

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.811 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C questioning the legality and propriety of the order passed by the Additional Metropolitan Sessions Judge for Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad, CrI.M.P.No.1427 of 2016 in M.C.No.212 of 2016 dated 30.12.2016, granting interim maintenance of Rs.5,000/- and Rs.3,000/- respectively to the respondents 2 & 3 herein.

Respondents 2 & 3 who are the wife and son of the petitioner filed CrI.M.P.No.1427 of 2016 alleging that the petitioner herein refused and neglected to main them. It is stated by the respondents 2 & 3 that they have no source of income to maintain themselves, whereas, the petitioner is working as Faculty Member in D.M.W.O. Collectorate Complex, Kurnool and drawing salary more than Rs.45,000/- per month. During pendency of M.C.No.212 of 2016, respondents 2 & 3 filed CrI.M.P.No.1427 of 2016 for interim maintenance contending that for deciding main petition, it may take sometime and respondents 2 & 3 cannot be starved to death during pendency of the petition.

The petitioner/respondent herein filed counter in CrI.M.P.No.1427 of 2016 admitting the relationship between respondents 2 & 3 herein as wife and son, while contending that the second respondent is working as a Post Graduate Teacher,

Hindi and earning Rs.7,500/- per month at Telangana Social Welfare Residential School (Girls) Mannanur, Mahabubnagar District. It is also stated that the petitioner is working on Consolidated payment of salary as an Employee in A.P. State Urdu Academy (Autonomous Body) Hyderabad and now working on deputation as in-charge faculty in District Minorities Welfare Office at Kurnool and earning only Rs.15,000/- per month and take home salary is only Rs.13,200/- per month and he has to look after his mentally retorted younger brother and requested this Court to dismiss the petition.

The Court below upon considering the material available on record and upon hearing both the counsel, passed the order impugned in this revision dated 30.12.2016, granting interim maintenance of Rs.5,000/- and Rs.3,000/- respectively to the respondents 2 & 3 herein.

Aggrieved by the interim maintenance order passed by the Trial Court, the present criminal revision case is filed raising several contentions, mainly on the ground that the second respondent is working as a Post Graduate Teacher, Hindi and earning Rs.7,500/- per month at Telangana Social Welfare Residential School (Girls) Mannanur, Mahabubnagar District. Though her bank account statement is also produced before the Court below in support of income proof, the same was not considered by the Court below and granted maintenance.

The second ground is that the Court below has had no territorial jurisdiction to entertain the maintenance case, as the second respondent is working at far off place i.e. Nagar Kurnool, Mahabubnagr District and the petitioner is working at Kurnool. Therefore, the Additional Metropolitan Sessions Judge for Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad has no jurisdiction.

The third ground is that the petitioner never neglected the respondents 2 & 3 and granting interim maintenance of Rs.5,000/- and Rs.3,000/- respectively to the respondents 2 & 3 herein is excessive and prayed to set-aside the impugned order passed by the Trial Court.

Learned counsel for the petitioner Sri Md. Jameel Ahmed Ansari, by over vehemence contended that the Trial Court did not afford any opportunity to adduce evidence and passing of the impugned order, basing on the affidavit and counter is illegal and when the Court has no territorial jurisdiction, passing of such an order under Section 125(1) Cr.P.C granting interim maintenance is irregular. Though the learned counsel for the petitioner contended that the second respondent is working as Post Graduate Teacher, Hindi and earning Rs.7,500/- per month at Telangana Social Welfare Residential School (Girls) Mannanur, Mahabubnagar District and the petitioner is working as an employee on Consolidated pay in A.P. State Urdu Academy (Autonomous Body) Hyderabad and now working on deputation as in-charge faculty in District Minorities Welfare Office at Kurnool and earning only

Rs.15,000/- per month and take home salary is only Rs.13,200/- per month, thereby, the amount awarded by the Trial Court is excessive and the Trial Court without considering the main requirement to establish that the second respondent has no means to maintain herself. When the second respondent has got means to maintain herself, granting maintenance by way of interim measure is an illegality and prayed to set-aside the impugned order in this revision.

Notice on the respondents was served, but none appeared.

Though, the Family Courts Act permits the Family Courts to follow its own procedure for disposal of the matter, since Crl.M.P.no.1427 of 2016 is filed under Section 125(1) Cr.P.C, the Court is bound to follow the procedure under Cr.P.C. It appears from the record that the petitioner filed nine documents, but, none of them were marked as exhibits before the Trial Court atleast for the limited purpose of consideration in an interlocutory order filed for interim maintenance. There is absolutely no dispute with regard to relationship between the petitioner and respondents 2 & 3. So far as the third respondent is concerned, he is the son of the petitioner, born during the wedlock with the second respondent. The question of refusal to deal with the third respondent by the petitioner does not arise and the petitioner is bound to maintain his son till his completes minority. Therefore, granting maintenance in favour of son during his minority is in accordance with law.

The second respondent is admittedly the wife of the petitioner and she pleaded that she has no means to maintain herself and the petitioner refused and neglected to maintain her by providing necessary amenities to lead her normal life, while contending that the petitioner is working as a Consolidated pay Employee in A.P. State Urdu Academy (Autonomous Body) Hyderabad and now working on deputation as in-charge faculty in District Minorities Welfare Office at Kurnool and earning Rs.45,000/- per month. This contention was refuted by the learned counsel for the petitioner herein, while contending that the petitioner is drawing only Rs.15,000/- per month in-charge faculty in District Minorities Welfare Office at Kurnool. Therefore, it is for the second respondent to prove initially that the petitioner is working as an employee on Consolidated pay in A.P. State Urdu Academy (Autonomous Body) Hyderabad and now working on deputation as in-charge faculty in District Minorities Welfare Office at Kurnool and earning salary of an amount of Rs.45,000/-. The petitioner also admitted that he is working on consolidated pay in A.P. State Urdu Academy (Autonomous Body) Hyderabad and now working on deputation as in-charge faculty in District Minorities Welfare Office at Kurnool, while contending that he is earning only Rs.15,000/- per month and take home salary is only Rs.13,200/- per month. To substantiate this fact, the petitioner appears to have produced nine documents along with the counter. Curiously, none of the documents were marked by the Court below and the Trial Court without any basis, fixed the income of the individual and granted interim maintenance without considering any

material. Therefore, the procedure adopted by the Court below is irregular and in such case, this Court can exercise its power under Section 397 & 401 Cr.P.C to set right the irregularity committed by the Court below. In view of the irregularity committed by the Court below in disposing Crl.M.P.No.1427 of 2016 in M.C.No.212 of 2016, without marking any documents and without recording any finding *prima facie* with regard to the income of the petitioner, the order under challenge is irregular and is hereby set-aside and remanded to Court below. The Additional Metropolitan Sessions Judge for Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad, is directed to decide the application afresh, after following necessary procedure prescribe under Cr.P.C for marking of documents, within one month from the date of receipt of copy of this order.

With the above direction, criminal revision case is disposed of.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:01.09.2017

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