

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.12465 OF 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code to quash the order dated 13.07.2017 in CrI.M.P.No.13 of 2017 in F.C.M.C.No.03 of 2017 passed by the Judge, Family Court-cum-IV Additional District Judge, Kurnool granting interim monthly maintenance of Rs.3,000/- to the 1st respondent and Rs.2,000/- each to the 2nd and 3rd respondents holding that the respondents 1 to 3 did not possess any independent source of income for their livelihood and whereas the petitioner is having sufficient means to maintain himself.

The 1st respondent herein filed petition under Section 125(2) Cr.P.C. on her behalf and also on behalf of respondents 2 and 3 to grant interim maintenance at Rs.10,000/- each to the 1st and 2nd respondents and Rs.5,000/- to the 3rd respondent before the trial Court alleging that the 1st respondent is the legally wedded wife of the petitioner and respondents 2 and 3 are children born during their wedlock.

There is no dispute with regard to the relationship, but the dispute is only with regard to possessing independent source of income by respondents 1 to 3 herein and petitioner, who is the husband of the 1st respondent herein.

According to the petitioner, he executed two sale deeds dated 03.10.2015 and 27.08.2014 respectively alienating the property in favour of the 2nd and 3rd respondents herein and they are in possession and enjoyment of the said property and getting substantial income from the said property and apart from that the petitioner did not possess any property to eke out his livelihood.

Therefore, the petitioner is not in a position to provide maintenance to respondents 1 to 3. It is also contended before this Court that he pronounced Talak to the 1st respondent, therefore, no marital relationship is subsisting.

Whereas, the trial Court observed that the petitioner did not produce any material before the Court that the two items of property covered by above stated two sale deeds are fetching any income to disentitle respondents 1 to 3 to claim maintenance. In the absence of any material produced before the Court having admitted execution of sale deeds in the name of respondents 2 and 3 for consideration, the petitioner, being father cannot deny the payment of maintenance to respondents 2 and 3, who are minors as on the date of passing the order and that they are prosecuting their studies in English medium school. The petitioner being a father is under legal obligation to provide maintenance to his children, he did not take any steps seeking custody of the children, during their minority. This itself indicates that the petitioner is not evincing any interest to look after the children i.e. respondents 2 and 3 and simply executed sale deeds in their favour. The divorced wife can also claim maintenance. In the absence of any proof that respondent Nos. 1 to 3 are getting income from the property possessed by them to meet their necessities, it is difficult for this Court to accept the contention of learned counsel for the petitioner. The petitioner being an able bodied person, is under the legal obligation to maintain either by doing hard work or by borrowing etc., as long as relationship between them is subsisting and that he cannot deny to provide maintenance. Even, if the execution of sale deeds in favour of respondents 2 and 3 is true, it is his

responsibility and as no evidence is placed to show that irrespective of those two properties they are getting income sufficient to meet the daily necessities, it is difficult to accept the contention that respondents 2 and 3 possessed sufficient means to maintain themselves. Therefore, taking into consideration, the present price index, the standard of living, which the respondents are expected while they were living with the father, I find that Rs.3,000/- to the 1st respondent and Rs.2,000/- each to respondents 2 and 3 is just and reasonable. However, it is left open to the petitioner to raise any plea either legal or factual before the trial Court.

Accordingly, the criminal petition is disposed of as stated above. The Judge, Family Court-cum-IV Additional District Judge, Kurnool is directed to dispose of FCMC.No.03 of 2017 as expeditiously as possible in any event not later than six months from the date of receipt of a copy of this order.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

15.12.2017
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