

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1678 OF 2017

ORDER:

This criminal revision is filed under Sections 397 and 401 of Cr.P.C. questioning the propriety and legality of the order dated 22.03.2017 in CrI.R.P.No.210 of 2015 passed by IV Additional Sessions Judge, Kakinada reducing the maintenance awarded to petitioner Nos.2 and 3 from Rs.4,000/- to Rs.2,500/-.

The petitioners filed M.C.No.62 of 2014 under Section 125 of Cr.P.C. for grant of maintenance at Rs.15,000/- per month to petitioner No.1 and Rs.5,000/- each per month to petitioner Nos.2 and 3 alleging that petitioner No.1 is the legally wedded wife and petitioner Nos.2 and 3 are the children born during their wedlock. But the respondent refused and neglected to maintain the petitioners. They had no independent source of income to maintain themselves, whereas the respondent is working as a driver in South Central Railway earning more than Rs.50,000/- per month and possessed immovable property of his own and therefore, sought for maintenance as stated above.

The respondent filed counter denying the material allegations while admitting the relationship between him and the petitioners, contended that he is earning Rs.32,000/- to Rs.35,000/- per month as salary being the driver in South Central Railway, Rajahmundry and denied the refusal and neglect of the petitioners and prayed to dismiss the petition.

During enquiry, on behalf of the petitioners, petitioner No.1 was examined herself as P.W.1 and on behalf of respondent, the

respondent examined himself as R.W.1 and also examined one V.Kondamma as R.W.2 and no documents were marked.

Upon hearing argument of both the counsel, the trial Court awarded Rs.6,000/- per month to petitioner No.1 and Rs.4,000/- per month to petitioner Nos.2 and 3 each. Aggrieved by the order dated 26.10.2015 in M.C.No.62 of 2014, the respondent herein preferred revision before the IV Additional Sessions Judge, Kakinada *vide* CrI.R.P.No.210 of 2015. The Sessions Judge upon hearing arguments of both the counsel while confirming the maintenance awarded to petitioner No.1, reduced the maintenance awarded to petitioner Nos.2 and 3 from Rs.4,000/- to Rs.2,500/- per month each without assigning any reason for such reduction.

Aggrieved by the said order, the present revision is filed mainly on the ground that the Sessions Judge did not assign any reason for reduction of maintenance from Rs.4,000/- to Rs.2,500/- per month each to petitioner Nos.2 and 3 and the finding of the Session Judge is not supported by any reason and therefore, the order is liable to be set aside and prayed to set aside the same.

During hearing, Sri A.K.Kishore Reddy, learned counsel for the petitioners contended that the trial Court though accepted that the respondent is getting more than Rs.30,000/- per month as driver in South Central Railways, Rajahmundry besides possessing a house of his father as per the evidence of R.W.1 and getting income by way of rent from the portion of the house let out by the father of the respondent and the respondent is having sufficient means to pay the maintenance as awarded by the Magistrate, but

the Sessions Judge reduced the maintenance awarded to petitioner Nos.2 and 3 from Rs.4,000/- to Rs.2,500/-.

Though notice was served on the respondent and proof of service is filed, none appeared for the respondent.

The respondent is working as a driver in South Central Railway, Rajahmundry. The petitioners contended that he is earning Rs.50,000/- per month as salary but the respondent disputing the income, contended that he is earning Rs.32,000/- to Rs.35,000/- per month. The respondent is an employee in South Central Railway and he used to receive salary slip every month but he did not produce the same which he is supposed to be in possession, for the reasons best known to him. Moreover, even according to his own pleadings, he is earning Rs.32,000/- to Rs.35,000/- but the Sessions Judge took the salary of the respondent as Rs.32,000/- per month and reduced the maintenance. While accepting that he is getting income by way of rent from one of the portions of the house of his father, owned and possessed, therefore, reduction of maintenance from Rs.4,000/- to Rs.2,500/- to petitioner Nos.2 and 3 is bereft of any reasoning, the conclusion arrived by the Sessions Judge is not based on any evidence on record. In such a case, the order passed by the trial Court is liable to set aside while restoring the order passed by the Magistrate.

In the result, the Criminal Revision Case is allowed restoring the order dated 26.10.2015 in M.C.No.62 of 2014 passed by the V Additional Judicial First Class Magistrate, Kakinada while

setting aside the order dated 22.03.2017 in CrI.R.P.No.210 of 2015
passed by the IV Additional Sessions Judge, Kakinada.

Miscellaneous petitions, pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12.09.2017
ssp

