

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.324 of 2016

AND

CRIMINAL REVISION CASE No.2431 of 2016

COMMON ORDER:

Since both the revisions cases arise out of common order, they are taken up together, heard and being disposed of by this common order.

Aggrieved over the order dated 09.10.2014 passed in M.P.No.119/2013 in F.C.O.P.No.402 of 2008, CrI.R.C.No.324 of 2016 came to be filed whereas CrI.R.C.(SR) No.1880 of 2015 is filed aggrieved by the order dated 09.10.2014 passed in M.P.No.95/2014 in F.C.O.P.No.402 of 2008. Vide the impugned order, the Court below while allowing the petitions filed by the respondent-wife directed the petitioner-husband to pay Rs.33,000/- towards arrears of maintenance in respect of M.P.No.119/2013 and Rs.36,000/- in respect of M.P.No.95 of 2014.

The facts in issue are that the respondent-wife filed F.C.O.P.No.402 of 2008 on the file of the Judge, Additional Family Court, Visakhapatnam, seeking maintenance @ Rs.3,000/- per month from the petitioner-husband. While allowing the said O.P., the learned Judge granted maintenance @ Rs.3,000/- per month from the date of filing of the petition apart from awarding costs in O.P. and Advocate fee at Rs.1,000/-. The said order has become final. Subsequently, respondent-wife filed M.P.No.119/2013 seeking recovery of arrears from 10.07.2012 to 11.07.2013 and M.P.No.95/2014 seeking recovery of arrears from 11.07.2013 to 11.07.2014. After hearing both the parties, learned Judge passed a common order dated 09.10.2014 allowing both the petitions directing the petitioner to pay Rs.69,000/- towards arrears. Challenging the same, the present revisions are filed.

Heard both sides.

Learned counsel for the petitioner mainly submits that in O.P.No.408 of 1997 the marriage of the petitioner and respondent was dissolved vide order dated 12.11.1998. As against the same, respondent-wife preferred CMA No.3066/1998, which was dismissed by this Court on 05.02.2007 directing the petitioner-husband to pay Rs.1,000/- per month towards maintenance.

It is his case that during the period from 12.03.2008 to 05.10.2009 he paid maintenance @ Rs.3,000/- per month and also @ Rs.1,000/- per month. Thus, he submits that the amount paid by him @ Rs.1,000/- per month may be adjusted towards arrears in connection with present O.P.

It is to be noted that while passing the impugned order, the learned Judge observed as follows:

“There is a considerable force in the argument of the counsel for the respondent/husband. Further, it is to be observed that, in order and Decree in OP 402/2008, while awarding the maintenance, this Court not considered the payment of Rs.1,000/- paid by husband in OP 408/1997. It is not mentioned in the Order and Decree that, the awarded amount of Rs.3,000/- per month is either inclusive of Rs.1,000/- that is awarded in O.P. 408/1997 or exclusive of the said amount. The Court not focused much on the aspect raised by the respondent now herein, and focused mainly and went on the aspect raised by the husband that Rs.1000/- granted in OP 408/1997 can be treated as permanent alimony? as such no amount can be awarded in OP 402/2008. Whatever may be the reason, the Court not given any finding regarding the payment that was made by the Husband in OP 408/1997, relating to the period from 12.3.2008 to 5.10.2009.”

In the absence of any finding with regard to the payment that was made by the husband in OP No.408/1997, the question of ordering adjustment of the said amount paid, towards arrears in present O.P. does not arise. Hence, I see no illegality or irregularity in the impugned order. However, it is always open to the petitioner-husband to obtain clarification, if any, from the Court, which has passed order awarding maintenance.

Accordingly, both the Criminal Revision Cases are dismissed. Miscellaneous petitions pending in these revisions, if any, stand closed.

31.08.2016
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JUSTICE C. PRAVEEN KUMAR