

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No. 1635 OF 2011

ORDER:

This criminal revision case is directed against the order dated 07-07-2011 in F.C.M.C.No. 23 of 2010 passed by the learned Judge, Family Court, Srikakulam (for short, 'the trial Court'), allowing the petition filed by respondent No. 2 herein under Section 125 of Cr.P.C. partly and granting maintenance @ Rs.1,500/- p.m. from the date of petition *i.e.* 28-07-2010 against the petitioner herein.

2. The brief facts of the case are that respondent No. 2 herein is father of the petitioner herein. He filed F.C.M.C.No. 23 of 2010 with the averments that he is aged 78 years and himself and his wife are old people and they are unable to maintain themselves due to old age and also due to bodily ailments. His further case is that the petitioner is their second son and he is Youth Congress President and he is earning income by doing rod bending work and also doing private contract works. He is also earning money by doing finance business with a capital of Rs.3,00,000/-. It is further averred that the wife of the petitioner is working as Aya in Government Headquarters Hospital, Srikakulam, and getting salary. The petitioner is getting total income of Rs.10,000/-. In spite of having sufficient earnings, the petitioner has neglected to maintain his aged parents who are in a distressed condition. On all his pleas, respondent No. 2 sought for maintenance of Rs.4,000/- p.m.

3. The petitioner opposed the petition mainly denying his earnings as mentioned in the petition. His case is that his elder brother is working as messenger in bank and getting more income than him. He further contended that respondent No. 2 is having a house, which was granted by Government, wherein both the brothers are residing in two separate portions and their father and mother are residing in one portion. His father has given the house property to his elder son without giving any property to him and therefore he was not providing any money to his father for maintenance.

4. The trial Court, having regard to the evidence on record, has observed that respondent No. 2/father in his evidence admitted that he purchased one rickshaw ten years back under co-operative loan and he is getting old age pension of Rs.200/- p.m. and Government also granted him Ac. 0.05 cents of land and he raised eucalyptus trees thereon and recently sold those trees for Rs.1,000/-. With regard to the earnings of the petitioner herein, the trial Court observed that during his evidence, he admitted that himself and his wife are doing coolie work and getting Rs.200/- per day. Again, he deposed as if he is getting only Rs.100/- per day and his wife is getting Rs.100/- per day on coolie work. The trial Court thus observed that even as per the admission of the petitioner, himself and his wife together are getting Rs.300/- per day and his father is aged about 78 years and though he is pulling rickshaw and earning Rs.150/- per day, still the petitioner, being the son, is bound to maintain his father. The trial Court further observed that the

elder son of respondent No. 2 herein is providing medical expenses to his parents to a tune of Rs.2,000/- p.m. On all these observations, the trial Court ultimately directed the petitioner herein to pay a monthly maintenance of Rs.1,500/- to his father from the date of petition *i.e.* 28-07-2010 and it was further directed that the petitioner herein shall pay arrears of maintenance at such rate on or before fifth of every succeeding month. Hence, the instant criminal revision case.

5. Heard learned counsel for the petitioner.

6. Though notice served on respondent No. 2, there is no representation for him.

7. Learned counsel for the petitioner has fulminated the order of the trial Court on the main plank of argument that F.C.M.C. was got filed by his elder brother through his father to see that somehow the petitioner vacates his portion of the house so as to grab the entire house for himself. Learned counsel, while agreeing that the petitioner has responsibility to maintain his father, however would contend that the petitioner is not having any sufficient income to maintain himself and his wife and children and on the other hand, his elder brother is having regular income as he is working as messenger in bank. Therefore, the trial Court ought to have dismissed the M.C.

8. In the light of the above arguments, I gave my anxious consideration to the order passed by the trial Court. The trial Court, having taken into consideration that admittedly the petitioner is the second son of his father and his parents are aged more than 75 years and also considering that the petitioner

and his wife by doing coolie work earning income and further considering that his elder brother is providing Rs.2,000/- p.m. to his parents towards medical expenses, granted monthly maintenance of Rs.1,500/-. On a careful perusal of the order, I find no illegality or irregularity therein. As rightly observed by the trial Court, the parents of the petitioner are aged people of more than 75 years. At this age, his father for want of maintenance is pulling rickshaw. Both the brothers are residing in two portions of the house of respondent No. 2 which was granted by Government to the latter. In these circumstances, the petitioner certainly owes responsibility along with his elder brother to maintain their parents. It emerges in the impugned order that his elder brother is paying Rs.2,000/- to his parents towards medical expenditure. Therefore, the petitioner has to pay some amount towards his contribution. Even according to his own admission, the petitioner and his wife are earning Rs.200/- per day if not Rs.300/- per day as observed by the trial Court. The petitioner and his wife are residing in a portion of the house belonging to his father without paying any rent. If the petitioner and his wife stay in a rented accommodation, certainly they have to pay rent of Rs.1,500/- to Rs.2,000/- p.m. to owner. In that view of the matter, the trial Court's awarding Rs.1,500/- p.m. as maintenance against the petitioner herein cannot be termed as illegal or unjust. So, at any rate, the impugned order does not suffer from the vice of illegality or irregularity. Considering the same, the criminal revision case is dismissed by confirming the order of the trial Court.

9. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

09-11-2018.
JSK

U.DURGA PRASAD RAO, J.

