

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2165 of 2017

JUDGMENT:

The petitioners in F.C.O.P. No.45 of 2016 on the file of the Judge, Family Court-cum-V Additional District Judge, Tirupati, filed the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') aggrieved over the order, dated 9.5.2017, whereby monthly maintenance of Rs.3,000/- to each of them granted from the date of petition, on the ground that the amount awarded is inadequate.

2. Heard Sri O. Udaya Kumar, learned counsel for the petitioners.

3. Though, initially, Notice Before Admission was ordered on 28.07.2017, Sri N.M. Krishnaiah, learned counsel filed vakalat for the 1st respondent-husband.

4. The present Revision Case has been taken up for disposal at the stage of admission.

5. Arguments of the learned counsel for the petitioners were heard on 19.12.2017. Since there was no representation for the 1st respondent, to afford an opportunity, adjourned to 4.1.2018, and Registry was directed to list this day under the caption 'For Orders'.

6. Learned counsel for the revision petitioners would submit that the Court below went wrong in recording a finding that there is some source of income to the petitioner No.1, overlooking the

evidence of P.W.2 on the mere ground that the Mortgage Deed marked as Ex.B2 does not contain a recital that P.W.2 was authorized to collect rents. The other facts, that the 1st petitioner owning site and construction of a building thereon is not in dispute and letting out is also not in dispute. Though, Simple Mortgage Deed, but when custody of the deed, is handed over to P.W.2, as she borrowed loan from P.W.2 to construct a building thereon, it is clear that it cannot be disputed that P.W.2 was asked to collect rents and adjust the rents towards discharge of debt. This particular intricacy is sidelined by the Court below. Second, the allegation levelled by the 1st respondent that the 1st petitioner merely raising a plea or making an averment without there being any proof is not a ground to look at it. When such serious allegation is levelled, the 1st respondent is duty-bound to come out with relevant details and to substantiate the stand he has taken. When he fails to do so, it is to be construed that scandalous allegations are being levelled which have got serious reflection. The consequence is that only with an intention or an attempt to get over or evade payment of maintenance, such an allegation is put forth by him. He even did not file salary certificate, but deliberately concealing the actual salary he was drawing, he has just put up the plea that he was drawing salary of Rs.18,000/- to R.20,000/- and got R.Ws.2 and 3 to speak to that effect, but that too expresses ignorance when suggestion was made that he was drawing a gross salary of Rs.35,000/- per month. According to him, he admitted that he got salary of Rs.22,000/- in the month of February, 2017, and he has

handed over his salary certificate to his advocate in the month of August, 2015, but the fact remains that salary certificate is not placed before the Court below and exhibited for perusal of the Court and, thus, even disabled the Court below in awarding just and reasonable compensation. That would be an inference to be drawn invariably in such a situation. Therefore, it is to be held that the 1st respondent deliberately suppressing the real salary he was getting. Even sidelining the same, still, it cannot be said that being the Village Revenue Officer with considerable service, he must be getting Rs.30,000/- per month, and, therefore, when kept in view, the amounts awarded by the learned Judge Family Court, certainly, it is to be held that they are on lower side.

7. Hence, the petitioners are entitled to enhancement of maintenance towards their monthly maintenance under Section 125 of the Code. The fact that the 2nd petitioner is prosecuting studies and to meet her educational expenses, besides taking care of food and shelter, certainly, makes one to view that the amount of Rs.3,000/- to each awarded is pittance, when looked at spiralling prices of all food articles and the soaring price index number, certainly, the petitioners are entitled to enhancement.

8. Therefore, the amount of Rs.3000/- each granted by the Court below towards monthly maintenance is enhanced to Rs.5,000/- each making a total of Rs.10,000/- from the date of petition.

9. Accordingly, the Criminal Revision Case is partly allowed, modifying the order of the Court below to the extent indicated in the above.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 05.01.2018
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