

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.856 of 2006

ORDER:

This criminal revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 19.04.2006 passed in M.C.No.6 of 2005 by the Judicial First Class Magistrate, Yellandu, whereby Magistrate granted maintenance at the rate of Rs.1,000/- from the date of order.

Dissatisfied with the order, the present revision is filed on various grounds. It is contended that the petitioner-wife is entitled for maintenance as prayed for since the respondent is receiving salary of Rs.6,000/- per month as a cashier in Mahesh Cooperative Bank, but the trial Court granted maintenance at the rate of Rs.1,000/- per month, which is meagre and requested to pass appropriate order granting maintenance taking into consideration the salary of respondent.

The trial Court believed the relationship between the petitioner and respondent and the respondent – husband refused and neglected to maintain the petitioner – wife. But the only question before this Court is quantum of maintenance. The main contention urged before this Court is that Exs.R.1 and R.2, which are payslips for the months of September 2005 and January 2006. These two documents would show that the

respondent – husband drawn Rs.6,156/- and Rs.6,400/- respectively.

Total deduction for the month of September, 2005 was Rs.3,756/-, which is inclusive of P.F., L.I.C, Profession Tax. But the amount deducted towards premium payable to the L.I.C. is not statutory deduction, it is saving. The petitioner also borrowed loans for purchasing vehicle and construction of house, but this amount cannot be deducted from the salary, after excluding savings and loans, net pay is around Rs.5,250/- for the month of September 2005.

According to the learned counsel for the petitioner, the petitioner is entitled to claim 1/4th of the net salary of husband by placing reliance on “**Dr.Kulbhushan Kumar v. Raj Kumari**¹”

But 1/4th of which comes to Rs.1,313/-, but the trial Court awarded maintenance only at the rate of Rs.1,000/- per month from the date of order. But the Apex Court in its later judgment rendered in “**Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**²” held as follows:

“Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in Sub-section (1) of Section 25. In exercising the power Under Section 25 (2), the court would have regard to the "change in the

¹ (1970) 3 SCC 129

² AIR 2017 SC 2383

circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under Sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just."

As per the principle laid down in "**Dr.Kulbhushan Kumar v. Raj Kumari**" (referred supra) the petitioner is entitled to Rs.1,313/- per month. Therefore, granting maintenance at the rate of Rs.1,000/- is contrary to the law and an amount of Rs.1,250/- per month is awarded to the petitioner from the date of order.

Learned counsel for the petitioner further contended that the trial Court should have granted maintenance from the date of petition. According to sub-section (2) of Section 125 of Cr.P.C. granting maintenance from the date of order is a rule and granting maintenance from the date of petition is exception. Even to grant maintenance from the date of petition, the Court has to record its own reasons. But here the Magistrate has passed the order strictly adhering to sub-section (2) of Section 125 of Cr.P.C. Therefore, maintenance cannot be granted from the date of petition while exercising power under Section 397 and 401 of Cr.P.C.

In view of my foregoing discussion, the order passed by the Judicial First Class Magistrate, Yellandu in M.C.No.06 of 2005 is modified granting maintenance at the rate of Rs.1,250/- per month from the date of order passed in M.C.No.06 of 2005.

In the result, the criminal revision case is partly allowed granting maintenance to the petitioner at the rate of Rs.1,250/- per month from the date of order passed in M.C.No.06 of 2005.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

05.10.2017
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