

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.2828 of 2016

ORDER:

The revision petitioner is the unsuccessful 1<sup>st</sup> respondent in CrI.MP.No.6862 of 2014 in DVC.No.30 of 2014 on the file of the Court of the learned I Additional Chief Metropolitan Magistrate at Visakhapatnam. The said petition was filed for various reliefs by the petitioners therein/ respondents 1 & 2 herein, who are the wife and minor daughter, aged 2 years, of the revision petitioner. By order, dated 30.11.2015, the trial Court while relegating the decision on the other reliefs to a later stage of final disposal of the main case, however, partly allowed the said MP and awarded interim maintenance allowances from the date of the petition @ Rs.7,500/- and Rs.2,500/- respectively to the petitioners therein and gave directions for payment of the said maintenance and arrears of maintenance.

1.1 Aggrieved thereof, the 1<sup>st</sup> respondent-husband/ revision petitioner herein preferred CrI.A.No.20 of 2016 before the Court of the learned Sessions Judge, Mahila Court, Visakhapatnam. By the order impugned in this revision, the learned Sessions Judge dismissed the said appeal and confirmed the afore-stated order of the trial Court. Aggrieved thereof, 1<sup>st</sup> respondent-husband preferred this revision case.

2. I have heard the submissions of Sri S Mujib Kumar, learned counsel for the revision petitioner/ husband and of Sri M. Karuna Sagar, learned counsel for the wife&daughter/ respondents 1 & 2 herein. I have perused the material record.

3. The parties in this revision case shall hereinafter be referred to as the revision petitioner and the respondents 1 & 2 as arraigned in this revision case.

4. Learned counsel for the revision petitioner would submit as follows: 'The trial Court erred in partly allowing the petition filed by the respondents 1 & 2 and in awarding interim maintenance to them. The Court below erred in confirming the said erroneous order. The Court below did not decide the matter on merits by simply stating that the truth or otherwise of the contentions of the parties will be decided in the main case. The Court below ought to have examined the facts and legal position applicable to the facts of the case and ought to have recorded a finding as to whether any domestic violence, which was alleged, has been committed or not before confirming the orders of the trial Court. Without considering the income and financial resources of the revision petitioner, the trial Court erroneously awarded huge sums of money as interim maintenance and by an equally erroneous order the lower appellate Court confirmed the said orders. The revision petitioner is only getting a net salary of Rs.18,000/- per month and he is discharging the debts which were incurred for construction of a house. He sold away the said house and is staying in a rented house. The respondents 1 & 2 are living in the 1<sup>st</sup> respondent's parents' house. Thus, they are having rent free accommodation. The 1<sup>st</sup> respondent/wife of this revision petitioner is employed in the Accounts section of Bharatiya Vignana Kendram, Visakhapatnam. Her mother is a Process Server in the District Court, Visakhapatnam. She owns a triple storied house at Visakhapatnam, and is getting Rs.15,000/- per month as rents. The Courts below failed to consider the financial condition of the revision petitioner and also the income and sources of income of the 1<sup>st</sup> respondent-wife of the revision petitioner. Hence, the order impugned may be set aside and as a sequel, the order of the trial Court may also be set aside and the MP filed by the respondents 1 & 2 may be dismissed in entirety in the interests of justice.'

5. On the other hand, learned counsel for the respondents 1 & 2 while supporting the orders of the Courts below stated that the relationship between

the parties is admitted and that the Courts below having appreciated the facts correctly and the legal position in proper perspective passed reasoned orders and that in view of the fact that the D.V.C is still pending and the respondents have to survive during the pendency of the main case, the orders of the Courts below are justified and do not warrant any interference.

