

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No. 32 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') by the petitioner/ husband is directed against the orders, dated 04.11.2016, in CrI.M.P.no.32 of 2016 in MC.No.1 of 2016 passed by the learned Judge, Family Court-cum-Additional District Judge, Ananthapuram.

2. I have heard the submissions of *Sri N.Aswartha Narayana*, learned counsel appearing for the petitioner/ husband, and of *Sri Laxmikanth Reddy Desai*, learned counsel appearing for the 2nd respondent/ wife. The parties shall hereinafter be referred to as the petitioner/ husband and 2nd respondent/ wife as arrayed in this revision case, for convenience and clarity.

3. The aforestated miscellaneous petition is filed under Section 125(1) of the Code by the 2nd respondent/ wife seeking interim maintenance from the date of the petition @ Rs.40,000/- per month for herself and her two children till the disposal of the above said F.C.M.C.No.1 of 2016. The petitioner/ husband resisted the said petition. The learned Judge, Family Court, Ananthapuram, awarded interim maintenance @ Rs.5,000/- per month each to the 2nd respondent/ wife and her two children from the date of the petition (04.01.2016). The learned Judge of the Court below also directed the petitioner/ husband to pay Rs.5,000/- towards legal expenses. The operative portion of the impugned order reads, verbatim, as under:

"In the result, the petition is allowed partly granting interim maintenance @ Rs.5,000/- (Rupees five thousand only) each per month in favour of petitioners 1 to 3 from the date of the petition. The respondent is directed to deposit interim maintenance amount within one month from the date of this order to the credit of CrI.M.P.32/2016 in MC 1/2016. The respondent is further directed to pay the maintenance amount of Rs.15,000/- per month to the 1st petitioner under proper acknowledgment on or before 10th of every succeeding month. The respondent is directed to pay further Rs.5,000/- (Rupees Five thousand only) towards legal expenses to the 1st petitioner."

4. Aggrieved of the said orders the husband filed this revision.

5. The case of the 2nd respondent/ wife and the submissions made on her behalf, shorn of unnecessary details, in brief, are as follows: 'She is the legally wedded wife of the petitioner [husband]. Their marriage was performed, on 11.05.1997, at Rajendra Municipal High School, Anantapur. At the time of marriage, her parents gave Rs.2,00,000/- cash and 10 tulas of gold ornaments to the petitioner and his parents. Thereafter, she joined the petitioner at his residence and lead marital life. During their lawful wedlock, they were blessed with two children, i.e., respondents 3 and 4 herein. The 3rd respondent, Bulle Abhishek Manoj, is studying Intermediate 1st year at Vijayawada; and the 4th respondent, Nithyasri Vignatha, is studying 9th class at Kesavareddy Techno School, Maruthi Nagar, Ananthapuram. The petitioner neglected to maintain herself and her children, i.e., respondents 3 and 4. She is unable to maintain her and her children. She is suffering from high BP and taking treatment from a private doctor. Her health is also not cooperating and she is leading a miserable life. She has no income or sources of income. The petitioner is residing separately with his relations. The petitioner is working as a Clerk-cum-Cashier in Currency Testing Wing, Syndicate Bank, Main Branch, Sreenivasa Nagar, Anantapuram, and is drawing a salary of Rs.65,000/- per month. Apart from that, he is having plots of various extents in Anantapur town, which are all worth about Rs.2 Crores. Though the petitioner is having sufficient means to maintain the 2nd respondent and the children, he has completely neglected them. Since the disposal of the maintenance case is being delayed, she filed the subject miscellaneous petition seeking interim maintenance @ Rs.40,000/- per month for her maintenance and that of her children during the pendency of the main case. If interim maintenance as sought for is not granted, she and her children would be put to great loss and suffering.'

