

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.3260 OF 2016 & 514 OF 2017

ORDER:

The wife for herself and minor child filed M.C.No.19 of 2013 against her husband, a government teacher. It is on contest by the impugned order of the learned Magistrate dated 17.11.2016, out of the claim of maintenance at Rs.4,000/- per month to the wife and Rs.2,000/- per month to the minor child from date of petition, the learned Magistrate ordered at same rate only from the date of order dated 17.11.2016, besides legal expenses of Rs.5,000/-. It is impugning the said passing of the order from date of order instead of date of petition, wife maintained the CrI.R.C.No.3260 of 2016 and impugning very awarding of maintenance to the wife at Rs.4,000/- per month, husband maintained CrI.R.C.No.514 of 2017.

2. Heard both sides and perused the material on record.
3. The core of contention by the husband is that even he filed before the lower court an application to receive documents by recall of witness under Section 311 Cr.P.C. in CrI.M.P.No.3076 of 2016, the trial Magistrate dismissed the same on 09.09.2016, without any valid reasons. What he claims from that application, even from perusal of the impugned order of the Magistrate dated 27.10.2016, is for

recall of R.W.1, husband to mark certain documents. The documents referred are the information letter from India Post about service of notice if any, statement of account issued by Vijaya Bank, judgment in C.C.No.163 of 2012, filed against the husband by the wife under Section 498-A IPC shown ended in acquittal and certified copy of her deposition in said calendar case claiming by him of there is an admission by her of she was working as a teacher and latest pay slip of him of August 2016 regarding what he is getting.

4. In fact before the learned Magistrate, there are two witnesses examined on behalf of the wife and three witnesses on behalf of the husband. Among the witnesses of the husband, particularly R.W.3, deposed that the gross salary of R.W.1 is, even by April 2016, Rs.37,649/- and net salary of that month is Rs.19,889/-. Thus, there is no need of taking his last drawn salary certificate of August 2016 in view of the admission from the evidence of R.Ws.1 and 3 and coming to the Vijaya Bank account of any amounts he claimed that was sending to the wife in fact the order of the lower court shows only from the date of order. So far as maintenance to wife concerned, even therefrom that, additional evidence no way now not even required to consider. He relied up the calendar case judgment, it is only an acquittal on benefit of doubt and not a clean acquittal of a false case, that no way improves the contention of him, much less, of no neglect or refusal or

disentitlement to maintenance. Having regard to the above, those documents no way require even to consider for these reasons.

5. Now coming to the correctness of awarding maintenance to the wife, no doubt, in her evidence she stated that she earlier worked before fifth month of her pregnancy as Vidya volunteer. There is nothing to show from the evidence that she is continuing even after delivery, as on the date of maintenance case, much less, as on the date of her deposition. There is no any record filed by him, even to show she is working. Thereby, Rs.4,000/- per month to the wife and Rs.2,000/- per month to the child as prayed for, once awarded from his gross salary of more than Rs.37,000/-, no way requires interference. Thereby, Criminal Revision Case No.514 of 2017 is liable to be dismissed.

6. However, coming to the revision maintained by the wife and daughter, in view of the observations from the date of order, so far as the wife concerned, also from the contentions of the additional evidence documents sought to be received showing from the bank account of sending amount that reflects to sustain the order in so far as wife from date of order instead of date of petition cannot be extended to the child. Hence, it is just to order the maintenance to the child from date of petition, rather than, from date of order.

Accordingly, revision of the wife in CrI.No.3260 of 2016 is allowed in part.

7. In the result, CrI.R.C.No.514 of 2017 is dismissed and CrI.R.C.No.3260 of 2016 is allowed in part. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO, J

17.04.2017
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