

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.740 OF 2009

ORDER:

This Criminal Revision Case is filed, under Sections 397 and 401 Cr.P.C., challenging the order dated 16-03-2009 in CrI.M.P.No.117 of 2009 in M.C.No.5 of 2008 on the file of the Court of IV Additional Judicial Magistrate of First Class, Warangal.

2. Though the matter was listed on 10-08-2017, there was no representation on behalf of the petitioner; therefore, the Registry was directed to list the case today under the caption 'for dismissal'. Even today also, there is no representation on behalf of the petitioners; therefore, this Court is inclined to dispose of this revision on merits.

3. As seen from the record, the contention of the petitioner (husband) is that the amount of maintenance granted in favour of the respondents 1 and 2 (wife and daughter) is on higher side. It is his further contention that the trial Court has not considered the scope of Section 127 (2) Cr.P.C., and dismissed the petition on erroneous grounds.

4. None appeared on behalf of the respondents 1 and 2.

5. The points that arise for consideration in this revision are:

1) Whether the trial Court is justified in dismissing CrI.M.P.No.117 of 2009 in M.C.No.5 of 2008 filed by the petitioner under Section 127 (2) Cr.P.C.?

2) Whether there is any illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C.?

6. Since both the points are inter-linked with each other, this Court is inclined to answer both the points simultaneously in order to avoid re-capitulation of facts.

7. A perusal of the record reveals that the respondents herein (wife and daughter) filed M.C.No.5 of 2008 under Section 125 Cr.P.C., against the petitioner seeking maintenance. During the pendency of M.C., the respondents herein filed Crl.M.P.No.1804 of 2008 in M.C.No.5 of 2008 seeking interim maintenance. The trial Court granted interim maintenance at the rate of Rs.500/- per month to the 1st respondent and Rs.250/- per month to the 2nd respondent by order, dated 10-12-2008. Challenging the said order, the petitioner herein (husband) filed Crl.M.P.No.117 of 2009 in M.C.No.5 of 2008 under Section 127 (2) Cr.P.C., to set aside the order, dated 10-12-2008 and the same was dismissed by order, dated 16-03-2009. Hence, this revision.

8. In order to appreciate the contention of the petitioner, it is apposite to refer to sub-section (2) of Section 127 Cr.P.C., which reads as follows:

“Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.”

A perusal of the above provision makes it clear that the Court can vary or alter the maintenance granted under Section 125 of Cr.P.C., basing on the judgment of the competent civil Court. In the instant case, nothing is produced to establish that the civil Court passed any judgment in favour of the petitioner, which eventually enables him to file petition under Section 127(2) Cr.P.C. This Court is fully agreeing with the findings of the trial

Court that the petition is not maintainable under Section 127 (2) Cr.P.C.

9. It is not in dispute that the 1st respondent is the wife and the 2nd respondent is the daughter of the petitioner. The trial Court granted interim maintenance at the rate of Rs.500/- per month to the 1st respondent and Rs.250/- per month to the 2nd respondent. Viewed from any angle, I am of the considered view that the amount of maintenance granted by the trial Court is not on higher side. The amount awarded by the trial Court is hardly sufficient for maintenance of respondents 1 and 2. There is no information whether M.C.No.5 of 2008 is still pending or not. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C. Hence, the revision lacks merits and bona fides and is liable to be dismissed.

10. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 17-08-2017.

Hsd