

HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No. 283 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 2 to 5.

The present criminal revision case is filed questioning the order dated 06.12.2017 passed in CrI.M.P.No.1109 of 2016 in M.C.No. 14 of 2008 on the file of the Court of the II Additional Judicial First Class Magistrate at Tenali, enhancing the maintenance from Rs.1,000/- to Rs.2,000/- per month to the second respondent and Rs.500/- to Rs.1,000/- per month to each of the respondents 3 to 5 from the date of filing of the petition i.e. 06.04.2016.

The brief facts of the case are that originally the respondents 2 to 5 filed M.C.No.14 of 2011 against the petitioner claiming a sum of Rs.4,000/- to the second respondent and Rs.2,000/- per month to each of the respondents 3 to 5, on the file of the I Additional Judicial First Class Magistrate, Tenali. After trial, the learned Magistrate, by orders dated 30.07.2012 dismissed the petition against the second respondent but allowed the petition by granting a sum of Rs.500/- per month to each of the respondents 3 to 5 from the date of the order. It is relevant to mention that against the dismissal of M.C. against the second respondent, she filed CrI.R.P.No.118 of 2012 before the XI Additional District and Sessions Judge, Tenali, and the same was allowed on 18.03.2014, granting maintenance @ Rs.1,000/- per month to the second respondent. In the year, 2016 the respondents 2 to 5 filed CrI.M.P.No.1109 of 2016 in

M.C.No.14 of 2011 under Section 127(1) Cr.P.C. for enhancement of maintenance from Rs.1,000/- to Rs.2,500/- per month to the second respondent and from Rs.500/- to Rs.1500/- per month each to the respondents 3 to 5 on the file of the II Additional Judicial First Class Magistrate, Tenali. The petitioner filed counter denying the averments made in the petition and contended that he is not having any movable and immovable properties and he is not having any means to pay the amounts as claimed. It is also stated in the counter that the respondents 2 to 5 when they were with the petitioner, they constructed a house and at present they are living in the same house. The learned Magistrate, after hearing, was pleased to allow the said petition partly by orders dated 06.12.2017 and enhanced the maintenance from Rs.1,000/- to Rs.2,000/- to the second respondent and from Rs.500/- to Rs.1,000/- per month to the respondents 3 to 5 from the date of filing of the petition i.e. 6.04.2016. Aggrieved by the same, the present criminal revision is filed.

Learned counsel appearing for the petitioner contended that the order under revision is contrary to law, weight of evidence and probabilities of the case. The Court below failed to consider that the respondents 2 to 5 also filed DVC No.14 of 2013 on the file of the II Additional Judicial First Class Magistrate, Tenali seeking maintenance and the same was allowed on 26.08.2016 directing the petitioner to pay monthly maintenance of Rs.1,000/- each to the respondents 2 to 5. Though the petitioner filed CrI.A.No.663 of 2016 assailing the orders passed in DVC No.14 of 2013, the same was dismissed on 4.12.2017 confirming the orders passed in DVC

No.14 of 2013. In the light of the orders passed in DVC No.14 of 2013, the learned magistrate ought to have dismissed the Crl.M.P.No.1109 of 2016 seeking enhancement of maintenance. The Court below ought to have appreciated that no grounds are made out by respondents 2 to 5 for enhancement of maintenance. The learned counsel for the petitioner specifically emphasized that the petitioner is working as temporary driver in Sri Vivardhini Rural Development Education School, Kolakaluru and earning Rs.3,000/- per month.

Per contra, the learned counsel appearing for the respondents 2 to 5, supported the order and submitted that the amount as awarded, is hardly sufficient to meet the education of the respondents 3 to 5, apart from other aspects.

