

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1767 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') seeking to quash the order dated 07.02.2017 in CrI.R.P.No.59 of 2016 in CrI.M.P.No.348 of 2016 in D.V.C.No.1 of 2016 on the file of the III-Additional Judicial Magistrate of First Class, Khammam.

2. The petitioner herein is respondent No.1 in the D.V.C. The respondents 1 and 2 herein, who are the wife and son of the petitioner respectively, filed D.V.C.No.1 of 2016 on the file of the III-Additional Judicial Magistrate of First Class, Khammam. Incidentally, CrI.M.P.No.348 of 2016 is also filed seeking interim maintenance. The learned Magistrate having taken note of the rival contentions and appreciating the contentions of the petitioners therein, awarded a sum of Rs.4,000/- to the 1st petitioner and Rs.2,000/- to the 2nd petitioner in CrI.M.P.No.348 of 2016 towards monthly maintenance for procuring food, clothing and to meet the medical expenses. It is not in dispute that the husband is working as a police constable in Dummugudem Police Station, Vira Village and Mandal, Khammam District.

3. Aggrieved over the said order, the husband preferred CrI.R.C.No.59 of 2016. Learned Principal Sessions Judge, Khammam, by order, dated 07.02.2017, on a re-appraisal, confirmed the order passed by the learned Magistrate mainly taking into

consideration that the husband is working as a police constable and is having sufficient earnings and even after meeting maintenance will be having huge amount from his monthly earnings and the maintenance amount granted by the learned Magistrate is not disproportionate and it is just and reasonable.

4. Sri Kowturu Pavan Kumar, learned counsel for the petitioner/husband, submits that the interim maintenance granted by the learned Magistrate and confirmed by the revisional Court is not correct and there is no specific provision for interim maintenance pending main D.V.C. under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act'), as such, the petition itself is not maintainable, and, therefore, the order is liable to be set aside. Besides that, the learned counsel contended that the amount awarded is on higher side.

5. The Court below by the power vested in it under Section 23 of the Act, granted interim maintenance. There need not be a separate provision to govern grant of interim maintenance. The power is vested in Section 23 of the Act even to take care of the interim maintenance to be granted by the Courts. Therefore, that ground is unsustainable.

6. Looking at the amount of maintenance of Rs.6,000/-, it cannot be construed as on higher side, as contended by the learned counsel for the petitioner when kept the earnings of the petitioner, who is working as a constable and getting salary of Rs.20,000/-. By any stretch of imagination, it cannot be said that the interim maintenance

of Rs.6,000/- i.e., Rs.4,000/- to the 1st petitioner-wife and Rs.2,000/- towards their child, cannot be construed as excessive. Therefore, there is no merit in the present petition.

7. Accordingly, the criminal petition is dismissed at the admission stage itself.

8. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

March 7, 2017

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