

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY****CRIMINAL REVISION CASE No.2313 of 2017****ORDER:**

This Criminal Revision, under Sections 397 and 401 Cr.P.C. is filed questioning the propriety and legality of the Order dt. 15.05.2017 in F.C.M.C.No.4 of 2015 passed by the Judge, Family Court-Cum-Additional District and Sessions Judge at Karimnagar, awarding maintenance of Rs.8000/- to the petitioner from the date of the Order.

The parties herein after will be referred as petitioner and respondent as arrayed in FC MC No.04 of 2015 on the file of the Judge, Family Court, Karimnagar.

The mother of the petitioner, being his natural guardian and next friend, filed FCMC No.4 of 2015 under Section 125 Cr.P.C. before the Judge, Family Court-Cum-Additional District and Sessions Judge at Karimnagar, for grant of maintenance at Rs.20,000/- per month, alleging that she is legally wedded wife of the respondent and during their wedlock, they gave birth to the petitioner, who is mentally retarded, and thereafter, the respondent subjected her to cruelty, refused and neglected to maintain both of them, as they have no independent source of income to maintain themselves sought order of maintenance. She also contended that the petitioner is working as Lecturer in Private College and earning more than Rs.30,000/- besides owning a house.

The respondent/husband filed Counter denying the material allegations mentioned in the petition while admitting the relationship between him and the respondent No.2, but denied his income alleging that he is working as LIC Agent and and not getting Rs.30,000/- as

lecturer working in Private College, as contended by his wife, and that the respondent never refused and neglected the petitioner and prayed for dismissal of the petition.

During enquiry, on behalf of the petitioner, the mother of the petitioner was examined as PW.1 and Exs. P.1 and 2 were marked. On behalf of the respondent, Rw.1 was examined and no documents were marked.

The trial Court, based on oral evidence, concluded that the respondent was working as lecturer in Private College and earning Rs.30,000/- and granted Rs.8,000/- per month to the petitioner as maintenance by an Order dt. 15.05.2017.

Assailing the said Order, the present Revision is filed on various grounds, mainly disputing the income of the respondent, as the trial Court recorded a finding that the respondent is earning Rs.30,000/- per month without any evidence and therefore, grant of maintenance at Rs.8000/- per month is excessive and prayed to set aside the Order.

During hearing, Sri Chandraiah Sunkara, learned counsel for the petitioner, drawn the attention of this Court to CrI.R.C.M.P.No.4025 of 2017, which is filed to receive the additional documents annexed to the petition i.e., the Salary Certificate dt. 27.06.2015 issued by the Head Master, ZPHS Vachunur, Timmapur Mandal, Service Certificate dt. 01.07.2017 and Form 16-A issued by the LIC, to contend that he is earning meagre income as LIC Agent and grant of maintenance of Rs.8,000/- per month is excessive.

The documents filed along with the above petition can be marked only by examining the witness. Though the Proceedings under Section 125 of Cr.P.C. is summary in nature, still, the Court is bound

to follow the procedure contemplated under the Code of Criminal Procedure for marking the documents. Therefore, unless the documents are brought on record, this Court cannot look into those documents for deciding the real controversy between the parties.

As seen from the Order under challenge, the trial Court believing the evidence of Pw.1 concluded that the respondent is getting Rs.30,000/- as lecturer in private collage. However, the conclusion arrived by the trial Court is without any proof and it is illegal and erroneous. Therefore, I find that it is appropriate to remit the matter to the Judge, Family Court, to arrive at a just and reasonable conclusion as to the income of the respondent after affording an opportunity to both parties to adduce additional evidence.

Accordingly, this Criminal Revision Case is allowed, the impugned Order is set aside and the matter is remitted to the trial Court to adduce additional evidence as to the income of the respondent/husband after affording an opportunity to both parties and dispose of the matter within a period of two months from the date of receipt of a copy of this Order. If the trial Court comes to the conclusion that the petitioner is entitled to the maintenance, that shall be awarded from the date of earlier Order i.e., on 15.05.2017, so as to protect the interest of both parties.

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

CrI.R.C. No.2313 of 2017

Dt. 15-09-2017

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