

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CRIMINAL REVISION CASE No.939 of 2016

ORDER:

This Criminal Revision, under Sections 397 and 401 Cr.P.C. is filed questioning the propriety, legality and regularity of the Order dt.10.01.2016 in M.C.No.201 of 2013 passed by XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge-cum-III Additional Judge, Family Court at Malkajgiri, whereby the Court awarded maintenance of Rs.3,000/- per month each to the respondent Nos. 1 and 2 herein from the date of filing the petition.

Petitioner herein is the husband, whereas respondent No.1 is legally wedded wife and respondent No.2 is the daughter of the petitioner herein. But, for different reasons, the petitioner discontinued to visit the house of the respondents, he subjected respondent No.1 to cruelty both physical and mental, completely refused and neglected to maintain the respondents. The petitioner is working as Supervisor in Bestro Packing Company and earning Rs.15,000/- per month and the respondents have no independent source of income for their maintenance. Therefore, they sought maintenance of Rs.8,000/- per month to respondent No.1 and Rs.5,000/- to Respondent No.2.

The petitioner herein remained *ex parte* before the trial Court.

The trial Court during enquiry recorded the evidence of the wife as P.w1 and concluded that the petitioner herein/husband refused and neglected to maintain the respondents herein while believing the income of the petitioner herein, and awarded maintenance of Rs.3,000/- per month each to the respondents.

The present Revision is filed by the petitioner/husband on the ground that the respondents herein did not examine any independent witness to prove that the petitioner refused and neglected to maintain the respondents and that no documents are produced to prove the income of the petitioner herein and therefore, in the absence of any proof with regard to income including refusal and neglect to maintain respondents, the Order passed by the trial Court is not legally sustainable and prayed to set aside the same.

During hearing, Sri N. Chandrasekhar Reddy, learned counsel for the petitioner/husband, reiterated the said contentions while drawing the attention of this Court to filing of Salary Certificate, which is marked as Ex.P.4, to substantiate his contentions. However, the trial Court did not consider the same in proper perspective and committed an error in ordering the petition.

Whereas, Sri Pavan Kumar Pujari, learned counsel for the respondent Nos. 1 and 2, contended that initially the petition was filed before the Judge, Family Court, Rangareddy in the year 2013 and later it was transferred to Malkajgiri Court. During pendency of the petition, the trial Court granted interim maintenance to the respondents, which attained finality. However, the petitioner did not comply the said direction. He is also contended that during pendency of this Petition, this Court also passed an interim Order dt. 01.07.2016 in CrI.R.C.No.1354 of 2016 directing the petitioner herein/husband to pay maintenance at Rs.1,500/- per month each to the respondent Nos. 1 and 2 towards interim maintenance on or before 10th of every succeeding month and on depositing the arrears of maintenance, calculating at the above rate, within a period of three months from the date of receipt of a copy of this Order. Despite the Order of this Court

Dt.01.07.2016, the petitioner did not comply the direction issued in CrI.R.C.M.P.No.1354 of 2016.

As seen from the material on record, respondent No.1 herself was examined as a witness. But, the contention of the learned counsel for the petitioner herein/husband is that the respondents did not examine any independent witness to prove that the petitioner refused and neglected the respondent Nos.1 and 2. Maintaining wife and children by the husband is between them and 3rd party is not expected to know the alleged refusal and neglect to maintain the respondents. The other contention of the learned counsel for the petitioner herein is that the parents of the respondents are the best witnesses to speak about refusal and neglect. If really they were living along the petitioner and respondents, they are material witness to speak about refusal and neglect, but it is not his case. In the absence of such plea, the examination of an independent witness cannot be insisted in the summary proceedings under Section 125 Cr.P.C. Therefore, it is not a ground to set aside the Order reversing the finding that the petitioner refusal and neglect to maintain the respondents.

The second contention raised before this Court is that the petitioner herein produced Ex.P.4—Salary Certificate and according to Salary Certificate, he was drawing Rs.7,500/-, but the trial Court ordered to pay maintenance at Rs.3000/- per month each to the respondents. If the petitioner is insisted to maintain the respondents by paying Rs.3,000/- each, the balance will be around Rs.1500/-, which is not sufficient to the petitioner to maintain himself and to meet his daily necessities including Food, Shelter and clothing, in view of the present price index and standard of living. Therefore, maintenance awarded by the trial Court is reduced to Rs.2,500/- to respondent No.1/wife and Rs.2,000/- to the respondent No.2.

With the above modification, this Criminal Revision Case is disposed of.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.09.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Dt. 15-09-2017

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