

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2029 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C, questioning the legality and propriety of the order in CrI.M.P.No.314 of 2014 in M.C.No.38 of 2006 passed by the Judge, Family Court-cum-XII Additional District Judge, Guntur, enhancing maintenance amount from Rs.2,000/- per month to Rs.8,000/- to the first respondent and from Rs.1,000/- per month to Rs.7,000/- per month to the second respondent, from the date of petition.

There is no dispute between the parties regarding relationship and the dispute is only with regard to enhancement of maintenance awarded in M.C.No.38 of 2006, by exercising power under Section 127(1) Cr.P.C.

The main contention raised before this Court is that, the take home salary of the petitioner is Rs.24,819/-, marked as Ex.B-1 and enhancing maintenance @ Rs.15,000/- per month to both the respondents 1 & 2 herein is excessive. Apart from that, enhancing maintenance from the date of petition is a clear illegality and in contravention of Sub-section (2) of Section 125 Cr.P.C and requested this Court to pass appropriate orders, while setting aside the orders passed by the Court below in CrI.M.P.No.314 of 2014 in M.C.No.38 of 2006.

Learned counsel for the petitioner Sri V. Raghu, would draw the attention of this Court to the pay-slips of the petitioner

pertaining to the months of June, 2016 and November, 2016. Learned counsel submits that the payslip of November, 2016 is marked as Exs.B-1 and would contend that the salary drawn by the petitioner was not Rs.1,28,503/- per month, as reflected in the payslip of June, 2016 and his take home salary is only Rs.24,819/- as per Ex.B-1 and if, Ex.B-1 is taken into consideration, the amount enhanced by the Trial Court is excessive and requested this Court to set-aside the order under challenge. Learned counsel for the petitioner also contended that, as a rule, maintenance must be granted from the date of order and exception to it is, granting maintenance from the date of petition, subject to recording reasons as required under Section 125(2) Cr.P.C. But, the Court below did not record any reason. Therefore, the order is in contravention of Subsection (2) of Section 125 Cr.P.C and prayed to set-aside the order under challenge.

Learned counsel for the respondents 1 & 2 Sri P. Shiv Kumar contended that the salary of Rs.24,819/- drawn by the petitioner per month is only on account of loans contacted by him and they are only savings for the petitioner. Apart from that, enhancement of maintenance from the date of petition is permissible, in view of law declared by the Supreme Court in **Shail Kumari Devi and another v. Krishan Bhagwan Pathak**¹, wherein, the Apex Court agreed with the order of this Court in **K. Sivaram v. K. Mangalamba**² and on the strength of the principles laid down in the above judgment, it is contended that enhancement of

¹ (2008) 9 Supreme Court Cases 632

² 1990 Cri.L.J 1880 (A.P)

maintenance from the date of petition cannot be faulted and prayed to dismiss the petition, confirming the order passed by the Trial Court.

Two points to be considered by this Court are enhancement of quantum of maintenance and grant of maintenance from the date of petition.

The petitioner admittedly was employed in Bharat Sanchar Nigam Limited as Junior Telecom Officer (JTO)(Regular) and drawn salary of Rs.1,28,503/- for the month of June, 2016. But, the said amount is inclusive of various amounts of arrears like amenity staff (no tax), basic pay, HRA, DA, medical reimbursement, etc. However, deductions are totalling to Rs.37,750/- for the said month of June, 2016. The salary slip produced by the petitioner vide Ex.B-1 disclosed that the petitioner is drawing Rs.81,007/- as gross salary. It is evident from Ex.B-1 that Rs.22,500/- is deducted from the salary of the petitioner towards Bank loan and Rs.15,867/- is deducted towards society loan, thereby, the take home pay of the petitioner is considerably reduced to Rs.24,819/-. The petitioner is receiving the take home pay after deductions of loan instalments and those loans are only for acquiring property or some other purpose and it is deemed as saving to the petitioner. Such amount will also be taken into consideration towards salary for deciding the enhancement of maintenance amount payable to the respondents 1 & 2 herein, as per judgment of the Supreme

Court in **Dr. Kulbhushan Kumar vs. Smt. Raj Kumari and Anr.**³ and **Kalyan De Chowdhury v. Rita Dey Chowdhury Nee Nandy**⁴.

While deciding grant of interim maintenance payable under Section 24 of Hindu Marriage Act, the Supreme Court in both the judgments referred supra, consistently held that 1/4th of the salary shall be paid as maintenance to the wife. If, such principle is applied to the present case, the maintenance payable to the wife would be more than Rs.20,000/- and the maintenance for the child would be another Rs.20,000/-. Therefore, the maintenance enhanced by the Trial Court is from Rs.2,000/- per month to Rs.8,000/- to the first respondent and from Rs.1,000/- per month to Rs.7,000/- per month to the second respondent, from the date of petition. Hence, the order passed by the Trial Court, enhancing maintenance to the respondents 1 & 2 as mentioned above is not contrary to the law declared by the Apex Court in the judgments referred supra. Therefore, I find no ground to reduce the enhanced maintenance amount.

