

**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CRIMINAL PETITION No. 3995 OF 2017**

**ORDER :**

The petitioner Sarabu David Sundara Ratna Rao is a retired postal employee, no other than the husband of 2<sup>nd</sup> respondent-complainant Sarabu Jhansi Lakshmi Bai, in the cause title of her shown as employee in Anganwadi Centre, Ariapenta village, Dommameta Mandal, Khammam District.

The quash petition is impugning the dismissal order of the CrI.R.P.No.27 of 2015 dt.12.04.2017 on the file of the XV Addl. district & Sessions Judge, Nuzvid, Krishna District, Andhra Pradesh, confirming the orders passed by the learned Magistrate Tiruvuru in M.C.No.6 of 2012, dt.17.04.2015 awarding maintenance of Rs.8,000/- per month to her from him from the date of the order dt.17.04.2015 supra.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the State and the learned counsel for the 2<sup>nd</sup> respondent-complainant and perused the grounds urged in the quash petition.

The relationship between the parties is not in dispute but for the entitlement and quantum. The contentions in the quash petition mainly are that the wife filed a case 30 years after wedlock u/sec. 498-A IPC against the husband(quash petitioner) that was covered by police final report taken cognizance in C.C.No.77 of 2010 ended in acquittal with finality and also later filed M.C.No.6 of 2012 claiming maintenance at

Rs.10,000/- per month stating she was Anganwadi worker receiving Rs.7,000/- per month that was not properly appreciated also of the fact that he is a retired postal employee getting pension of only about Rs.10,000/- per month and the quantum is thereby otherwise unsustainable and the revision Court did not properly appreciate in confirming the order of the learned Magistrate hence to set aside both the orders and reduce quantum of maintenance if not to exonerate.

In the Maintenance Case before the learned Magistrate, the wife came into the witness box and examined herself as P.W.1 and cause examined her daughter as P.W.2. The husband (quash petitioner) came into the witness box and examined himself as R.W.1 and examined N.Kanakadurga as R.W.2. For the petitioner-wife Exs.P.1 to P.11 are marked and for respondent-husband Exs.R.1 to R.6 were marked. The Exs.P.1 to P.11 are only medical reports of the PW.1 and among R.1 to R.6, the certified copy of the chargesheet in Cr.No.37 of 2005 supra, hospital discharge summary, Santini Hospital certificate with prescriptions, and the information given by ICDS Officer under RTI Act, regarding avocation of the petitioner, worked as Anganwadi worker pursuant to the requisition sought under Exs.R.5 and R.6. R.W.2 is Supervisor of the ICDS at Palvancha of Dammapeta who deposed with reference to Exs.R.1 to R.6 that P.W.1 was working in ICDS from September, 2014 at Palvancha Division as Anganwadi worker at Arlapenta village and getting Rs.4,200/- per month and she was residing at Arlapenta village.

It is in support of the contention of she was not residing within the jurisdiction of the Court much less at Mulagalapativarigudem village, Vissannapeta and the maintenance case filed before the learned Magistrate with no jurisdiction. In fact a perusal of the X.2 certificate marked through P.W.2 shows that P.W.1 was working as Anganwadi worker at Arlapenta by drawing honorarium of Rs.7,000/- for the month from March, 2015 to May, 2015 and w.e.f. June, 2015 to August, 2015 she was not drawing any honorarium shown in abscondence from duty and that certificate was dated 01.09.2015. In fact, in the quash petition, there is CrI.M.P.No.5865 of 2017 filed by the quash petitioner/husband with his affidavit seeking permission to amend the cause title of his wife-2<sup>nd</sup> respondent saying notice sent with address of Arlapenta village of Dammapeta Mandal of Khammam District returned unserved as no such person is living in the village and according to him she is residing at Mulagalapudivarigudem village, Vissannapeta mandal, Krishna district and the same was cause amended and it clearly shows therefrom that the P.W.1 is not residing at Arlapenta and not working as Anganwadi worker from June, 2015 though earlier she was working from 01.10.1991 as per Ex.P.2 and it shows her honorarium as on March, 2015 was Rs.7,000/- per month. Thus from Exs.X.1 to X.3 she is not working as Anganwadi worker after 2015 June, and not even residing at Arlapenta of Khammam District. Thus, the contention that she got means by drawing about Rs.7,000/- per month as

Anganwadi worker is not sustainable as also considered by the learned Magistrate and the learned Sessions Judge in the revision so also to conclude here from own showing by the quash petitioner of his wife as 2<sup>nd</sup> respondent (M.C.petitioner) is residing in Krishna District and not at Arlapenta and not working as Anganwadi worker. Then to consider his means:-

Undisputedly he is retired from service. According to his pay particulars, he is drawing by the end of January, 2016 pension of Rs.12864/- and same is the amount of December, and November , 2016 and lesser to it during August, September and October and lesser to it during April to July. Even from perusal of pension from March, 2015, it is not exceeding Rs.12,864/-p.m. However, the evidence on record shows that he is having Ac.4.00cents of Mango garden at Vottigudipadu village and a house and house site at Hanuman Junction, besides that he is owning RCC Building at Vottigudipadu and one house and house site at Nuzvidu but no documents are filed in proof by the wife and daughter P.Ws. 1 and 2 among Exs.P.1 to P.11 or otherwise to show he got any lands other than the house at para-10 of the order of the learned Magistrate refers to it. In fact in saying he worked as a Postman and retired from service on 30.04.2011 and healthy and got pension of more than Rs.10,000/- per month and got more than 10acres Mango garden at Vattigurupadu village, as per the evidence of wife and he did not deny his above properties and getting of pension and therefrom held it can be taken his earnings including

pension is Rs.25,000/- per month and awarding Rs.8000/- p.m. In fact, even taken about the land and the house where he resides what he possessed from cross-examination is not possessed 4 acres but one acre besides vacant site at Andreyapuram and other places and in getting such a huge amount not possible to believe from the one acre landed property,

Having regard to the above and he is also suffering from ailments besides his wife from the medical records, this Court feels to subserve the ends of justice to reduce Rs.8000/- p.m. to Rs.6,500/- p.m. by considering his pension about Rs.12864/- p.m. and income from the landed property, house and house site, if any.

Accordingly and in the result, the Criminal Petition is allowed in part by modifying the quantum of monthly maintenance amount awarded by the trial Court and confirmed by the Revision Court of Rs.8000/- p.m. to Rs.6,500/-p.m. Time granted to pay all the arrears, by adjusting the amounts if any paid or deposited, within four months from the date of receipt of the order. Failing which she can execute along with the regular monthly payable amounts for recovery.

Consequently, the pending miscellaneous petitions, shall stand closed.

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Dr. B.SIVA SANKARA RAO J,

Date:30.08.2017

Note: Issue copy in three days.

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