

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.1527 OF 2017

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the order dt.24.04.2017 in Crl.M.P.No.254 of 2016 in M.C.No.38 of 2016 passed by the Judge, Family Court-cum-IV Additional District Judge, Kadapa whereby the court directed the petitioner to pay maintenance of Rs.8,000/- to the first respondent and Rs.2,000/- to the second respondent (total Rs.10,000/-) on or before 10th of every succeeding month till disposal of the maintenance case, as interim maintenance.

2. The first respondent herein filed M.C.No.38 of 2016 and during the pendency of the petition, the respondents 1 and 2 filed application for grant of interim maintenance alleging that respondents 1 and 2 had no independent source of income to lead their life, whereas the petitioner is working as Supervisor drawing monthly salary of Rs.60,000/- per month. The petitioner having sufficient means, neglected and refused to maintain respondents 1 and 2 and now they are living with the parents of the first respondent.

3. The petitioner filed counter denying material allegations, contending inter alia that he is drawing Rs.20,000/- per month and he has been suffering from hypertension, diabetes and spending Rs.5,000/- towards medicines and Rs.7,500/- towards rent besides other expenses. It is also contended that the first respondent agreed to receive Rs.4,00,000/- towards full and final settlement for obtaining divorce, at the intervention of elders and deposited Rs.3,00,000/- in the name of second respondent and the first respondent herself left the matrimonial home and went to her parents' house and the balance amount is agreed to be paid at the time

of obtaining divorce and therefore, the respondents 1 and 2 are disentitled to claim interim maintenance and prayed for dismissal of the petition.

4. Upon hearing argument of both the counsel, the trial court allowed the petition directing the petitioner to pay interim maintenance as mentioned supra.

5. Aggrieved by the impugned order, the present revision is filed on the ground that there is family settlement between the petitioner and first respondent and as full and final settlement, the petitioner deposited Rs.3.50,000/- and the same was withdrawn by the first respondent by using ATM card and the balance was agreed to be paid at the time of obtaining divorce by mutual consent. But, the trial court did not consider this contention in proper perspective, so also the income of the petitioner, awarded interim maintenance erroneously.

6. Learned counsel for the petitioner reiterated the contentions urged before the trial court and produced salary slip for the month of March, 2017 along with memo to substantiate his contention, that the petitioner was drawing meagre amount as salary and requested this court to pass appropriate orders setting aside the order dt.24.04.2017 passed by the trial court in CrI.M.P.No.254 of 2016 in M.C.No.38 of 2016.

7. There is no dispute regarding relationship between the petitioner and the respondents 1 and 2. The second respondent is the daughter born during wedlock to the first respondent and petitioner, and she is aged 7 years by the date of filing the petition. The petitioner being father is legally bound to maintain the child. He disowned his responsibility to maintain the child. Therefore, the petitioner is bound to pay maintenance to the second respondent till attaining majority.

8. The first respondent is the wife of the petitioner and mother of second respondent and there is no dispute regarding the relationship between the parties and that apart, the petitioner contended that there was full and final settlement for Rs.6 lakhs, according to the arguments advanced by the learned counsel for the petitioner. Whereas, he pleaded that there was settlement for Rs.4 lakhs and deposited Rs.3 lakhs in the name of the second respondent. But, curiously this version was changed in the grounds of revision for the first time vide ground No.4. Wherebys, it is contended that the petitioner already deposited Rs.3,50,000/- in the family settlement and the first respondent has already withdrawn the entire amount by using ATM card. This ground is totally inconsistent and contrary to the plea raised in the counter. Therefore, either deposit of Rs.3 lakhs in the name of second respondent herein or withdrawing Rs.3,50,000/- by the first respondent by using ATM card are not believable in view of inconsistency in the counter and also in the ground urged in the revision vide ground No.4. Therefore, the contention that there was full and final settlement and payment of any amount is hereby rejected.

9. The other ground urged before this court is that the petitioner was drawing only Rs.22,629/- towards monthly salary and produced the salary slip for the month of March, 2017 issued by the Power Engineering Company, No.77, R.V.Road, Basavangudi, Bangalore. As seen from the salary slip, the petitioner was drawing total salary of Rs.33,669/-, but he obtained loan of Rs.1,60,000/- and the company deducting loan dues in instalments. Therefore, the loan availed by the petitioner which was deducted was subsequent to filing of the present petition since the salary slip produced by the petitioner pertains to the month of March, 2017. The deduction was only Rs.10,000/- i.e. loan advanced by the company.

Therefore, such deduction cannot be taken into consideration while assessing the maintenance payable to the respondents 1 and 2. Therefore, the total salary of the petitioner was Rs.33,669/- per month and awarding of interim maintenance @ Rs.8,000/- and Rs.2,000/- to the respondents 1 and 2 respectively is just and reasonable taking into consideration, the present cost of living and price index and that apart, the petitioner and respondents 1 and 2 being wife and daughter are expected to lead the same standard of life which they lead while they were staying with the petitioner who was supervisor in reputed company at Bangalore. Therefore, the interim maintenance awarded by the trial Court cannot be reduced to any extent.

10. It is the contention of the petitioner that there was full and final settlement and decided to live separately after obtaining divorce decree and this fact is not supported by any material and raising such plea and to substantiate the same is sufficient to conclude that the petitioner refused and neglected to maintain the respondents 1 and 2 though he is legally bound to maintain them being wife and daughter. Therefore, the conclusion arrived at by the court below that the petitioner refused and neglected to maintain the respondents 1 and 2 cannot be interfered with.

11. The jurisdiction of this court under Section 397 and 401 Cr.P.C. is limited and this Court cannot interfere with the findings of fact recorded by the Court below unless it finds that there is manifest perversity or apparent error in the order passed by the court below. Here, I find no manifest perversity or apparent error to exercise jurisdiction under Section 397 and 401 Cr.P.C. to interfere with the findings recorded by the trial court with regard to interim maintenance awarded by the trial court. Therefore, I find no ground to interfere with the order passed by the

Judge, Family Court and consequently, the revision is liable to be dismissed at the stage of admission.

12. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:23-08-2017

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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