

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.143 of 2017

ORDER:

The revision is maintained against the order dated 26.12.2016 passed in CrI.M.P.No.2399 of 2015 in M.C.No.45 of 2002 by the Special Mobile Judicial Magistrate of First Class, Kakinada, enhancing the monthly maintenance to Rs.5,000/- per month from Rs.1,500/- to the respondent herein from the date of the above order.

The grounds in revision vis-à-vis oral submissions of the petitioner herein who is party-in-person are that the order of the trial Court is erroneous and contrary to law and failed to see that the revision petitioner is dismissed from service on 12.10.2016 by his employer on the ground that the petitioner undergone judicial custody for a period of 9 days in Section 498-A IPC case filed against him by the MC petitioner and he is with no means, apart from the fact that the MC petitioner is earning by working as a teacher with sufficient means and thereby she is not entitled to maintenance and the order passed by the trial Court is without application of mind and seeks to set aside the impugned order by allowing the revision.

The revision respondent No.1-M.C. petitioner (wife of the revision petitioner), despite notice served failed to attend hence taken as heard and perused the material on record.

Before the learned Magistrate but for the oral evidence of PW.1 and RW.1, there is no documentary evidence adduced either to show that he was dismissed from service or she is working as

Government teacher and earning sufficient salary. No doubt the marriage dated 19.06.1991 between the couple was dissolved as per the order dated 14.07.2011 in O.P.No.5 of 2011 on the application of wife against the husband passed by the learned III Additional Senior Civil Judge, Kakinada. The impugned order of the lower Court was dated 26.12.2016. The additional document filed by him dated 13.10.2016 is the proceedings of the E.O., TTD, Tirupati in Roc.No.DA4/8364/2014 which shows he was dismissed from service. His contention of she married another person after getting divorce from him and living with 2nd husband, there is no proof filed by him. The dismissal order of him referred supra if taken as additional evidence that what the lower Court observed in Para 13 there is nothing to enhance the maintenance but for not filed. Even in the revision it is not filed with any application under Section 391 Cr.P.C. to receive as additional evidence. However the document is enclosed to grounds of revision. He is a party in person and the respondent wife even served failed to attend as referred supra. This Court is required to receive to sub serve the ends of justice said order of his dismissal from service, within its power under Section 165 of the Evidence Act and under Section 391 Cr.P.C. by referring as Ex.C1. Once the same is taken into consideration from he has no job and no avocation but for otherwise a Vocal Artist, there is no justification to enhance the maintenance to Rs.5,000/-, but for to Rs.2,000/- from Rs.1,500/- per month.

Having regard to the above, the revision is allowed in part by reducing the maintenance amount from Rs.5,000/- to Rs.2,000/- per month. It is made clear that if at all he is able to

show that she married another person and living with him from the divorce between them made final, it is left open to him to file application under Section 127 Cr.P.C.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

APPENDIX OF EVIDENCE

Ex.C1 - Dismissal order of the petitioner/husband from the service issued by the Executive Officer, TTD, Tirupati dated 13.10.2016.

Date: 23.03.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

