

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No. 1631 OF 2017

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') questioning the propriety and legality of the order dated 30-03-2017 in CrI.M.P.No. 151 of 2016 in M.C.No. 51 of 2016 on the file of the Court of IV Additional District Judge – cum – I Additional Family Judge at L.B. Nagar, Ranga Reddy District (for short, 'the Court below'), whereby it granted *interim* maintenance of Rs.15,000/- per month to the petitioner therein.

2. The parties will hereinafter be referred to as the petitioner and respondent No. 2 as arrayed in this case for convenience.

3. Respondent No. 2 filed petition under Section 125 (2) Cr.P.C. for grant of *interim* maintenance alleging that her marriage with the petitioner was performed on 07-06-2015. At the time of marriage, her parents presented dowry. The petitioner is doing job at Bangalore. She joined the petitioner at Bangalore. At the instigation of family members of the petitioner, he started irritating respondent No. 2 and also demanded for sale of the land and additional dowry of Rs.1,00,00,000/- and sent her to her parents' house. Since then, she is living separately. The petitioner is working and earning Rs.95,000/- per month apart from getting income of Rs.10,00,000/- p.a. and whereas respondent No. 2 did not possess any independent means to maintain herself and therefore prayed to award Rs.25,000/- p.m. as *interim* maintenance under Section 125 (2) Cr.P.C.

4. The petitioner filed counter affidavit admitting his marriage with respondent No. 2 while denying payment of any amount as dowry at the time of marriage or after the marriage. It is contended that respondent No. 2 herself

deserted the company of the petitioner and she never took care of him. He always wanted to lead conjugal life but respondent No. 2 was not interested in leading conjugal life. In spite of requests and objections by the petitioner, respondent No. 2 left him on her own and that he is not engaged in any employment due to mental tension or otherwise and therefore not liable to pay any maintenance much less *interim* maintenance and prayed for dismissal of the petition.

5. By the impugned order, the Court below awarded *interim* maintenance of Rs.15,000/- p.m. accepting that the petitioner is earning Rs.95,000/- p.m. as salary besides receiving agricultural income from the agricultural property in the native village.

6. Feeling aggrieved by the impugned order, the present revision is filed on various grounds mainly contending that the amount awarded towards *interim* maintenance in favour of respondent No. 2 @ Rs.15,000/- p.m. is excessive and therefore the order is illegal and arbitrary. The Court below failed to consider the contention of the petitioner that respondent No. 2 did not agree to live with the petitioner at least one month after the marriage but started insisting to shift their residence from Bangalore to Hyderabad without any valid reasons and that the petitioner is working as Software Engineer in Bangalore. Thus, granting maintenance @ Rs.15,000/- p.m. is illegal and prayed to set aside the same.

7. I have heard learned counsel for the petitioner and perused the record. There is no dispute regarding marriage between the petitioner and respondent No. 2. In support of the contention of learned counsel for the petitioner that respondent No. 2 herself left the company of the petitioner without any reasonable or justifiable cause, thereby she is disentitled to claim maintenance in view of sub-section (4) of Section 125 Cr.P.C., no material is produced before the Court below to show that he had taken any steps to restore the family ties

resorting to Section 9 of Hindu Marriage Act, 1955 (for short, 'the Act'), by filing a petition for restitution of conjugal rights and till today, there is nothing on record to show the efforts if any made. From the allegations made in the petition and counter, it is clear that the petitioner made certain allegations against respondent No. 2 and respondent No. 2 made certain allegations against the petitioner. However, those allegations cannot be decided at the stage of granting *interim* maintenance, at the end of inquiry in maintenance petition, those aspects can be looked into and decided. As on today, the petitioner is earning Rs.95,000/- p.m. The Apex Court in ***Dr. Kulbhushan Kumar Vs. Raj Kumari and another***¹; and ***Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy***² while deciding an application under Section 25 (2) of the Act held that wife is entitled to 1/4th of the salary towards monthly maintenance. If the principle laid down in the above two judgments is applied to the present facts of the case, granting maintenance @ Rs.15,000/- p.m., which is less than 25% of the admitted salary of the petitioner, is just and reasonable and even otherwise at this stage in the absence of any material showing irregularity or illegality in the order impugned, this Court cannot interfere with the fact findings recorded by the Court below while exercising power under Sections 397 and 401 Cr.P.C. Sections 397 and 401 Cr.P.C. conferred limited jurisdiction on this Court to interfere with the findings recorded by the Court below. Normally this Court would accept the fact findings unless it finds that there is manifest perversity or apparent error in the findings recorded by the Court below. Here, in the present case, learned counsel for the petitioner did not bring to my notice any such manifest perversity or apparent error in the impugned order. Hence, I find no ground to set aside the order passed by the Court below. Consequently, the revision case is liable to be dismissed.

¹ (1970) 3 SCC 129

² 2017 (4) ALD 176 (SC)

8. In the result, the criminal revision case is dismissed confirming the order dated 30-03-2017 in CrI.M.P.No. 151 of 2016 in M.C.No. 51 of 2016 on the file of the Court of IV Additional District Judge – cum – I Additional Family Judge at L.B. Nagar, Ranga Reddy District. However, the Court below is directed to decide M.C.No. 51 of 2016 as expeditiously as possible and in any event not later than six months from the date of receipt of a copy of this judgment. Pending miscellaneous petitions in this criminal revision case, if any, shall stand dismissed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 24-10-2017.

JSK

