

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2342 of 2017

ORDER:

This revision is filed under Sections 397 and 401 of Cr.P.C questioning the propriety, legality and regularity of the order, dated 30.06.2017 in Crl.M.P.No.247 of 2016 in M.C.No.30 of 2016 passed by the Judge, Family Court-cum-VI Additional District Judge, Kadapa granting interim maintenance of Rs.5,000/- per month each to respondent No.2 and 3 from the date of petition and also directing to pay monthly interim maintenance of Rs.5,000/- each to respondents 2 and 3 herein on or before 10th of every succeeding month till disposal of the main case.

2. Respondents 2 and 3 herein were petitioners before the Court below and the petitioner herein is the respondent, hence, hereinafter referred to as petitioner and respondents 2 and 3 for convenience.

3. Respondents 2 and 3 filed a petition under Section 125 of Cr.P.C claiming maintenance and during pendency of the petition, they claimed interim maintenance under Section 125(2) of Cr.P.C alleging that the marriage between the 2nd respondent and the petitioner was performed and they lived happily for some time and blessed with a daughter, who is named as G.Rajeshwari, the 3rd respondent, now aged 12 years. Respondents 2 and 3 have no independent source of income to lead ordinary life and whereas the petitioner is working and earning Rs.70,000/- per month. The 3rd respondent is studying 8th standard in Sai Krishna School Co-Operative Colony, Kadapa and required Rs.35,000/- towards school fee, but the 2nd respondent has no means to meet the expenses for education etc. of the 3rd respondent.

4. The petitioner herein filed counter admitting the relationship between him and respondents 2 and 3 and denied the other allegations.

It is contended that he is working in Electricity department, placed under suspension in the month of September, 2015 and drawing only Rs.16,000/- per month as subsistence allowance, which is not sufficient to eke out his livelihood and he has to pay debts to various creditors. It is also contended that the 2nd respondent deserted the petitioner without any ostensible reason and she is collecting Rs.6,000/- per month as rent and thereby she is having sufficient means to maintain the 3rd respondent and prayed for dismissal of the petition.

5. No oral or documentary evidence is adduced before the Court below, during enquiry.

6. Upon hearing the argument of both counsel, the Court below awarded Rs.5,000/- each per month to respondents 2 and 3 from the date of petition.

7. Aggrieved by the said order, the present revision is filed on the ground that the Court below erred in concluding that the petitioner was drawing Rs.70,000/- per month though he contended that he is drawing Rs.16,000/- per month as subsistence allowance and the Court below did not consider the discrepancy about the salary being drawn by the petitioner and awarded maintenance @ Rs.5,000/- each per month to respondents 2 and 3 erroneously and prayed to set aside the order impugned in this revision.

8. There is no dispute regarding relationship between the petitioner and respondents 2 and 3. The 3rd respondent is the daughter borne during their wedlock, who is now aged 12 years, and studying 8th standard in Sai Krisha School Cooperative Colony, Kadapa. The petitioner cannot avoid his legal obligation to maintain his daughter and as such the 2nd respondent has to incur Rs.35,000/- per annum towards school fee and other expenses of the 3rd petitioner. Therefore, the petitioner cannot disown of his obligation to maintain respondent No. 3

by providing necessary food, clothing, medical, education and etc. Therefore, the petitioner is liable to pay maintenance to the 3rd respondent.

9. So far as the 2nd respondent is concerned, the allegation that she herself deserted the petitioner without any reason or just cause is not substantiated before the Court below by adducing any evidence. If for any reason, the 2nd respondent deserted the petitioner, nothing prevented him to file petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The petitioner did not take any such step, but made a bald allegation that the 2nd respondent deserted him and living separately. Therefore, on this ground it is difficult to held that the 2nd respondent is living separately deserting the petitioner voluntarily without any reasonable cause. The conduct of the petitioner itself shows that the allegation that the 2nd respondent neglected him is invented for limited purpose of deciding the present revision.

10. The main contention before the Court below was that he was receiving only Rs.16,000/- per month as subsistence allowance and not Rs.70,000/-. Admittedly, he is **working** as an employee in Electricity Department and he is supposed to obtain a salary slip every month. For the reasons best known to him, he did not produce the said salary slip to substantiate his contention that he was only drawing Rs.16,000/- per month as subsistence allowance, more particularly, when the 2nd respondent specifically contended that he is drawing Rs.70,000/- per month. But, one of the contention urged before the Court below is that he was placed under suspension in the month of September, 2015. But no iota of evidence brought on record to substantiate his contention that he was placed under suspension and he was receiving Rs.16,000/- per month as subsistence allowance during the period of suspension. In the

absence of any material, it is difficult for this Court to accept the said contention.

11. Another contention urged before this Court is that he was not given any opportunity for producing documentary evidence. It is ex facie false for the reason that the petitioner filed counter and his counsel advanced argument before the Court below. Therefore, on that ground, the said order cannot be reversed.

12. Taking into consideration, the present cost of living, price index and the standard of living, respondents 2 and 3 are expected to lead the life, which they led while living with the petitioner. Therefore, granting Rs.5,000/- per month each to respondents 2 and 3 is not exorbitant or excessive. Hence, I find no ground to interfere with the findings recorded by the Court below to reduce maintenance. Therefore, the order passed by the Court below is free from legal infirmities warranting interference of this Court by exercising power conferred under Sections 397 and 401 Cr.P.C. and accordingly, the order dated 30.06.2017 in CrI.M.P.No.247 of 2016 in M.C.No.30 of 2016 passed by the Judge, Family Court-cum-VI Additional District Judge, Kadapa, is confirmed.

13. Accordingly, the Criminal Revision Case is dismissed.

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

M. SATYANARAYANA MURTHY J

Date: 23.08.2017
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