6. The case of the petitioner/husband, shorn of unnecessary details, in brief, is as follows: 'The relationship between the parties is true. The allegation that at the time of marriage, the parents of the 2nd respondent/ wife gave Rs.2,00,000/- cash and 10 tulas of gold ornaments to the petitioner and his parents is absolutely false. The allegation that the petitioner completely neglected the respondents 2 to 4 is not true and correct. The further allegations that the 2nd respondent is not able to maintain herself and her children and that her health condition is not good and that she is taking treatment for high BP from a private doctor are all false. The allegation that the 2nd respondent has no income or sources of income for her maintenance and that of her children is not correct. The further allegation that this petitioner is residing separately is not correct. The allegation that the petitioner is getting a salary of Rs.60,000/- per month and that he is having plots in Anantapur Town and that they are worth Rs.2 Crores are all false allegations. The petitioner is drawing a salary of Rs.25,000/- per month after deductions. Hence, the question of paying interim maintenance @ Rs.40,000/- per month, to the respondents 2 to 4 herein does not arise. The petitioner got the job on compassionate grounds, after the death of his father. At the time of marriage, neither cash nor gold were presented as alleged by the 2nd respondent. In fact, a sum of Rs.60,000/- was given, that too, for purchase of sarees for the 2nd respondent. The gold ornaments presented by the parents of the 2nd respondent to the 2nd respondent were always in her custody even till now. At no point of time, they were kept in the custody of the petitioner. As the petitioner hails from a middleclass family, he used to lead a very economical life and not a luxurious life. From the date of the matrimonial journey, the 2nd respondent is in the habit of harassing this petitioner for one reason or the other. She, without hearing the words of the petitioner and by paying a deaf ear to the advice, used to do chit and sarees businesses. Several creditors attacked her. Then, he came to know that she sustained losses in the

business. He sold his own property bearing D.No.16-296 and land in an extent of Ac.01.27 cents in Sy.no.1954/2 to discharge the debts of the 2nd respondent/ wife. The petitioner protected the reputation of the 2nd respondent by discharging debts to a tune of about Rs.50,00,000/- . At that time, in the presence of elders, the 2nd respondent admitted that she has committed blunders without hearing the words of the petitioner and further promised that she will lead a happy life with the petitioner without doing any businesses, in future. That apart, the petitioner borrowed amounts from the department only for discharging the debts of the 2nd respondent. The 2nd respondent not even discharged her duties as a wife. She is also in the habit of lending amounts to her brother, Sreekanth. When the petitioner requested the said Sreekanth for repayment, he, with the support of the 2nd respondent, got attacked the petitioner with rowdys. She openly supported her brother, Sreekanth. Within a short span of time, the petitioner came to know that there is no change in the attitude of the 2nd respondent and that once again she started borrowing amounts from the third parties. As the petitioner has been insisting upon the 2nd respondent not to do such activities, she developed grudge against him. Further, in the year 2015, the 2nd respondent and her brother with the help of rowdy elements attacked this petitioner and threw him out of his house. Since then, the 2nd respondent is staying in the said house of the petitioner; and, he is staying separately along with his mother. She spoiled the matrimonial life by her adamant attitude and deserted the petitioner voluntarily and for no reason. He has to pay instalment amount towards the debts contracted and discharge EPF loan and society loan in sums of Rs.2,50,000/- each, besides festival loan and ODC loan to the tune of Rs.50,000/- each. He has to discharge housing loan to the tune of Rs.1,50,000/- . He has to take care of his dependant mother. He had spent Rs.40,000/- on her medical treatment and Rs.70,000/- on an operation done to treat her backbone problem. The petition is filed by suppression and

misrepresentation of facts. Since the 2nd respondent deserted the petitioner and is doing business in sarees and is earning income and is residing in the house of this petitioner, she is not entitled to any maintenance. All documents pertaining to his qualifications and properties besides other documents are with the 2nd respondent and she is not returning the same to this petitioner. This petitioner is in financial crisis and is not in a position to pay maintenance to the 2nd respondent and the two children. The main case itself is liable for dismissal. Therefore, the 2nd respondent and her children are not entitled to any maintenance.

