

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15845 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the order dated 31.08.2016 in CrI.M.P. No.194 of 2014 in M.C. No.31 of 2014 passed by the Judge, Family Court-cum-VI Additional District and Sessions Judge, Nalgonda, whereby awarded interim maintenance @ Rs.3,000/- per month against claim for Rs.20,000/- per month.

The second respondent filed CrI.M.P.No.194 of 2014 for grant of an interim maintenance @ Rs.20,000/- per month alleging that she has no means to maintain herself independently and she is living with her relatives on account of the conduct of the petitioner herein and that the petitioner is earning Rs.1,00,000/- per month and possessed sufficient means to maintain, as he has maintaining bore well JCB besides possessing other immovable properties Ac.11.05 gts of land at Shabdullapuram Village of Kanagal Mandal, Nalgonda District and also possessed house plots opposite to Sandeep School, Reddy Colony, Nalgonda Town, and in total earning Rs.1,00,000/-, but he refused and neglected to maintain the second respondent who is starving and prayed to grant the interim maintenance.

The petitioner herein filed counter in the maintenance case denying the allegations *inter alia* contending that the second respondent lodged complaint against him for the offence punishable under Section 498-A of Indian Penal Code, 1860 and

it is without any evidence and he also further drawn the attention of the Court to Marriage O.P. No.16 of 2010 on the file of Senior Civil Judge, Nalgonda, for divorce on the ground of cruelty and during pendency of the petition, the learned Senior Civil Judge granted divorce dissolving marriage on various grounds. Thereupon, the petitioner herein preferred civil miscellaneous appeal and it is pending. Therefore, the second respondent is not entitled to claim any maintenance at this stage.

After hearing, considering the material on record and based on the affidavit and counter affidavit filed by the petitioner and respondent, the learned Judge, Family Court, disposed of the petition granting interim maintenance @ Rs.3,000/- per month from the date of petition.

Aggrieved by the order, the present criminal petition is filed on various grounds mainly contending that he is only an agriculturist without any agricultural land and denied possessing of JCB or bore well lorry etc. and agricultural land of an extent Ac.11.05 gts house etc denying his total income and that he has to maintain his two children, who are prosecuting their B.Tech Education. Therefore, the order under challenge is bereft of any reasoning for awarding interim maintenance @ Rs.3,000/- per month and prayed to set aside the same.

Learned counsel for the petitioner, during hearing, would contend that the petitioner is only an agriculturist without any agricultural land and he is incurring huge expenditure for prosecuting for studies of two children, who are studying

B.Tech., and that the second respondent herein herself subjected him to cruelty, therefore she is not entitled to claim interim maintenance from the petitioner.

As seen from the material on record, by the date of filing criminal petition, the marital relationship between the petitioner and the second respondent subsists. Even after obtaining order dissolving marriage, she is entitled to claim maintenance under Section 125 Cr.P.C.

The only question before this Court is that the petitioner has no means to pay interim maintenance @ Rs.3,000/- per month.

The parties before the court did not produce any documentary evidence in support of the income, however, the respondent is a divorced wife as on today and entitled to claim maintenance and the interim maintenance awarded by the Judge is only @ Rs.3,000/- per month, which is not sufficient even to meet the daily necessities like food, clothing and shelter of a married women during these days and that apart taking into consideration of the price index and cost of living as on the date of order, the maintenance awarded by the trial court is hardly insufficient to meet both ends to live as a human being during present days. The contention of the counsel for the petitioner that the petitioner has no means to maintain the second respondent is without any subsistence as the petitioner is able to meet necessary expenditure for prosecuting studies of his two children.

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Therefore, I find no illegality in the order passed by the Judge, Family Court, in CrI.M.P. No.194 of 2014 in M.C.No.31 of 2014 warranting interference of this Court while exercising jurisdiction under section 482 Cr.P.C. which can be exercised sparingly in exceptional circumstances.

In the result, the criminal petition is dismissed. However the Judge, Family Court, has to decide the matter independently uninfluenced with the observations hereinabove.

The petitioner is directed to pay arrears of maintenance within two months from today, while continuing to pay monthly interim maintenance awarded by the trial court on or before 5th of every succeeding month.

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

M. SATYANARAYANA MURTHY, J

Date: 09.11.2016
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