

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRL.R.C.No.2139 OF 2017

ORDER:

This petition is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 05.05.2016 in CrI.R.P.No.105 of 2015 passed by the III Additional Sessions Judge, Bhimavaram enhancing the maintenance awarded by the trial Court i.e. Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Bhimavaram vide order dated 28.07.2015 in M.C.No.8 of 2015.

2. Respondents 1 to 3 filed M.C under Section 125 Cr.P.C claiming maintenance at Rs.20,000/-each per month alleging that the marriage between the petitioner and the 1st respondent was performed and at the time of marriage, the parents of the 1st respondent presented Ac.01.00 agricultural land and Rs.3,00,000/- cash as dowry, Rs.50,000/- towards 'adapaduchu lanchanams' and 10 sovereigns of gold etc. their marriage was consummated and they blessed with two children, who are respondents 2 and 3. But, due to unbearable harassment for her inability to meet illegal demand for payment of Rs.1,00,000/- as additional dowry, she was necked out, hence, she is staying along with her parents at Bhimavaram. She also further contended that she has no means to maintain themselves, whereas the petitioner herein is working as Software Engineer and earning Rs.1,00,000/-, and that she lodged a complaint, which is registered as case in Crime No.63 of 2014 for the offences punishable under Sections 498-A, 323 read with 34 IPC and the same is pending before II Additional Judicial First Class Magistrate, Bhimavaram. Therefore, respondents 1 to 3 sought for maintenance of Rs.20,000/- each per month.

3 The petitioner filed counter and contended that the 1st respondent is owner and possessor of land in R.S.No.30/4B and 39/3 at Nowduru Village and the father of the 1st respondent owner and possessor of lands at Nowduru Village and dabha house and that mother of the 1st respondent also owner and possessor of lands in Nowduru Village. Whereas the brothers of the 1st respondent are well settled and residing at Hyderabad and Indonesia. The petitioner admitted that he was working as Software Engineer in Tech Mahindra and earning Rs.80,000/- per month as salary and he has to pay Rs.20,000/- towards housing loan, Rs.17,150/- towards children educational loan and Rs.2,000/- towards apartment maintenance, thereby, his net income would be around Rs.40,000/- and that the parents of the petitioner are dependent on him and that the petitioner did not neglect or refuse to maintain respondents and prayed for dismissal of the maintenance case.

4. During enquiry, before trial Court, on behalf of respondents 1 to 3, PWs.1 and 2 were examined and RW.1 was examined on behalf of the petitioner, but no documentary evidence was produced on either side.

5. Upon hearing argument of both counsel, the Court below awarded maintenance at Rs.5,000/- to the 1st respondent and Rs.8,000/- each to the 2nd and 3rd respondents as monthly maintenance payable by the petitioner on or before 10th of every month.

6. Dissatisfied with the maintenance awarded by the trial Court, petitioner preferred revision before the Sessions Judge in CrI.R.C.No.105 of 2015, the Sessions Judge by order dated 05.05.2015 enhanced maintenance from Rs.5,000/- to Rs.10,000/- per month and Rs.8,000/- to the 2nd and 3rd respondents to Rs.10,000/- per month each and awarded total amount of Rs.30,000/- to respondents 1 to 3.

7. Aggrieved by the said order passed by the revisional Court, the present revision is filed on various grounds mainly contending that on account of liabilities for payment of housing loan, educational loan etc the petitioner is only receiving Rs.40,000/- as net salary, as such the enhancement from Rs.5,000/-, Rs.8,000/-to Rs10,000/- each is illegal. It is also contended that on account of pending litigation against the petitioner and his parents at Bhimavaram Court, they are spending most of the amount for covering distance of 400 km from Hyderabad and therefore, the maintenance awarded by the Sessions Judge at enhanced rate is illegal and prayed to set aside the same.

8. During hearing, learned counsel for the petitioner reiterated the grounds urged in the revision and mainly drawn the attention of this Court that the revisional Court without any material awarding maintenance at enhanced rate of Rs.10,000/- each per month to respondents 1 to 3 is illegal and prayed to set aside the same.

9. Whereas, learned counsel for respondents 1 to 3 supported the order impugned since the Sessions Court took into consideration of the price index and cost of living and other necessities of respondents 1 to 3, therefore, the order passed by the Sessions Court cannot be interfered with by exercising power under Sections 397 and 401 Cr.P.C. and prayed for dismissal of the revision.

