

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1447 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the unsuccessful respondent assailing the orders, dated 17.06.2016, of the learned II Additional Judicial First Class Magistrate, Tanuku, West Godavari District, passed in M.C.No.81 of 2015.

2. I have heard the submissions of *Sri V.Venkat Kumar*, learned counsel for the petitioner, and of *Sri Ch.Chandra Rao*, learned counsel for the 2nd respondent. I have also heard the submissions of the learned Public Prosecutor representing the State of AP. I have perused the material record.

3. By the order impugned in this revision case, the learned Magistrate granted maintenance @ Rs.20,000/- per month to the 2nd respondent/ minor daughter being represented by her mother and natural guardian, and directed that the said maintenance is payable by the petitioner/ father from the date of the filing of the maintenance case.

4. The case of the petitioner, who is aggrieved of the said orders, is as follows: "The impugned order is an *ex parte* order. The same was passed without considering the means and capacity of the petitioner and also that of the wife of the petitioner, who is employed, and is drawing a huge amount as salary. The learned Magistrate failed to consider the fact that matrimonial proceedings are pending in the Family Court at Hyderabad. The learned Magistrate ought to have seen that the petitioner's wife left his company in August 2011, without any reasonable cause. The wife of the petitioner is a Government employee and is working with Eastern Power Distribution Company of AP Limited (APEPDCL). She opted for her transfer to her native place, Tanuku. Thereafter, she did not allow the petitioner to lead marital life or to see the child. During August 2015, the petitioner made hectic efforts through

the caste elders for settling the matter. At a meeting held in the presence of caste and community elders at Tanuku, the wife of the petitioner and her parents vehemently opposed for the petitioner visiting the place of his wife and looking after the child. Therefore, the petitioner filed proceedings for custody of the child. The petitioner was deputed by his Company to take up a job at a place in the State of Uttarakhand. Hence, the petitioner left for Uttarakhand on his vocation in the month of September, 2015. Hence, he is not aware of the maintenance case proceedings. The petitioner was set *ex parte* for his non-appearance in the maintenance case. He is a law abiding citizen. Having come to know about the maintenance case proceedings, after receiving the garnishee orders, he has taken necessary steps by approaching the Court. A non-bailable warrant was also issued against the petitioner. When a copy application was made for the same, it was returned saying that copy application for grant of copy of NBW is not maintainable. The delay in filing the case is explained. This Court is pleased to condone the delay. Since the impugned order is an *ex parte* order, the petitioner could not produce any evidence before the Court of the learned Magistrate with regard to his income and financial resources and also that of his wife. The impugned order being an *ex parte* order may be set aside and an opportunity may be given to the petitioner to have the cause decided on merits. The maintenance awarded @ Rs.20,000/- per month is high and excessive. The petitioner is not in a position to pay the huge arrears of maintenance and also the monthly maintenance @ Rs.20,000/-. Unless the *ex parte* order is set aside and an opportunity is given to contest the maintenance case on merits, the petitioner suffers serious and irreparable loss.”

5. Learned counsel for the 2nd respondent while reiterating her case in the counter would submit as follows: “The petitioner intentionally remained *ex parte* in the maintenance proceedings. He filed the revision case with a delay of 151 days without giving any reasons much less valid reasons for the

said delay. The allegations in the revision case are invented. The said allegations are false and baseless. The contention that he went to Uttarakhand in the month of September, 2015 is baseless. No documentary proof is produced in support of the said contention. Even though the order is an *ex parte* order, it is an order granted on merits. The learned Magistrate's order awarding maintenance @Rs.20,000/- per month is a well reasoned order. The petitioner is drawing a gross salary of Rs.54,634/-. He has no dependants or other obligations. As such, the maintenance granted by the Court below to the 2nd respondent is a just and fair amount in view of the facts and circumstances of the case, the family background, the social status of the families of the parties and the present day cost index. The petitioner never cared for the 2nd respondent/ daughter and his wife. Only after the maintenance is awarded by the Court below, he approached this Court with a *mala fide* intention to avoid payment of maintenance and harass the 2nd respondent and the child. Being father he is bound under facts and in law to maintain the daughter."

6. At the hearing, learned counsel for the 2nd respondent would further submit that the petitioner is liable to pay a huge sum towards arrears of maintenance and that the petitioner is not paying any monthly maintenance to the 2nd respondent and, therefore, there are no *bona fides* in the request of the petitioner.

7. In reply, the learned counsel for the petitioner would submit that the net salary of the petitioner is Rs.48,613/- and to establish the said fact, his pay slip for the month of November, 2016, is submitted to the Court and that the petitioner has other obligations and that he has to discharge his debts and that he is prepared to pay a reasonable amount out of the arrears of maintenance and abide by any conditions that may be imposed by the Court while setting

aside the *ex parte* order and granting an opportunity to contest the maintenance case on merits.

8. I have given detailed and thoughtful consideration to the facts and submissions.

9. The relationship between the parties is not in dispute. The order impugned is an *ex parte* order. By the order impugned, the learned Magistrate awarded maintenance @ Rs.20,000/- per month to the 2nd respondent, who is the daughter of the petitioner aged about 10 years. The wife of the petitioner is having the custody of the said child is not in dispute. Maintenance is awarded from the date of the petition filed in the year 2015 is also not in dispute. Now, the petitioner requests for an opportunity to have the maintenance case decided on merits and, therefore, seeks to set aside the *ex parte* order of maintenance. Having regard to the facts and circumstances, this Court is of the considered view that the *ex parte* order can be set aside, subject to certain conditions and the learned Magistrate can be directed to dispose of the maintenance case on its merit in accordance with the procedure established by law on the petitioner complying with the conditions now being imposed while setting aside the *ex parte* orders.

10. In the result, the Criminal Revision Case is allowed and the order, dated 17.06.2016, of the learned II Additional Judicial First Class Magistrate, Tanuku, is set aside, subject to the following conditions and observations:

- i) The petitioner shall deposit within two weeks from the date of receipt of a copy of this order a sum of Rs.50,000/- from out of the arrears of maintenance to the credit of M.C.No.81 of 2015 on the file of the II Additional Judicial First Class Magistrate, Tanuku;

- ii) Similarly, he shall deposit another sum of Rs.50,000/- from out of the arrears of maintenance within three weeks thereafter;
- iii) He shall further deposit similarly another sum of Rs.50,000/- out of the arrears of maintenance within three weeks thereafter;
- iv) On due compliance of all the above three conditions, the maintenance case shall stand restored for disposal on merits.
- v) On the restoration of the maintenance case, on due compliance of all the above conditions, the learned Magistrate shall dispose of the said case on merits and in strict accordance with the procedure established by law, however, as expeditiously as possible and preferably within three months from such restoration. Nevertheless, the petitioner shall deposit to the credit of the maintenance case @ Rs.10,000/- per month, from the month of restoration, towards the maintenance of the daughter during the pendency of the maintenance case.
- vi) As a sequel to this order, the NBW issued against the petitioner shall remain in abeyance. The 2nd respondent is at liberty to withdraw any amounts deposited by the petitioner by following the procedure established by law.
- vii) It is made clear that on failure to comply with any one or more of the above said conditions, the revision case shall stand dismissed and the *ex parte* order passed in the maintenance case shall stand revived and the order keeping the NBW in abeyance shall stand revoked and the learned Magistrate shall be at liberty to proceed in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

19th June, 2017

Note:- Issue CC by 20.06.2017
(B/o) RAR