

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11228 OF 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 06.09.2017 passed in Crl.R.P. No.4 of 2017 on the file of II Additional District and Sessions Judge (FTC), Mancheri, whereby the maintenance awarded to 2nd respondent was reduced from Rs.10,000/- per month to Rs.5,000/- per month while confirming the maintenance awarded to 3rd respondent—daughter.

2) Respondents 2 and 3 herein filed Maintenance Case No.4 of 2016 under Section 125 of Cr.P.C before the I Additional Judicial Magistrate of First Class, Mancheri, claiming maintenance of Rs.10,000/- per month each alleging that the 2nd respondent is the legally wedded wife of the petitioner herein and the 3rd respondent is the daughter, born during wedlock of petitioner and 2nd respondent, aged 13 years as on the date of filing the petition. It is also alleged that they have no independent source of income for their livelihood. Whereas learned counsel for the petitioner informed that they have sufficient income to maintain themselves.

3) Petitioner herein filed counter affidavit denying the material allegations alleging that he is only ward member and he obtained divorce in H.M.O.P. No.31 of 2013 dated 11.04.2014 dissolving the marriage between the petitioner and respondent No.2, therefore, she is ceased to be wife of the petitioner and that the said M.C was filed only as a counter blast to the H.M.O.P. No.31 of 2013. It is also contended that the respondent is earning Rs.2,500/- per month as honorarium being ward member and he has no other source of income to pay maintenance and prayed to dismiss the petition.

4) It is further contended that the 2nd respondent working in S.V.Silks, Mancherial, earning Rs.6,000/- per month as a sales woman and that under 'Asara scheme' she is entitled to claim Rs.1,000/- from the Government and prayed for dismissal of the petition.

5) During trial, on behalf of respondents, PWs.1 and 2 viz., Debbati Suma and Ch.Rajkumar were examined and marked Exs.P1 to P5. The petitioner herein himself examined as RW.1 and marked no document.

6) Upon hearing the argument of both the counsel, the learned Magistrate partly allowed the MC directing the petitioner to pay a sum of Rs.10,000/- per month and Rs.5,000/- per month to the respondent Nos.2 and 3 respectively.

7) Aggrieved by the order, the petitioner herein preferred Criminal Revision No.4 of 2017, which was partly allowed reducing the maintenance of Rs.10,000/- to Rs.5,000/- per month to the respondent No.2 while confirming the maintenance awarded to the 3rd respondent.

8) The present Criminal Petition is filed on the ground that the trial Court did not consider the income of the petitioner and divorce granted in favour of the petitioner dissolving the marriage between the petitioner and 2nd respondent in H.M.O.P. No.31 of 2013 and committed an error in granting maintenance of Rs.5,000/- per month to 2nd respondent and Rs.5,000/- per month to the 3rd respondent, in view of his meager earning of Rs.2,500/- per month as honorarium as a ward member and prayed to set-aside the orders passed by the trial Court and Sessions Court.

9) The present petition is filed under Section 482 Cr.P.C. The jurisdiction of this Court is limited and such power can be exercised to

prevent abuse of process of Court or to secure the ends of justice.

10) Sri Alladi Ravinder, learned counsel for petitioner contended that respondent Nos.2 and 3 did not produce any other material to prove the income of the petitioner except producing Exs.P1 to P4, which are medical prescriptions and scan reports. Even in the petition, the 2nd respondent alleged that the petitioner was earning sufficient income without disclosing source of income of petitioner. However, the trial Court granted maintenance of Rs.10,000/- and Rs.5,000/- per month to the respondents 2 and 3 respectively recording finding that the petitioner refused and neglected to maintain the respondent Nos.2 and 3. In the revision, the Sessions Judge, reduced the maintenance from Rs.10,000/- to Rs.5,000/- per month to the 2nd respondent.

11) Having dissatisfied with the order passed by the Sessions Judge, the present revision is filed contending that he is not liable to pay maintenance in view of divorce obtained by him dissolving the marriage between petitioner and 2nd respondent.

12) Obtaining divorce in H.M.O.P. is not in dispute but the divorced wife is also entitled to claim maintenance under Section 125 Cr.P.C. Therefore, on the ground of dissolution of the marriage between the petitioner and 2nd respondent, maintenance to 2nd respondent cannot be denied.

13) The 2nd ground urged before the Court is that the maintenance awarded by the trial Court in favour of the 2nd respondent is excessive. The Sessions Court reduced maintenance from Rs.10,000/- to Rs.5,000/- per month. While considering the facts and circumstances of the case, both the trial Court and Sessions Court disbelieved the contention that she is working as sales woman in S.V.Silks and such a

fact finding cannot be disturbed exercising the power under Section 482 Cr.P.C.

14) More over, a woman aged 34 years required food, shelter, cloths and medicines etc., to lead normal life and she may require not less than Rs.5,000/- per month during these days. Apart from that she is expected to maintain the same standard of life which she led while living with the petitioner.

15) Hence, taking into consideration of the facts and circumstances of the case, price index and cost of living, the Sessions Court rightly reduced the maintenance from Rs.10,000/- to Rs.5,000/- per month, and the same cannot be interfered with by this Court while exercising the power under Section 482 Cr.P.C, thereby the maintenance awarded by the Sessions Judge is hereby confirmed.

16) Coming to the maintenance awarded to the 3rd respondent—daughter, the trial Court awarded Rs.5,000/- per month and the same was confirmed by the Sessions Court in Crl.R.P. and her age is 13 years as per the cause title.

17) Learned counsel for petitioner stated that the 3rd respondent is now prosecuting her education in residential school and she requires not less than Rs.5,000/- per month to prosecute her studies as a student in a residential school. Therefore, maintenance awarded by the Courts below is just and reasonable. Hence, I do not find no grounds to interfere with the order passed in Crl.R.P while exercising the power under Section 482 Cr.P.C.

18) Accordingly, the Criminal Petition is dismissed at the stage of admission.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Dt.21.11.2017
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CRIMINAL PETITION No.11228 OF 2017



Date:21.11.2017

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