10. Based on rival contentions, the point that arises for consideration is:

Whether the finding recorded by the Sessions Judge enhancing maintenance amount from Rs.5,000/- per month to Rs.10,000/- per month to the 1st respondent and Rs.8,000/- per month to 10,000/- per month each to the 2nd and 3rd respondents is reasonable, if so whether the award of maintenance at enhanced rate is liable to be set aside?

POINT:

11. The relationship between the parties is not in dispute. Similarly separate living of respondents at Nowduru and other places is also not in dispute. The only dispute is with regard to the quantum of maintenance awarded by the Sessions Judge. The Judicial Magistrate awarded maintenance to the 1st respondent at Rs.5,000/- per month and Rs.8,000/- to the 2nd and 3rd respondents per month. On revision before the Sessions Judge, it was enhanced to Rs.10,000/- each to respondents 1 to 3. The petitioner admitted in his counter that he is working as Software Engineer in Tech Mahindra and whereas respondents 1 to 3 are contending that the petitioner is earning Rs.1,00,000/- per month besides income from other properties at his native village. Curiously, no piece of evidence is brought on record to establish that the petitioner is earning more than Rs.1,00,000/- per month as salary besides the income from agriculture and other properties. In any view of the matter the petitioner admittedly earning Rs.80,000/- per month as Software Engineer. Therefore, respondents 1 to 3 are expected to lead the same standard of life, which they lead while staying with the petitioner at Hyderabad. But, now they are staying at Nowduru Village, which is nearby Bhimavaram Town. The liabilities of the petitioner for payment of house loan, educational loan are also not supported by any material except testimony of RW.1. Even assuming for a moment that he is discharging loan, it is only on account of purchase of the house. But, whereas, the children are living with the 1st respondent, thereby continuing educational loan is somehow doubtful. In any view of the matter, the petitioner is drawing Rs.80,000/- per month, he has to pay maintenance to the wife and children to allow them to maintain the same standard of life. If Rs.30,000/- awarded by the Sessions Judge is sustained, the petitioner can not lead his normal life with the remaining

amount out of his salary. Since petitioner admitted about liability to discharge housing loan at Rs.20,000/- and education loan of Rs.17,150/-, the balance would be Rs.43,000/-. In such a case, the balance amount is hardly sufficient to the petitioner to lead normal life as a Software Engineer at Hyderabad and whereas respondents 1 to 3 may enjoy luxurious life with the maintenance awarded by the Sessions Judge. Therefore, taking into consideration the cost of living, price index and the liabilities of the petitioner including obligation to maintain his parents, the amount awarded by the Sessions Judge is excessive.

12. There is no straight jacket formula to fix maintenance payable to the children and wife by the husband. But, there are aspects to be considered while fixing maintenance to the children and wife. They are, status of the parties, reasonable wants of the claimants, the income from the property of the claimants, number of persons to be maintained by the husband, liabilities if any of the husband, the amount required by the wife to lead similar life as she enjoyed in the matrimonial home, keeping in view food, clothing, shelter, educational and medical needs of the wife and children if any residing with the wife and earning capacity of the husband are relevant considerations. If these aspects are taken into consideration, the award of maintenance to respondents 1 to 3 at enhanced rate of Rs.10,000/- each is arbitrary and therefore, taking into consideration of the liabilities and obligations of the husband and other relevant factors, which I referred in the earlier para and the place of their stay of both wife and husband, I find that the award of enhanced rate is highly improbable to the facts and circumstances of the case and it will become liability to the petitioner. It is a burden sum to the petitioner since he is admittedly receiving less than Rs.45,000/- per month towards salary while meeting other liabilities like payment of income tax etc. Therefore, the maintenance awarded by the Judicial Magistrate in

M.C.No.8 of 2015 is just and reasonable and consequently, the order dated 05.05.2016 in CrI.R.C.No.105 of 2015 passed by the III Additional Sessions Judge, Bhimavaram is set aside while restoring the order dated 28.07.2015 in M.C.No.8 of 2015 passed by the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Bhimavaram.

13. Accordingly, the criminal revision case is allowed.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 03.08.2017
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