

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.2110 of 2016
and
Criminal Petition No.13451 of 2016

COMMON ORDER:

Both the criminal revision and criminal petition arise out of order dated 30.05.2016 in CrI.M.P.No.38 of 2014 in M.C.No.219 of 2008 passed by the Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad. Accordingly both the cases are heard together and being disposed of by this common order.

2. The Maintenance Case was filed by the wife and minor boy aged about 14 years against the respondent/ husband therein claiming maintenance. On 15.07.2009, the learned Family Court Judge allowed the M.C.219 of 2008 by granting monthly maintenance of Rs.3,000/- p.m. to the wife and Rs.8,000/- p.m. to the minor child from 01.01.2009 apart from legal expenses of Rs.1,500/-. Impugning said order, respondent/ husband filed CrI.R.C.No.1431 of 2009 before the Another Bench of this Court and the same was dismissed confirming the order of the lower Court however with observation in saying the minor son is entitled to maintenance till attaining majority only. The petitioner/ wife filed CrI.M.P.No.38 of 2014 under Section 127 (1) Cr.P.C. for enhancement of maintenance from Rs.3,000/- to Rs.30,000/- per month to her. On 30.05.2016, the learned Sessions Judge allowed the petition by enhancing the maintenance from Rs.3,000/- to Rs.15,000/- p.m. from the date of the order. Aggrieved by the same, the petitioner/ wife maintained CrI.R.C.No.2110 of 2016 and the respondent/ husband maintained CrI.P.No.13451 of 2016 to quash the order dated 30.05.2016 enhancing the maintenance.

3. The grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/ wife in CrI.R.C.No.2110/ 2016 are that the order of the lower Court awarding maintenance of Rs.15,000/- is utterly low from the fact that the respondent/ husband is earning a salary of Rs.80,000/- p.m. besides income from rents and coconut garden and with no other burdens, the lower Court ordered to pay the maintenance from the date of order instead of from the date of petition and sought for allowing the revision by enhancing the maintenance at Rs.30,000/- as prayed for from date of petition.

4. The grounds in the CrI.P.No.13451/ 2016 filed by the husband impugning the above order vis-a vis the oral submissions of the learned counsel for the revision respondent are that the enhancement of maintenance from Rs.3,000/- to Rs.15,000/- per month is excessive and it has to be reduced for his gross salary is Rs.41,800/- and after deductions net salary is Rs.36,953/- and he has to take care of his parents and sought for allowing of criminal petition by setting aside the maintenance enhancement order.

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

6. The relationship between the parties is not in dispute. The fact that the wife is entitled to maintenance by awarding the same originally in M.C.No.219 of 2008 at Rs.3,000/- p.m. that was confirmed in revision of the husband by its dismissal in CrI.R.C.No.1431 of 2009, dated 14.06.2013 by this Court another Bench by clarifying of the entitlement by minor son is till his attaining of majority is not in dispute. Coming to the enhancement on the application of wife in CrI.M.P.No.38 of 2014 by order dated 30.05.2016 from Rs.3,000/- p.m. to the wife at Rs.15,000/- p.m. 'from the date of order' out of her claim of

Rs.30,000/- p.m. from the date of petition, only 8 ordering 'from date of the order' impugned by the wife as utterly low and should have been granted from date of petition and by the husband as exorbitant and should not have been enhanced and on rival claims as to what is the just maintenance to award concerned, that is the only issue in the two matters arising for common disposal. The evidence on record of she as P.W.1 with reference to Exs.P.1 to P.6, earlier order confirmed in revision, the rental receipts, electricity consumption bills, gas receipts and election card shows of she is wife of the M.C. respondent by name Gopala Krishna Verma with no any evidence by the husband coming into the witness box but for cross-examined her if any, he did not produce his salary certificate to know what his gross salary and net salary despite the wife is claiming his salary is about Rs.80,000/- p.m. His petition cause title it is shown as Manager(Commercial) M/s. Solvay Pharma India Limited, East Mumbai and even in his application, it is shown the same address and same avocation but for showing presently working as Deputy Manager, in M/s. ADDOTT India Limited. Under Section 106 of the Indian Evidence Act, it is for him to produce his salary certificate and perks of each month with all allowances to know what his gross and what his net salary is and the expenditure he has to incur out of it. His claim is that he is getting gross salary of Rs.41,800/- after deductions, the net salary is of Rs.36,953/- which is not supported by any proof. What his claim is he has to look after his aged parents residing in East Godavari District at Rajole, in their joint family house. She claimed that they got more than 6 acres of coconut garden at Rajole which he denied. There is no evidence on record in this regard about his properties and income. She did not even file any proof. His contention in the counter of she is

having double bed room flats at Amberpet and one house plot at Jayabheri Enclave, Medchal road, and getting income therefrom.

7. From the above evidence the lower Court after scanning, came to conclusion for nothing to show wife got any avocation and earnings. Even taken from his gross salary of nearly Rs.42,000/- in November 2015, with increase by now from the change in the economic index on costs of living, Rs.15,000/- requires to be modified to Rs.12,000/- however, instead 'from date of order' it is also to be modified as 'from the date of petition' as even under amended Section 125CrPC there is a provision for interim maintenance pending application for maintenance or enhancement of maintenance to the original sum and once such is the case no more reasons are required to award from the date of petition for there is no justification in awarding, only from the date of order that too when there is no maintenance paying to the son pursuant to the revision order of the Court against the order in M.C.No.219 of 2008 referred supra.

8. Having regard to the above and in the result, both the Criminal Revision Case and Criminal Petition are allowed in part by modifying the order of the lower Court in CrI.M.P.No.38 of 2014 dated 30.05.2016 with regard to maintenance from Rs.15,000/-p.m. to Rs.12,000/-p.m. and 'from the date of order' to 'from the date of petition'

Consequently, miscellaneous petitions, if any pending in both the cases shall stand closed.

Date:18.04.2017.

Dr. B.SIVA SANKARA RAO J,