

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.401 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C filed against the orders in M.P.No.200 of 2003 in M.P.no.1354 of 2001 in M.P.No.214 of 2001 in M.C.No.19 of 199 passed by the Additional Metropolitan Sessions Judge For the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court at Hyderabad, wherein, M.P.No.200 of 2003 was allowed by the Trial Court, enhancing the maintenance amount from Rs.250/- to Rs.750/- per month to the first petitioner and from Rs.500/- to Rs.750/- per month to the second petitioner, thereby, directed the first respondent to pay the enhanced maintenance to the petitioners from the date of order.

Vide orders in M.C.No.19 of 1991 dated 23.07.1992, maintenance of Rs.250/- per month to the first petitioner and Rs.100/- per month to the second petitioner was granted from the date of petition i.e. 19.08.1999, initially. Subsequently, the maintenance of the second petitioner was enhanced to Rs.500/- from time to time. Thereafter, both the petitioners filed M.P.No.200 of 2003 for enhancement of maintenance as stated above, on the alleged reason that the first respondent owns two houses at Golconda and A.C Guards and receiving rents of Rs.10,000/- per month and in view of changed circumstances like rise in price of goods, change in standard of living and inflation in the earnings of first respondent.

The first respondent filed counter in M.P.No.200 of 2003 denying material allegations, inter alia contending that he is

married for the second time and blessed with five children, whereas the first petitioner is earning Rs.1,000/- per month by doing tailoring work and as her father is a retired Tahsildar, getting pension of Rs.4,000/-. The first respondent further stated that he does not possess any house properties at Golconda and he is earning meagre amount of only Rs.60/- to Rs.70/- per day and prayed to dismiss the petition.

The first petitioner was examined as P.W.1 and marked Exs.P-1 to P-4 and first respondent is examined as R.W.1 and marked Exs.R-1 to R-12.

The Trial Court upon hearing argument of both the counsel, the Trial Court enhanced maintenance amount as stated supra, but the same is now under challenge in this criminal revision under Sections 397 & 401 Cr.P.C.

The main contention of the petitioners is that the amount awarded by the Trial Court is too low and requested to enhance the maintenance.

None appeared for the first respondent.

The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct

miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or failure to take proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury due to maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

Therefore, keeping in view of these general principles regarding scope of jurisdiction of this Court under Sections 397 & 401 Cr.P.C, I would like to examine the order under revision.

Initially, the petitioners were awarded maintenance of Rs.250/- and Rs.100/- respectively i.e wife and daughter in M.C.No.19 of 1991 dated 23.07.1992. Thereupon, the maintenance of the second petitioner enhanced from time to time upto Rs.750/-. Learned counsel for the petitioners fairly conceded that the second petitioner is married and now staying at United States of America. Therefore, the second petitioner is not entitled to claim any maintenance, after attaining majority. Further, the learned counsel contended that the maintenance enhanced to the first

petitioner/wife is also too low, as she is expected to lead same standard of life when she lead while living with her husband.

It is stated that the first respondent is working as a private electrician. At best, he may earn a minimum wage. So far as the properties held and possessed by him are concerned, are allegedly rented out for Rs.10,000/- and it is not supported by any material. However, the first respondent is bound to occupy one of the house along with his second wife and five children. Therefore, at best, he would have let out the other house on rent. Even if the statement of the petitioners is believed to be true, enhancement of maintenance to the petitioners i.e. wife and daughter at Rs.750/- per month in the year 2005 is too low, as the daughter might be a college going girl by that time. Therefore, taking into consideration the cost of living and price index as on the date of filing the petition before the Trial Court, i.e in the year 2003, I deem it appropriate to enhance the maintenance to Rs.1,000/- each to the petitioners from the date of petition.

With the above modification, criminal revision is allowed.

However, it is made clear that the second petitioner/ daughter is entitled to claim maintenance only during her minority. The first respondent is directed to pay arrears of maintenance to the petitioners within three months from the date of receipt of copy of this order.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:31.07.2017
SP