7. At the hearing before the Family Court, no oral and documentary evidence was adduced.

8. The learned counsel for the petitioner/husband, while reiterating the pleaded case of the petitioner, would further submit as follows: 'The trial Court did not properly appreciate the fact that the case pleaded by the 2nd respondent is false and is full of misrepresentations. The Family Court failed to take note of the facts stated in the counter of this petitioner. For all the reasons stated in the counter of this petitioner, the 2nd respondent cannot claim any maintenance much less interim maintenance. The Family Court failed to see that the 2nd respondent failed to establish any of her contentions by producing any material or documents and that she did not even prove either the income & capacity of this petitioner or that he neglected to maintain her and the children. In the circumstances stated, if he is called upon to pay Rs.15,000/- per month to the wife and children, from the date of the petition, (04.01.2016), the petitioner suffers serious and irreparable loss. The Family Court considered only the contentions of the wife and did not at all appreciate the facts stated by this petitioner and also his contentions whereby the case of the 2nd respondent was strongly denied. The trial Court ought to have given reasons as to how the 2nd respondent is entitled to claim maintenance when she

herself deserted the petitioner and is staying in his house and is further earning income by doing sarees business. The interim maintenance awarded in all, @ Rs.15,000/- per month is highly excessive and exorbitant and the petitioner is not in a position to pay huge arrears of maintenance and also the monthly maintenance at the above said rate during the pendency of the main case.'

9. Per contra, learned counsel for the 2nd respondent/ wife while supporting the orders of the Court below, submitted as follows: 'In the main case, it is stated by the 2nd respondent that the petitioner herein did not provide even one meal per day and neglected the respondents 2 to 4 and that he had eventually driven them out of the matrimonial house and that the respondents 2 to 4 are staying alone at the mercy of others. The Family Court framed four points for consideration and answered the same having regard to the facts pleaded and submissions made on both sides. The respondents 3 and 4 are school going children and are studying Intermediate and Tenth standard. The trial Court rightly observed to the following effect: "The petitioner's monthly income is Rs.60,000/-. The petitioner having disputed the said income and pleaded that his take-home pay is Rs.25,000/-, failed to establish any of his contentions including the contentions about the alleged businesses that were allegedly run earlier and are being run by the 2nd respondent. The petitioner made only self-serving statements." The Family Court also held that the petitioner is a solvent person and that merely because the respondents 2 to 4 herein failed to establish the monthly income of the petitioner by producing a document, they cannot be denied interim maintenance and that as he is an employee of the Syndicate Bank, he is capable of maintaining the respondents 2 to 4. However, as the 2nd respondent failed to prove the exact salary of the petitioner by producing his salary certificate from the Bank, the trial Court awarded Rs.15,000/- only, in all, towards maintenance of the respondents 2 to 4. Since the respondents 3 and 4 are now in higher classes, the meagre interim

maintenance is not even sufficient to meet their educational expenses. Hence, the revision, which is devoid of merit, is liable to be dismissed.

10. I have given detailed consideration to the facts and submissions and I have perused the material record.

11. The points for determination in the Criminal Revision Case are as under:

- 1) *Whether the 2nd respondent/wife has made out valid and sufficient grounds for award of interim maintenance to her and the two children?*
- 2) *And, if so, whether the quantum of interim maintenance awarded to her and the children is on the higher side and is liable to be reduced in the facts and circumstances urged by the petitioner/husband?*
- 3) *To what relief?*

