

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE Nos.1377 AND 1728 of 2017

COMMON ORDER:

These criminal revision cases are filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') by the husband and wife respectively, questioning the order, dated 15.04.2017, passed in M.P.No.28 of 2016 in M.C.No.343 of 2016 by the Judge, Additional Family Court, Hyderabad, awarding interim maintenance of Rs.10,000/- per month to the wife, from the date of order against the husband.

2. Wife filed CrI.R.C.No.1728 of 2017 questioning the order passed by the Court below on the ground that the Court below failed to award maintenance amount from the date of petition i.e., 29.08.2016, but granted maintenance from the date of order i.e., 15.04.2017, which is erroneous.

3. Husband filed CrI.R.C.No.1377 of 2017 questioning the quantum of interim maintenance at Rs.10,000/- per month awarded by the Court below on the ground that he is receiving only Rs.20,521.55 ps. as gross salary working as an employee in District Cooperative Bank.

4. Heard both sides at the stage of admission.

5. The first and foremost contention of the wife is that the Court below failed to grant interim maintenance from the date of order

instead of granting from the date of petition i.e., on 29.08.2015, which is an error. No doubt, no guarantee of completing the proceedings within a time fixed under the statute i.e., the reason for neglected wife to claim interim maintenance is incorporated the provision under Section 125 Cr.P.C. to claim interim maintenance. Sub section 2 of Section 125 Cr.P.C. is not amended suitably. On the other hand, granting maintenance from the date of order is a rule and granting maintenance from the date of petition is an exception. Time and again this Court and Apex Court held that for granting maintenance from the date of petition, the Court is not required to record reasons satisfying to order payment of maintenance from the date of petition. But, here in this case, the Court below made it specific that interim maintenance shall be from the date of the order not from the date of petition. Therefore, the Court below strictly adhering to requirement under sub-section 2 of Section 125 Cr.P.C. and passed order awarding interim maintenance from the date of order i.e., on 15.04.2017, in M.P.No.28 of 2016 in M.C.No.343 of 2016, thereby, the order is not an irregular or illegal, warranting interference by this Court exercising the power under Sections 397 and 401 Cr.P.C. Therefore, I find no force in the contention raised by the counsel for the wife in Crl.R.C.No.1728 of 2017 and the revision is liable to be dismissed.

6. In the other revision filed by the husband i.e., Crl.R.C.No.1377 of 2017, the husband questioned the order on the ground that granting interim maintenance @ Rs.10,000/- per month is excessive.

7. As seen from the material on record and observations made in para 6 of the order of the Court below, husband is getting salary of Rs.30,000/- per month. As per the allegations of the maintenance case, the husband getting Rs.1,00,000/- per month as rent. But, the husband admitted that he is working as an employee in District Co-operative Bank while contending that he is drawing Rs.5,603/- per month as salary and the salary certificate produced before the Court below disclosed that he is drawing Rs.20,521.55 ps. per month. But, net salary was shown as Rs.7,495.55 ps. after deducting the loan amounts etc., But the amount deducted towards installments of loan cannot be deducted while fixing interim maintenance payable to the wife.

8. Assuming for a moment that the husband was drawing Rs.20,521.55 ps., the interim maintenance shall be 25% of the salary of the husband as held by the Apex Court in **Dr. Kulbhushan Kumar vs. Smt. Raj Kumari and another**¹ and **Kalyan De Chowdhury v. Rita Dey Chowdhury Nee Nandy**². Though the order in the above two judgments pertains to grant of interim maintenance under Section 24 of the Hindu Marriage Act in a petition filed under Section 13 of the Hindu Marriage Act during pendency of the petition, the same principle can be applied to the present facts of the case, it pertains to interim maintenance in a petition under Section 125 Cr.P.C. Therefore, the interim maintenance payable to the wife by the

¹ AIR 1970 SC 234

² AIR 2017 SUPREME COURT 2383

husband comes to Rs.5,130.38 ps. since the wife failed to produce any iota of evidence to substantiate her contention that her husband is getting Rs.1,00,000/- per month as rent and no details were produced regarding the property that her husband possessed and income he is getting by way of rent from the property. In the absence of any material alleged receipt of Rs.1,00,000/- per month as rent cannot be accepted and the Court below rightly disbelieved the income of the husband being received by him towards rent. The Court below committed an error in granting Rs.10,000/- per month as interim maintenance, though the husband is receiving Rs.20,521.55 ps. per month as salary. Therefore, the lower Court committed serious error in awarding Rs.10,000/- per month as interim maintenance and the same is liable to be set aside by reducing the same from Rs.10,000/- to Rs.5,130.38 ps.

9. In view of my foregoing discussion, Crl.R.C.No.1728 of 2017 filed by the wife is dismissed while allowing in part the revision in Crl.R.C.No.1377 of 2017 filed by the husband reducing the interim maintenance from Rs.10,000/- per month to Rs.5,130.38 ps.

Miscellaneous petitions pending, if any, in both the revision cases shall stand closed.

M. SATYANARAYANA MURTHY, J

25th October 2017.
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