6. I have carefully perused the record and I have given earnest consideration to the facts and submissions.

7. The revision case arises out of orders passed in a Miscellaneous Petition in a pending D.V. Case. Both the parties have not adduced any evidence in the said petition. In the MP, the respondents 1 & 2 sought a direction to the revision petitioner and his family members to allow them to stay in the house at Sainagar Colony of Sabbavaram, and further prayed for awarding maintenance @ Rs.45,000/- and Rs.15,000/- respectively to them. There is no need to advert to the contentions and rival contentions with regard to main issues involved in the DVC and record any findings as to whether who among the spouses is responsible for the disputes, as the main case is pending and the relief granted under challenge is only award of interim maintenance. It is equally not necessary to record any findings on the traded allegations regarding demands and payment of dowry etcetera, the alleged intimacy between the petitioner herein and the 7<sup>th</sup> respondent in the DVC, who is his niece, and the alleged acts of domestic violence.

8. Whatever may be the reasons, there were disputes between the spouses and those disputes had lead to estrangement is admitted. The petitioner and the respondents 1 & 2 are living separately is also not in dispute. In the considered view of this court, there is no reason to deny award of interim maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for the sustenance of the wife. Unless the husband establishes that his wife has income of her own and needs no financial

support from him, she cannot be denied interim maintenance from the husband. So far as the children who are minors, the petitioner/father is obliged under facts and in law to pay reasonable amount of monthly maintenance to them. The maintenance awarded shall be adequate for sustenance, and sufficient for meeting expenses towards food, clothing and shelter, besides essential incidental expenses. In case of children, it takes in its compass the educational expenses also of the children. The law is well settled that the maintenance has to be awarded keeping in view the social status and economic & living conditions of the family; and, the maintenance awarded to the wife and children must be sufficient to enable them to live in reasonable comfort. The provision for maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for interim maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of interim maintenance is subject to final determination of their rights in the D V Case or a matrimonial OP, if any, before a civil Court/Family Court. The provision provides for speedy remedy for providing interim maintenance to the wife and eligible children.

9. The specific case of the respondents 1 & 2 is that on 29.04.2014 the petitioner herein executed a gift-cum-settlement deed in respect of the property situate at Sai Nagar Colony, Sabbavaram, in favour of the 2<sup>nd</sup> respondent with an intention that the 1<sup>st</sup> respondent would withdraw the report lodged with the police and that in that view of the matter and with a fond hope that there would be some change in the attitude of the petitioner the 1<sup>st</sup> respondent and family members did not pursue her report lodged with the police though 1<sup>st</sup> respondent sustained severe injuries in the incident of attack upon her. It is also her case that the revision petitioner and his family members tried to kill her for not fulfilling their demand for additional dowry and necked the respondents 1 & 2 out of the matrimonial house in the early

hours of 26.10.2014 by retaining her certificates, dresses and other belongings and that having no other go, the 1<sup>st</sup> respondent along with the 2<sup>nd</sup> respondent took shelter in the house of the mother of the 1<sup>st</sup> respondent and that thereafter she filed the subject DVC along with the instant MP for the reliefs mentioned therein and that the revision petitioner neglected to maintain the respondents and that they are unable to maintain themselves and that they have no means or income or sources of income.

10. Per contra, the case of the revision petitioner is that the 1<sup>st</sup> respondent herein lived only for two days at Visakhapantam with him and that the marriage was consummated and that they were blessed with the 2<sup>nd</sup> respondent on 17.04.2011. He specifically denied all the allegations made against him and his family members in the counter and further stated as follows: "He along with his elder brother Ganeswara Rao-6<sup>th</sup> respondent in the DVC, purchased a small house site at Sabbavaram, and constructed a small house by raising loans. The mother of the 1<sup>st</sup> respondent, who bore grudge against the revision petitioner and his family members, forced them to execute a gift cum settlement deed in the name of the 2<sup>nd</sup> respondent. The then Sub-Inspector of Police, Sabbavaram, played active role at that time in the matter and that in the said circumstances he was constrained to sign and execute the gift cum settlement deed. The police officer stated to him that he was acting on the advice of a Magistrate, Sultana Begum. The mother of the 1<sup>st</sup> respondent alone quarrelled with him, on 15.12.2011, and, on 24.02.2012, at Burnikam village. She also gave a report to the SHO, Pendurthy Police Station, on 06.05.2012. On 10.04.2014, the mother of the 1<sup>st</sup> respondent came to the newly constructed house and un-necessarily quarrelled with the revision petitioner and caused injuries to him with her finger nails; she then went away to his sister's house and abused the family members of the revision petitioner and behaved in a nasty way in the locality. The matters could not be settled despite placing before the elders due to the adamant behaviour of the mother of the 1<sup>st</sup>