The other contention raised before this Court is that, maintenance from the date of petition without recording specific reason is illegal. The Court has to record its reasons and it is the requirement under Subsection 2 of Section 125 Cr.P.C also. But, this Court took a different view in **K. Sivaram**² case, which is accepted by the Apex Court in **Shail Kumari Devi**¹ case, where, the Apex Court held that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from

³ AIR 1970 SC 234

⁴ AIR 2017 SUPREME COURT 2383

the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order. As observed in **K. Sivaram**² case, reasons have to be recorded in both the eventualities. The Court was also right in observing that wherever Parliament intended the Court to record special reasons, care had been taken to make such provision by requiring the Court to record such reasons. The Supreme Court further held that duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, the Apex Court in **Savitri v. Govind Singh Rawat**⁵ held that in absence of prohibition to grant 'interim' maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to unable wife to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose. The Apex Court held that while deciding an application under Section 125 of the code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court.

⁵ AIR 1986 SC 984

The respondents 1 & 2 filed petition under Section 127(1) Cr.P.C for alteration of allowance i.e maintenance awarded in M.C.No.38 of 2006. As seen from the allegations made in the petition, the respondents 1 & 2 filed M.C.No.38 of 2006 on the file of IV Additional Junior Civil Judge, Guntur and the same was partly allowed vide order dated 22.02.2008. CrI.P.no.314 of 2016 was filed in the year 2016 for alteration of maintenance on the ground that the second respondent is a school going child, studying V class and the maintenance granted by the Trial Court in M.C.No.38 of 2006 is very meagre to meet the day-to-day expenses and due to changed circumstances like hike in school fee, uniforms, cost of books, transportations and other miscellaneous expenses, and due to passage of time, the respondents 1 & 2 are unable to lead normal life with the meagre amount awarded by the Magistrate in M.C.No.38 of 2006 and on account of changed circumstances, they sought alteration of allowance i.e. maintenance amount. But the petitioner raised a contention that he is jobless and he is maintained by his parents. Therefore, he is not in a position to pay maintenance to respondents 1 & 2 at enhanced rate. But the Trial Court took into consideration the changed circumstances, the standard of living and other considerations referred above altered maintenance awarded in M.C.No.38 of 2006 on 22.02.2008.

Section 127 Cr.P.C permits the Magistrate to alter the allowance on proof of a change in the circumstances of any person, receiving under Section 125 Cr.P.C, a monthly allowance for the maintenance or interim maintenance, or ordered under the same

section to pay a monthly allowance for the maintenance or interim maintenance to his wife, child, father of mother, as the case may be, the Magistrate may make such alteration as he thinks fit, in the allowance for the maintenance or the interim maintenance as the case may be. Therefore, the Magistrate has to take into consideration the changed circumstances to alter the allowances either to increase or to decrease the amount, due to changed circumstances, subsequent to passing an order in a petition filed under Section 125 Cr.P.C.

In the present case, by the date of awarding maintenance, the second respondent who is a girl was aged less than 5 years and after passing the order, she was admitted in the school and the first respondent was forced to meet the expenses for education etc, thereby, it is a changed circumstance to be considered for alteration in allowance i.e. maintenance awarded under Section 125 Cr.P.C. Apart from that, as the second respondent is suffering from skin disease and undergoing treatment under the supervision of a dermatologist, thereby, the first respondent was forced to incur medical expenses. Apart from that, there is lot of change in the price index and cost of living after passing order in M.C.No.38 of 2006 on 22.02.2008 within a span of eight years i.e. by the date of filing petition and there is many fold increase in the salary from the date of order in M.C.No.38 of 2006. Therefore, taking into consideration the changed circumstances, the Court below altered the allowances granted in favour of the respondents 1 & 2 and such finding cannot be interfered lightly by this Court, as a matter of routine while exercising power under Sections 397 & 401

Cr.P.C. Consequently, I find no ground to interfere with the findings recorded by the Courts below and the criminal revision case is liable to be dismissed.

Therefore, I find no ground to interfere with the order in Crl.M.P.No.314 of 2014 in M.C.No.38 of 2006 passed by the Judge, Family Court-cum-XII Additional District Judge, Guntur, enhancing maintenance amount from Rs.2,000/- per month to Rs.8,000/- to the first respondent and from Rs.1,000/- per month to Rs.7,000/- per month to the second respondent, from the date of petition

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:20.10.2017

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