

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.12020 of 2017****ORDER:**

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the Order dated 24.01.2016 in Criminal Revision Petition No.142 of 2016 on the file of XIII Additional Sessions Judge, Narasaraopet, partly setting aside the Order dt.31.08.2016 in M.C.No.13 of 2015 passed by Additional Judicial First Class Magistrate, Chilakaluripet, granting maintenance @ Rs.4,000/- per month, to the respondent herein/wife, reducing the same from Rs.6,000/-per month as awarded by the Magistrate.

The petitioner herein is the respondent/husband before the Magistrate and the revision petitioner before the revisional Court. The wife filed a petition before the trial Court, under Section 125 Cr.P.C., claiming maintenance @ Rs.10,000/- per month, alleging that she did not possess any independent source of income and whereas the petitioner herein/husband possessed sufficient means to maintain herself, but he refused and neglected to maintain her. The respondent/husband filed Counter denying the material allegations while contending that the petitioner had no sufficient means to maintain the respondent/wife.

During enquiry, on behalf of wife, Pws. 1 and 2 and Exs. P.1 to P.4 were marked and on behalf of husband, Rws. 1 and 2 were examined and Ex.R.1 was marked.

Upon hearing both the counsel, the Magistrate ordered payment of Rs.6,000/- per month to the wife towards maintenance from the date of petition.

Aggrieved by the Order passed by the Magistrate, the husband filed Revision Petition No.142 of 2016, which was allowed partly reducing maintenance of Rs.6,000/- to Rs.4,000/- by Order dt.24.01.2017 while confirming the other part of the Order i.e., granting maintenance from the date of petition.

The present petition is filed challenging the Order granting maintenance from the date of Order instead of granting maintenance from the date of petition as required under Section 125(2) Cr.P.C.

During hearing, learned counsel for the petitioner raised only ground that granting maintenance from the date of petition is erroneous and placed reliance on the judgment of this Court in *Kurna Suresh Babu*¹ and drawn the attention of this Court to under Section 125(2) Cr.P.C and on the strength of the same, he sought quashment of the order as the trial Court granted maintenance from the date of petition instead of granting maintenance from the date of Order.

The trial Court granted maintenance of Rs.6,000/- per month from the date of petition, which is assailed in the revision, and the revision Court reduced it to Rs.4,000/- from Rs.6,000/- while confirming the date of ordering payment of maintenance.

The present dispute is only with regard to date of payment of maintenance. According to Section 125(2) Cr.P.C, any such allowance i.e., allowance for maintenance or interim maintenance and expenses of the proceedings shall be payable from the date of order, or, if so ordered from the date of application for maintenance or interim maintenance and expenses of proceedings as the case may be. Therefore, discretion has given to the Magistrate to order payment of

¹ Laws (APH) 2008 7 33

maintenance from the date of petition specifying the date. The contention of the learned counsel for the petitioner is that without recording reasons, the Court cannot grant maintenance from the date of petition. Thus, recording of reasons for granting maintenance from the date of petition is mandatory. But, a bare look at the provisions i.e., Section 125(2) Cr.P.C., it did not mandate recording of reasons for granting maintenance from the date of petition, but the Court has to specify in the order regarding ordering maintenance from the date of petition. But, the principle laid down by this Court in *Kurna Suresh's* case (1 supra) rendered by the single judge of this Court is otherwise. In the judgment of this Court, it is made clear that for granting maintenance from the date of petition, the Court has to record reasons for granting maintenance from the date of petition. But the Order under challenge passed by the Magistrate and confirmed by the revisional Court granting maintenance from the date of petition is bereft of any reasons as mandated in the judgment of this Court.

In the latter judgment in *Shail Kumari Devi and another*², the Apex Court discussed passing of an order giving effect from the date of petition and held that taking into consideration of the facts and circumstances when wife is residing in the house belonging to the respondent/husband and such finding has been recorded even by the family Court. It is also in evidence that she was receiving income from the land in her possession which belonged to her husband, the respondent herein. It is true that the respondent could not state the actual amount received by the wife from the cultivation of the land, but it is also one of the considerations which is relevant and material while fixing the amount of maintenance.

² (2008) 9 SCC 632

Following the same principle in *Shali Kumari Devi's case* (2 *supra*), the Apex Court in the latter judgment reported in *Jaiminiben Hirenbbhai Vyas and another*³ held in para No.6 as follows:

“ In Shaik Kumari Devi v Krishan Bhagwan Pathak, this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In Shail Kumari Devi (*supra*) this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such order. Thus, such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.”

In the latter judgment in *Bhuwan Mohan Singh v Meena and others*⁴, the Apex Court considered partly overruling the judgment of this Court in *K. Sivaram v K. Mangalamba*⁵ and held as follows:

“After referring to the decision in Krishna Jain (*supra*), the Court adverted to the decision of the High Court of Andhra Pradesh in *K. Sivaram v. K. Mangalamba*[11] wherein it has been ruled that the maintenance would be awarded from the date of the order and such maintenance could be granted from the date of the application only by recording special reasons. The view of the learned single Judge of the High Court of Andhra Pradesh stating that it is a normal rule that the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance was not accepted by this Court. Eventually, the Court ruled thus: -

“43. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect.”

In the present case on hand, the maintenance petition was filed in the year 2015 and disposed of in the month of August, 2016 i e., after one year from the date of filing the petition, but during pendency of the petition, no interim maintenance was granted and paid to the wife by the petitioner herein. However, she was living away from the petitioner without any means, much less sufficient means to maintain

³ (2015) 2 SCC 385

⁴ (2015) 6 SCC 353

⁵ 1990 Cri LJ 1880

herself. As disposal of the matter was delayed both by the trial Court and the revisional Court, granted maintenance from the date of petition and such order cannot be faulted for the reason that she is bound to incur certain amount for her maintenance during pendency of the petition. Though the petition was filed in 2015, the Order has not attained finality till date. During this period, she is bound to incur certain amount for her maintenance. Therefore, granting maintenance from the date of petition by the trial Court, which was confirmed by the revisional Court, cannot be faulted taking into consideration the facts and circumstances of the case, including the failure to pay any interim maintenance during pendency of this Petition before the trial Court and the Revisional Court etc., Hence, I find no ground to quash the Order since the Court specified in its Order giving effective date of maintenance. Consequently, the present Criminal Petition is devoid of merit and it is liable to be dismissed.

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

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 08.12.2017
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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



Cr1.P. No.12020 of 2017

Dt. 08.12.2017

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