

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12517 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings dated 04.07.2017 passed in CrI.MP.No.979 of 2015 in M.C.No.289 of 2014 by the Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad, wherein interim maintenance of Rs.8,000/- per month was granted to the second respondent and Rs.4,000/- per month each was granted to respondents 3 and 4 herein, who are petitioners before the trial Court.

It is the case of respondents 2 to 4 that the second respondent is legally wedded wife of the petitioner herein and they lived happily for some time. They were blessed with two children, who are respondents 3 and 4. Thereafter, some disputes arose between the petitioner and the second respondent. Thereby, the petitioner refused and neglected to maintain the second respondent and respondents 3 and 4. The petitioner possess sufficient means being an employee working in the State Government whereas respondents 2 to 4 do not possess any independent means to maintain themselves and that apart, respondents 3 and 4 are school going children and the question of earning does not arise and hence, sought Rs.10,000/- per month to the second respondent and Rs.5,000/- per month each to respondents 3 and 4.

The petitioner filed counter admitting marriage between himself and the second respondent and also giving birth to

respondents 3 and 4 but denied the allegation of harassing the second respondent and attempting to kill her. He admitted that she lodged a report with the police for the offences punishable under Sections 498-A and 307 of the Indian Penal Code (IPC) and also maintenance case in MC.No.321 of 2010 and after due enquiry, the Family Court, Nampally, Hyderabad directed the petitioner to pay total maintenance of Rs.4,500/- per month to respondents 2 to 4 and subsequently, they entered into a compromise. The second respondent herself was harassing the petitioner and the parents of the petitioner and insisting him not to pay any amount to his parents and that she lodged a false report against the petitioner in Crime No.406 of 2014 of Ghatkesar P.S. for the offences punishable under Sections 307 and 498-A IPC and prayed for dismissal of the petition.

The Court below, upon hearing argument of both the counsel, observed that the petitioner did not produce any salary slip to assess the financial condition of the petitioner but respondents 2 to 4 contended that he was earning Rs.35,000/-per month in the year 2014. Hence, the Court below awarded interim maintenance of Rs.8,000/- per month to the second respondent and Rs.4,000/- per month each to respondents 3 and 4.

Assailing the said order, the present petition is filed on various grounds contending that the petitioner was placed under suspension and his gross salary was too meagre and was getting net salary of Rs.9,000/- per month only after deducting housing loan etc., but the Court below did not take into consideration any material while passing the order of interim maintenance at Rs.8,000/- per month to the second respondent and Rs.4,000/-

per month each to respondents 3 and 4, committed an error and prayed to set aside the same.

During hearing, learned counsel for the petitioner contended that the petitioner is working only as an Attender and earning Rs.35,000/- per month as gross salary and after deducting housing loan and other statutory deductions, the petitioner is getting only Rs.9,000/- per month and now he is placed under suspension and requested this Court to modify the order passed by the Court below.

Indisputably, the petitioner is the legally wedded husband of the second respondent and father of respondents 3 and 4, who were born during their wedlock. They are school going children of 10 years and 8 years age respectively by the date of filing of petition in the year 2014 and now they are aged 13 years and 11 years respectively prosecuting their education. The petitioner is under legal obligation to provide maintenance either to legitimate or illegitimate children under Section 125 Cr.P.C. Respondents 3 and 4 are the legitimate children of the petitioner and they are entitled to claim maintenance from their father, who refused to maintain them. The petitioner did not file any petition seeking custody of the children and maintained silence all through. This itself is sufficient to show that the petitioner refused to maintain the respondents and neglected them without any fault on their part. Therefore, grant of maintenance in favour of respondents 3 and 4 is in accordance with law.

The second respondent is the wife of the petitioner, who lodged report against him for the offences punishable under Sections 498-A and 307 IPC, as the petitioner allegedly subjected

her to cruelty and made an attempt to kill her. In such a case, she is not supposed to live with the petitioner in view of apprehension. Even then the petitioner is under obligation to provide maintenance to her, legally.

The only contention before this Court is that the petitioner is drawing Rs.9,000/- only per month after statutory deductions. The petitioner is entitled to claim exemption from paying monthly maintenance payable to the wife but no salary slip or salary certificate was filed on record. He produced evidence to prove housing loan deduction and such deduction cannot be taken into consideration while calculating interim maintenance, as it relates to savings.

As per judgment of the Supreme Court in **Dr. Kulbhushan Kumar vs. Smt. Raj Kumari and Anr.**¹ and **Kalyan De Chowdhury v. Rita Dey Chowdhury Nee Nandy**², while deciding grant of interim maintenance payable under Section 24 of the Hindu Marriage Act, the Supreme Court in both the judgments referred supra, consistently held that 1/4th of the salary shall be paid as maintenance to the wife. If, such principle is applied to the present case, the maintenance payable to the wife would be more than Rs.8,000/- and the maintenance for the children would be another Rs.8,000/-. Therefore, the interim maintenance granted by the Court below @ Rs.8,000/- per month to the second respondent and Rs.4,000/- per month each to respondents 3 and 4 is apt. Therefore, I find no ground to reduce the maintenance amount.

¹ AIR 1970 SC 234

² AIR 2017 SUPREME COURT 2383

In the absence of any documentary proof of income being received by the petitioner, the trial Court rightly accepted the income stated by respondents 2 to 4 and even now the counsel for the petitioner admitted about gross salary being received by the petitioner in the year 2004 was at Rs.35,000/-. There must be some hike during the last three years but the Court below ordered interim maintenance only Rs.8,000/- to the second respondent and hence, I find no illegality warranting interference, by exercising power under Section 482 Cr.P.C. However, to avoid hardship to the petitioner, the Court below is directed to dispose of the main case as expeditiously as possible in any event not later than six (6) months from the date of receipt of a copy of this order. Further, the observations made hereinabove will have no bearing on the disposal of the main petition and the Presiding Officer of the Court below is directed to dispose of the maintenance case uninfluenced by the observations made hereinabove.

With the above observations, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

18th December 2017

NOTE: Issue CC by ten days
B/O
RRB