

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3298 of 2016

ORDER :

The revision petitioner is the husband of 2nd respondent herein. The relationship of husband and wife is not in dispute. The 2nd respondent herein filed M.C.No.274 of 2012 before the Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast case cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, claiming maintenance to her and her minor female child who born on 26.04.2008 out of their wedlock on 09.05.2007 stating that her husband is neglecting them without paying any maintenance. It is her claim that she and the minor child are entitled to maintenance at Rs.2,50,000/- per month, saying her husband is working in M/s.Zensar Technology at America and drawing salary of Rs.4,50,000/- per month. She also filed CrI.M.P.No.765 of 2014 for interim maintenance pending consideration of the maintenance case.

2. The contest of the revision petitioner/husband in the M.C., and interim maintenance application in nutshell is that he is having his own earnings as Software Engineer. That he got obligations, that he can take care of his child. As there is negligence and refusal by 2nd respondent/wife, she is not entitled for maintenance who is qualified and having capacity to earn.

3. During the course of interim maintenance enquiry on behalf of the wife interim maintenance was awarded therein at Rs.10,000/- per month to wife and daughter. It is impugning the

said order dated 28.05.2015, the husband and wife maintained two Revisions bearing CrI.R.C.Nos.1010 & 1097 of 2015 and another Bench of this Court, by common order dated 02.08.2015 disposed of both the Revisions. The matter is only at the interim maintenance stage, thereby without causing prejudice there from to decide the main matter on merits, the Family Court was directed to dispose of the main case within a period of three months from the date of receipt of the order and meanwhile continue to pay the interim maintenance, including arrears in three equal instalments.

4. As per the directions of this Court, when the Family Court, taken up enquiry in the M.C., the revision petitioner did not participate in cross-examination, though present in the Court on the respective dates for few adjournments or for his absence for any other adjournment and ultimately saying from his non-appearance and non-cross-examination of PW.1, evidence in chief filed way back on 02.11.2014, an exparte order of maintenance was granted as per interim maintenance order supra. It is at that stage, he filed CrI.M.P.No.666 of 2016 to set aside the exparte order of maintenance and to afford him opportunity for cross-examination of PW.1 and to lead evidence from his side. The same was ended in dismissal on 25.05.2016 by the Family Court, with the observation that from the wife's chief affidavit dated 02.12.2014 taken on oath on 17.06.2015 and posted for marking of documents. The Court appointed one Sri A.L.Raju as Amicus Curie and interim maintenance was awarded. Both parties filed Revisions and there was a direction for disposal. While so on 02.03.2016, the revision petitioner called absent for no representation and did not cross-examine PW.1 and there are no

merits in the application to set aside the exparte order against him. It is impugning the same, the present Revision is filed through Advocate originally and later continuing as party-in-person.

5. Heard both sides and perused the material on record.

6. But for the facts culled out from the record referred to supra, there is no full record from the Court not even chief-affidavit of 2nd respondent/wife available before the Court. Nothing was filed even during the course of hearing whether available to submit, asked by the Court. Undisputedly, there was interim maintenance awarded and the same was ordered to be continued by dismissal of the Revisions maintained by both sides and there was a direction for disposal of the main matter. It was on 02.03.2016 for absence and non-cross-examination of Pw.1 by the revision petitioner, the exparte order of maintenance passed.

7. Hence, this Court feels ~~just to~~ set aside the impugned order instead of dismissal. No doubt earlier this Court while disposing of the Revisions directed the Court below to dispose of the M.C. within three months, which is not reflected from the docket of the Court below showing that the revision petitioner/husband is avoiding cross-examination of Pw.1.

8. Having regard to the above, while continuing the interim maintenance order granted by the Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast case cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, confirmed in dismissal of the two Revisions filed by both parties as interim maintenance, pending disposal of the main M.C., the exparte order passed in

Crl.M.P.No.666 of 2016 is set aside and the M.C., is remanded back to the Family Court, with a direction to give one more opportunity to the revision petitioner by fixing a date after receipt of the order to appear and complete the cross-examination on the same date and by granting further time for further evidence of petitioner and respondent, if any, by proceeding day-to-day and decide the matter on merits. If the revision petitioner failed to avail the opportunity, the order of interim maintenance for all purposes affirmed in the impugned order by final disposal otherwise holds good for re-determination.

9. Accordingly, the Revision is allowed remanding the matter for fresh disposal.

Consequently, miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

31.01.2017.
Rds

Dr. B.SIVA SANKARA RAO J,