12. POINTS:

12.1 The relationship between the parties is not in dispute. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. The petitioner and the 2nd respondent are living separately is also not in dispute. The children are with the 2nd respondent and they are pursuing higher educations being in XI and X standard. In the present revision there is no need to deal with the principal issues involved in the main case and record any findings as to who amongst the spouses was responsible for the rift and/or estrangement. In the considered view of this court, there is no reason to deny award of interim maintenance to the wife unless it is sufficiently established by the husband that the income of the wife, if any, is sufficient for her sustenance. Under facts and in law, the petitioner is bound to maintain his children irrespective of the disputes between him and his wife. The law is well settled that the interim maintenance awarded shall be adequate for sustenance, food, clothing and shelter besides essential incidental expenses. In case of children, interim maintenance shall be adequate also to

meet the expenses on their education and extra curricular activities. While awarding interim maintenance, the social status, economic and living conditions of the family will have to be taken into consideration; and, the interim maintenance awarded to the wife and children must be sufficient to enable them to live in reasonable comfort. The wife contends that she is leading a miserable life and that she and her children are living at the mercy of others and that she has no income or sources of income. Her case is that her husband is employed in a Nationalized Bank and is earning a decent salary of about Rs.65,000/- . Though the husband pleaded that his wife and children are residing in his house and that his take-home pay is Rs.25,000/- and that he is paying huge instalments towards various loans, EPF, ODC etcetera, he did not produce any documentary evidence including his salary certificate though he is the best person having access to the said documents. When his annual salary is more than Rs.2,50,000/-, he must necessarily be an income tax assessee. He failed to produce copies of his income tax returns/ documents to establish his gross and net annual incomes. Therefore, an inference favourable to the 2nd respondent can be drawn while determining the income and financial capacity of the petitioner. Apart from the fact that he is employed, he is also an able bodied person, is undisputed.

12.2 In the case on hand though the husband asserted that the wife is doing business and is earning sufficient income, no evidence is adduced and the said contentions are not substantiated. Any order granting interim maintenance under the Code is always subject to final determination of the rights of the parties in the main case. The provision for interim maintenance provides for speedy remedy for maintenance to the wife and children. In a proceeding seeking interim maintenance, if it appears to the Court that either the wife has no independent income or sufficient income to support her and her children and meet the necessary expenses of the case, the Court may, on the application of the wife, order the husband to pay to the wife and her children,

interim maintenance, as well as the expenses of the proceedings. On the above analysis this Court finds that the 2nd respondent-wife made out valid and sufficient grounds for awarding interim maintenance.

12.3 Dealing with the quantum of maintenance it is to be noted that though it is the contention of the petitioner that interim maintenance awarded by the Court below is high and excessive, he did not produce even before this Court, any material or documents related to his income from salary and other sources, if any. He did not file copies of his income tax returns, if any. Except reiterating his pleaded case nothing else was done to substantiate his pleaded case. Considering the facts and circumstances and the financial capacity of the petitioner and also the basic needs of the 2nd respondent/ wife & the children, and the present day cost of living, the Court below awarded interim maintenance @ Rs.5,000/- each per month to the 2nd respondent and her two children. As already noted, interim maintenance awarded shall be adequate for sustenance, food, clothing and shelter besides essential incidental expenses. While awarding interim maintenance the social status, economic and living conditions of the family will have to be taken into consideration; and, the interim maintenance awarded to the wife and children must be sufficient to enable her and the children to live in reasonable comfort. On a careful examination of the facts and circumstances, this Court is satisfied that there is no merit in any one of the contentions of the petitioner, which are unsubstantiated and that the impugned order of the Court below awarding interim maintenance to the respondents 2 to 4 does not warrant interference. Viewed thus, this Court finds that this revision is devoid of merit and is liable to be dismissed. Points are accordingly answered in favour of the 2nd respondent/ wife.

13. In the result, the Criminal Revision Case is dismissed confirming the order of the Court below. It is made clear that this Court did not make any

observations or record any findings on the merits of the main matter; and, therefore, the trial Court shall dispose of the main case uninfluenced by the observations, if any, made in this order. There shall be no order as to costs. The petitioner herein shall pay the arrears of maintenance within two months from the date of the receipt of a copy of this order in two equal monthly instalments and shall continue to pay interim monthly maintenance as awarded by the Family Court until the disposal of the main case.

Pending miscellaneous petitions, if any, in this Criminal Revision Case shall stand closed.

M. SEETHARAMA MURTI, J

27.06.2017
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