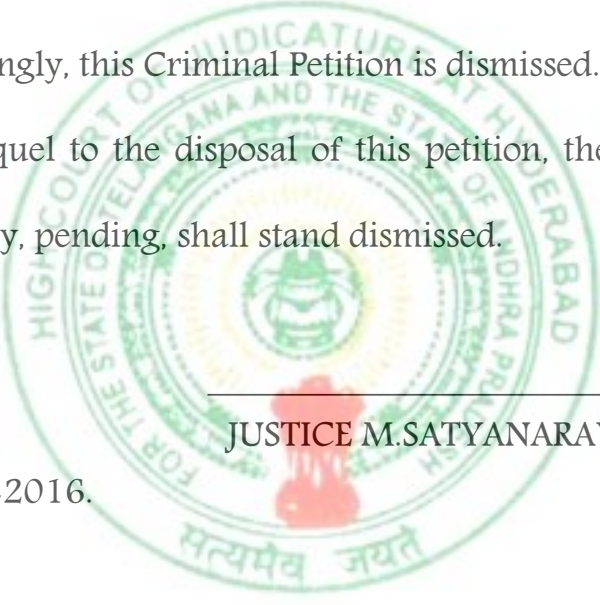
The minimum wage prescribed by the Government is not less than Rs.500/- per day and therefore, petitioner-husband's income can be fixed at Rs.500/- per day which comes to more than Rs.10,000/- per month. However, in a decision of apex court reported in *SAYGO BAI v. CHEERU BAJRANGI* ⁽¹⁾ while deciding a similar issue regarding quantum of maintenance held that the income of the husband from his profession and other sources shall be taken into consideration and when the husband himself admitted about his profession or the income that can safely be accepted to fix the maintenance, as the wife and children are expected to lead the same standard of life as that of husband and father.

¹ AIR 2011 SC 1557

In the present case, the income of the petitioner-husband herein being a carpenter is more than nearly Rs.500/- per day as per minimum wages prevailing in the area and his total monthly income would be more than Rs.10,000/- in any event. Hence, the awarding maintenance of Rs.1500/- to the first respondent-wife and Rs.1,000/- to each of the respondents 2 and 3-children is just and reasonable though it is not hardly sufficient to meet their regular daily needs i.e., food, shelter and clothing and consequently, this petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed. No costs.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.



JUSTICE M.SATYANARAYANA MURTHY

Dated 10-11-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dvs