respondent. The CI of Mahila police station advised the mother of the 1<sup>st</sup> respondent to leave the petitioner and the 1<sup>st</sup> respondent so that they would live a peaceful life. Thereafter, the revision petitioner vacated the house and shifted to the house of his parents at Chinamusidiwada village. The mother of the 1<sup>st</sup> respondent is taking advantage of the fact that she is working in judicial department and harassing the petitioner and his family members by getting registered false cases one after the other. The 1<sup>st</sup> respondent is working at Srikrishna Ssu Vihar at Dwarakanagar, Visakhapatnam, and is earning Rs.15,000/- per month. She is also enjoying the properties and getting rents from the house property of her grand mother as she is the only daughter of her parents. The revision petitioner is working on a meagre salary in a Company dealing with mutual funds & shares. The amount claimed by the respondents 1 & 2 towards interim maintenance is high and excessive and the amount awarded is unjust and exorbitant.'

11. It is to be noted that the 1<sup>st</sup> respondent herein stated in her pleadings that the petitioner herein is working as customer care executive in reliance Company and that he is getting a salary of Rs.50,000/- per month and that he owns and possesses movable and immovable properties at Dronamraju Nagar, Pendurthi, Visakhapatnam, and Sabbavaram and that he is getting additional income of Rs.50,000/- from the usufruct from agricultural lands. The petitioner is the owner of the house property at Sainagar colony, Sabbavaram, is admitted by him. He did not file his salary certificate from his employer. Since the petitioner has not denied the averment in the MP of the respondents 1 & 2 that he is getting salary of Rs.50,000/- and as he has not filed his salary certificate, the trial Court determined the monthly maintenance payable to the respondents 1 & 2 in all at the rate of Rs.10,000/- per month and the said awarded maintenance was confirmed by the Court below. However, a FORM 16 summary was produced before this Court along with CrI.RC.MP.No.3233 of 2017 filed to receive additional documents, wherein his monthly take home pay was

shown as Rs.18,130/- during the period from 01.01.2016 to 31.11.2016 and Gross annual salary was shown as Rs.2,19,132/-; his HRA was shown as 4,920/- per month; executive, conveyance and medical allowances were shown as 1,900/-, Rs.1,600/- and Rs.1,250/- respectively. The revision petitioner is an able bodied person and is working an executive and owns property is borne out by record. Considering the family economic and social status, the facts and circumstances of the case, the income of the petitioner, the basic needs and requirements of the respondents and the present day cost of living, this Court finds that Rs.10,000/- in all awarded to the respondents 1 and 2 herein is just and fair and the said allowance does warrant variation or alteration.

12. On the above analysis this Court finds that the contentions of the revision petitioner do not merit consideration and that the orders of the Courts below do not warrant any interference.

13. In the result, the Criminal Revision Case is dismissed. The revision petitioner shall pay to the 1<sup>st</sup> respondent or deposit to the credit of the trial Court the arrears of interim maintenance within two months from the date of receipt of a copy of this order, however, in two equal monthly instalments. The amounts paid already, if any, shall be given credit while calculating the arrears. However, the trial Court is directed to dispose of the DVC on merits and in strict accordance with the procedure established by law as expeditiously as possible and preferably within two (02) months from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

M. SEETHARAMA MURTI, J

18.09.2017  
Vjl