Having heard both the learned counsel and from the perusal of the material on record, it is revealed that the respondents 2 to 5 originally filed MC No.14 of 2011 claiming maintenance against the petitioner. In the said M.C., they were granted Rs.1,000/- and Rs.500/- per month towards maintenance. Subsequently, they filed Crl.M.P.No.1109 of 2016 seeking enhancement of maintenance before the II Additional Judicial First Class Magistrate, Tenali. After hearing, the said petition was allowed in part enhancing the maintenance from Rs.1,000/- to Rs.2,000/- and from Rs.500/- to Rs.1000/- per month towards maintenance with effect from 6.04.2016. Though the respondents 2 to 5 have contended that the petitioner is having immovable properties worth Rs. One Crore in his name and joint family property worth Rs.3 Crores in the form of dry and wet lands, two house sites at Kolakaluru and two own vehicles

and the petitioner is doing private job and getting salary of Rs.20,000/- per month and also doing business and getting additional amount of Rs.20,000/- on it and Rs.1,50,000/- from agriculture yielding per annum, no evidence is placed to that effect.

Per contra, though the petitioner, has stated that he is earning only Rs.3,000/- per month by working as temporary driver, he also has not produced any evidence to that effect. The second respondent examined herself as PW-1 and simply narrated the contents of the petition. In the cross examination PW-1 denied the suggestion that she is having 50 cents of land in her name and she is getting sufficient income on the said land and the maintenance already granted is more than sufficient to maintain herself and the respondents 3 to 5. However, it is admitted fact that the respondents 2 to 5 are depending on the petitioner and it is incumbent on him to pay maintenance regularly. It is specifically contended that the petitioner is working as Volvo driver in Morning Star Bus Services and earning sufficiently. However, in order to avoid maintenance, he simply stated that he is working as temporary driver, earning only Rs.3,000/- per month. Per contra, the petitioner himself examined as RW-1 and he submitted that he is suffering with different ailments and he is having a back ache and he has been removed from Morning Star Bus Services as driver. He is not able to do any work except working as temporary driver in Sri Vivardhini Rural Development Education School and earning Rs.3,000/- per month. The sister of the petitioner, who is examined as RW-2, also deposed that the petitioner is not having any avocation.

She further stated that she is earning Rs.5,000/- per month, out of which she is paying Rs.1,000/- to RW-1. Though the petitioner as well as the respondents 2 to 5 have made allegations with regard to possessing of different properties, no evidence is forthcoming from both sides.

Now-a-days, in the light of the cost of living and the inflation rate, it is difficult for the respondents 2 to 5 to survive on the meager amount of Rs.5,000/- granted towards maintenance under the impugned orders. However, in addition to the maintenance awarded in the present proceedings, the respondents 2 to 5 were also awarded maintenance in DVC No.14 of 2013 @ Rs.1,000/- each i.e. in total Rs.4,000/-. In fact, in the present proceedings and in the DVC, the respondents 2 to 5 are receiving maintenance @ Rs.9,000/- per month. If the means of the petitioner is appreciated, except stating that he is working as driver, no evidence is forthcoming to establish that he is having sufficient means to pay the maintenance at the rate awarded by the learned magistrate. When the petitioner is directed to pay Rs.9,000/- per month towards maintenance and even if it is accepted that he is working as Volvo driver, it cannot be said that he is earning more than Rs.15,000/- to Rs.20,000/- per month. In such a situation, directing the petitioner to pay Rs.9,000/- per month in all, towards maintenance, would certainly cause hardship for him. In these circumstances, this Court is inclined to interfere with the orders passed by the learned magistrate in enhancing the maintenance.

Accordingly, the order dated 06.12.2017 passed in Crl.M.P.No.1109 of 2016 in M.C.No. 14 of 2008 on the file of the Court

of the II Additional Judicial First Class Magistrate at Tenali is modified to the extent of reducing the maintenance from Rs.2,000/- to Rs.1,000/- per month to the second respondent. However, the maintenance as awarded to the respondents 3 to 5 remains unchanged.

With the above observations, the criminal revision case is disposed of.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand dismissed.

Date:07.08.2018
Ccm

P. KESHA VA RAO,J



HON'BLE SRI JUSTICE P. KESHA RAO



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