

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.R.C.No.2434 of 2017

ORDER

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., aggrieved by the order passed by the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge-cum-III Additional Family Court, Ranga Reddy District at Malkajgiri, in M.C.No.121 of 2010 dated 06.01.2017, granting maintenance at the rate of Rs.5,000/- per month each to the petitioners therein, namely, Smt K. Pushpalatha and K. Vamshi Krishna Rao, against the respondent, namely, K. Venkata Raghavender Rao, who is the husband and father of petitioners 1 and 2 respectively.

2. The respondents herein i.e., petitioners before the Court below, have filed petition under Section 125 Cr.P.C., for grant of maintenance at the rate of Rs.20,000/- per month while contending that the marriage between the first respondent and the petitioner herein was performed on 09.03.2008 and they blessed with a child i.e., second respondent herein. It is stated that the petitioner subjected the first respondent to harassment both physically and mentally for her failure to meet the illegal demand for payment of dowry and finally, on 07.12.2009, he necked out the respondents from the house; that the respondents have no independent source of income to maintain themselves, whereas the petitioner having sufficient means to maintain the respondents refused and neglected to maintain them, they claimed maintenance as stated above.

3. The petitioner herein filed counter before the Court below contending that the first respondent is working in Sri Shiridi Sai Pest Management and Pest Machines Office, situated at Nallakunta and earning a sum of Rs.3,500/- per month and that she filed DVC No.19 of 2010 on the file of X Metropolitan Magistrate, against him, and in the said DVC, the Court granted interim maintenance at the rate of Rs.5,000/- per month and also ordered for payment of Rs.68,000/- towards reimbursement of medical expenses of second respondent, and in the appeal preferred by petitioner, interim stay was granted subject to payment of Rs.2,000/- per month to the first respondent. Suppressing the said facts, the respondents herein filed maintenance case and therefore, they are not entitled to claim any maintenance.

4. During enquiry, P.W.1 was examined and Exs.P1 to P8 were marked on behalf of the petitioners and RW1 was examined and Ex.R1 was marked on behalf of the respondent, before the Court below.

5. Upon hearing argument of both the counsel, the Court below directed the petitioner to pay maintenance at the rate of Rs.5,000/- per month each to the respondents from the date of filing of the petition, while directing that the maintenance amount paid by petitioner in DVC shall be deducted from the maintenance amount granted in M.C.

6. Aggrieved by the order passed by the Court below, the present revision is filed by petitioner mainly on the ground that

granting of maintenance by both the Courts in D.V.C.No.19 of 2010 and M.C.No.121 of 2010 is erroneous and that when maintenance was granted in DVC, the respondents are not entitled to claim maintenance under Section 125 of Cr.P.C., and prayed for dismissal of the maintenance case by allowing this revision.

7. During hearing, learned counsel for petitioner mainly contended that since the interim maintenance was granted in DVC at the rate of Rs.5,000/- per month to the 1st respondent, the respondents are disentitled to claim maintenance under Section 125 Cr.P.C., apart from that C.C.No.565 of 2014 on the file of XX Metropolitan Magistrate, Malkajgiri, registered for the offence punishable under Section 498-A IPC, was ended in acquittal, an appeal in FCA No.92 of 2015 is pending before this Court and O.P.No.642 of 2010 on the file of Additional Family Court, Hyderabad, filed for divorce is also pending and in such case, granting maintenance twice in favour of respondents 1 and 2 against the petitioner will cause much prejudice to him and therefore, he prayed to set aside the order passed by the Judge, Family Court in M.C.No.121 of 2010 dated 06.01.2017.

8. The scope of revision under Sections 397 and 401 of Cr.P.C., is limited and normally, this Court would not exercise such power to interfere with the findings recorded by the Court below unless the Court finds manifest perversity or apparent error in the order passed by the Court below. Here, in this case, the petitioner's contention is that respondents having obtained an order for payment of interim

maintenance at Rs.5,000/- per month in DVC are disentitled to claim maintenance in M.C.No.121 of 2010. The order copy in Crl.M.P.No.6998 of 2010 in D.V.C.No.19 of 2010 dated 01.12.2010 is placed on record for consideration. As per the said order, only interim maintenance was granted by exercising power under Section 23 of Protection of Women from Domestic Violence Act during pendency of DVC. However, Section 20(1)(d) of the said Act, permits the Magistrate to award maintenance in addition to the maintenance awarded under Section 125 Cr.P.C. or any other law for the time being in force. Therefore, grant of maintenance in Crl.M.P.No.6998 of 2010 in DVC No.19 of 2010 is not a bar to obtain an order of maintenance under Section 125 Cr.P.C., which is summary in nature. However, the Court below made it clear in paragraph No.10 of the order that the maintenance amount paid by petitioner in DVC shall be deducted from the maintenance amount granted in M.C. under Section 125 Cr.P.C. Therefore, grant of maintenance by the Court below is not in addition to the interim maintenance granted by the Magistrate in DVC. Hence, on this ground, the order of granting maintenance by the Court below, cannot be reversed.

9. The other ground raised before this Court is that C.C.No.565 of 2014 on the file of XX Metropolitan Magistrate, Malkajgiri, for the offence punishable under Section 498-A IPC, was ended in acquittal and attained finality, but the same cannot be accepted, for the reason that when the first respondent was subjected to cruelty, she lodged a complaint with the police and after completion of

investigation, police filed charge sheet before the Magistrate, but acquittal of the accused i.e., petitioner herein, is not a ground to decline maintenance when the petitioner refused and neglected to maintain the respondents and it is impossible for the first respondent to live with her husband on account of such bitter enmity as he subjected her to cruelty. Therefore, there is any amount of justification for her separate living on account of alleged harassment which she meted in the hands of petitioner. Hence, on this ground, the maintenance under Section 125 Cr.P.C., cannot be denied.

10. The other ground raised before this Court is that F.C.A.No.92 of 2015 is pending before this Court, but it is not known whether the petition filed by petitioner or respondents was dismissed either for divorce or for grant of decree of restitution of conjugal rights. In the absence of any material, it is difficult to accept this contention and reverse the findings recorded by the Court below. Therefore, taking into consideration the facts and circumstances of the case, I find no grounds to set aside the order passed by the trial Court, since, the petitioner being father of the second respondent, who is under legal obligation to maintain his son, refused and neglected to maintain and did not provide anything for maintenance to the second respondent, denial of maintenance to the second respondent on any ground is impermissible.

11. Coming to the maintenance granted to the first respondent being wife, as discussed in the earlier paragraphs, the petitioner refused and neglected to provide maintenance to the first

respondent without any just or reasonable grounds and not claiming any exemption under Section 125(4) of Cr.P.C. In such case, granting maintenance in favour of the first and second respondents cannot be faulted for any of the reasons. Therefore, the findings recorded by the Court below are hereby confirmed holding that the petitioner is liable to pay maintenance at the rate of Rs.5,000/- per month each to the respondents from the date of petition.

12. Accordingly, the Criminal Revision case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

11th September, 2017

sj

