

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.2265 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order, dated 06.07.2007 in Crl.M.P.No.243 of 2017 in M.C.No.183 of 2009 passed by the Judge, Family Court, at L.B.Nagar, Ranga Reddy District enhancing the maintenance from Rs.3,000/- to Rs.5,000/- per month to the first respondent herein and from Rs.1,000/- to Rs.2,500/- to the second respondent herein, minor daughter.

2. The respondents 1 and 2 are the wife and daughter of the petitioner and they filed M.C.No.183 of 2009 and obtained order of maintenance of Rs.3,000/- and Rs.1,000/- p.m. respectively on 13.10.2010. Later, Crl.M.P.No.243 of 2017 was filed under Section 127 Cr.P.C. for alteration of maintenance or allowance to enhance the maintenance from Rs.3,000/- to Rs.5,000/- and from Rs.1,000/- to Rs.3,000/- per month to the respondents 1 and 2 respectively alleging that the second respondent is student prosecuting her studies in private school to meet the expenses of education like school fee, tuition fee and transportation etc. have been increased from date of passing of order in the maintenance case and apart from that the cost of household articles and escalation of prices, rents etc., the amount awarded by the court initially at Rs.3,000/- and Rs.1,000/- is not sufficient to lead the same standard of life which the petitioner herein is living and therefore, due to changed circumstances, more particularly hike in prices of essential commodities including school fee, books, rent, medical expenses etc.

3. The petitioner herein filed counter denying the allegations while contending that the first respondent is B.Com. graduate and worked as teacher for two years in St. Mathews School, SRK Puram, and was earning Rs.10,000/- per month, but she resigned her job voluntarily and filed the present petition with an ulterior motive and that there is a likelihood of her joining once again to earn salary and apart from that the petitioner has to maintain his sister, mother and mother's elder sister who is a widow who are suffering from old age ailments and therefore, any enhancement of maintenance would cause loss to this petitioner and petitioner is not in a position to pay the same.

4. During enquiry, the first respondent was examined as PW-1 and marked no documents. The petitioner herein was examined as RW-1 and marked no documents.

5. Upon hearing arguments of both counsel, the Judge, Family Court enhanced maintenance as mentioned supra, taking into consideration of the present price index, hike in price of essential commodities, school fee etc. due to passage of five year time from the date of passing the order.

6. The present revision is filed challenging the impugned order on various grounds, mainly on the ground that in the absence of any changed circumstances enhancing maintenance from Rs.4,000/- to Rs.7,500/- by the Judge, Family Court is excessive and the court totally ignored the liabilities of the petitioner who is working as Senior Assistant in NCC group and prayed to set aside the impugned order.

7. The main contention before this court at the stage of admission of revision is that enhancement of alteration of maintenance from Rs.4,000/-

to Rs.7,500/- to both the respondents is excessive and the Judge, Family Court totally ignored the liabilities and responsibilities of the petitioner and passed the impugned order and requested to set aside the impugned order.

8. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

9. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

10. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has

been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

11. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of the Apex Court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

12. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised

arbitrarily, as held by the Apex Court in *Amit Kapoor vs Ramesh Chander & Anr.*¹

13. Keeping in mind the scope of revision under Section 397 and 401 Cr.P.C. it is necessary to decide the present controversy before this court.

14. The respondents 1 and 2 obtained an order of maintenance or monthly allowance of Rs.3,000/- and Rs.1,000/- to the respondents 1 and 2 respectively in M.C.No.183 of 2009 on 13.10.2012. The court awarded maintenance based on the evidence available on record as on that day ignoring cost of living, price index etc. After passing of the order, there is lot of change in the price index including high rise in price of essential commodities, that apart the second respondent was 4 years by then and now as on the date of filing the petition before the court in Crl.M.P.No.243 of 2015, she was 9 years. Therefore, she is pursuing her studies in private school and she required to meet minimum necessities like uniform, school fee, books, food and clothing etc. for which father is liable as education is also part of maintenance. Therefore, on account of changed circumstances from the date of passing the order due to passage of four years right now, the petitioner is liable to pay enhanced maintenance. Similarly, the first respondent was aged 27 years by then and now she is more than 30 years and she may require some additional facilities like medication on account of passage of time and therefore, in view of changed circumstances, the Judge, Family Court rightly took judicial notice of hike in price of essential commodities, school fee, books etc. And passed the order impugned in this revision enhancing the maintenance as mentioned above. Even, the court may take judicial

¹ 2012(9) SCC 460

notice of manifold increase of salaries of government employees for the four year period, based on price index.

15. It is also contended by the petitioner herein that he has to maintain his mother, and elder sister of his mother who is widow and that the first respondent worked as teacher being B.Com. graduate earning Rs.10,000/- per month for two months and now she resigned and filed the impugned petition to claim enhanced rate of maintenance. Even according to the admission made in the counter filed by the petitioner in the miscellaneous petition for enhancement under Section 127 Cr.P.C. Merely because she worked for few months, it is difficult to conclude that she is disentitled to claim enhanced rate of maintenance and even for two months also no evidence is produced and nothing is elicited in the cross examination of PW-1 about her working and earning Rs.10,000/- per month. Therefore, the petitioner also conveniently avoided to produce the salary slip before the court and disabled the court to look into the salary slip and pass appropriate order based on the earnings. When the petitioner has contended that he is receiving Rs.15,000/- per month while working in N.C.C. he is not supposed to withhold the documentary evidence available with him to claim benefit of decreasing maintenance granted by the Court or to confirm the earlier maintenance granted by the court. But, in the absence of any evidence, it is difficult to uphold the contention of the petitioner by this court while exercising power under Section 397 and 401 Cr.P.C.

16. The maintenance can be altered in the changed circumstances under Section 127 Cr.P.C. more particularly, on proof of a change in the circumstances of any person, receiving, under section 125 Cr.P.C. a

monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit; 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.

17. Where any order has been made under section 125 Cr.P.C. in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-

(i) in the case where, such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125 Cr.P.C., the Civil Court shall

take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order.

18. Considering the relevant considerations referred supra, I find no ground to interfere with the fact finding recorded by the Judge, Family Court for alteration of maintenance or monthly allowance increasing Rs.3,000/- to Rs.5,000/- per month to the first respondent and Rs.1,000/- to Rs.2,500/- per month to the second respondent which is not even hardly sufficient to meet the necessities of an ordinary human-being though she is expected to lead same standard of life which she led while staying with her husband. Therefore, the order of enhanced maintenance passed by the Judge, Family Court is strictly in accordance with law and consequently, the revision is liable to be dismissed.

19. In the result, the criminal revision is dismissed. Miscellaneous petitions, if any, pending in this case shall stand closed.

DATE:10-08-2017
ccm

M.SATYANARAYANA MURTHY,J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date:10.08.2017

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