

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4626 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the order dated 29.11.2017 passed by the Additional Judicial Magistrate of First Class, Amalapuram, in CrI.M.P.No.1544 of 2017 in M.C. No.10 of 2017, whereby the learned Magistrate directed the petitioner herein to pay an amount of Rs.2,000/- per month to the first respondent herein and an amount of Rs.1,000/- per month each to the respondents 2 and 3 herein, towards interim maintenance from the date of the petition till disposal of the M.C.

The petitioner is the husband of the first respondent and father of respondents 2 and 3. The respondents herein filed a petition under Section 125 Cr.P.C. and during pendency of the petition, CrI.M.P.No.1544 of 2017 was filed for grant of interim maintenance @ Rs.6,000/- to the first respondent and Rs.3,000/- each to the respondents 2 and 3, alleging that they have no independent source of income to maintain themselves and the petitioner herein is able-bodied man, earning sufficiently and that they were neglected to maintain by the petitioner herein without any reasonable cause and prayed to grant interim maintenance.

The petitioner herein disputed the liability to pay interim maintenance while asserting that he is earning only Rs.150/- to 200/- per day as a daily wage private worker in the Shipyard Company, Visakhapatnam and that he is ready and willing to receive the respondents to maintain them.

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The learned Magistrate, upon hearing the counsel for the petitioner and respondents, awarded interim maintenance @ Rs.2,000/- to the first respondent and Rs.1,000/- each to the respondents 2 and 3, having concluded that the petitioner herein is refused and neglected to maintain the respondents, but did not discuss anything about the capacity of the petitioner herein to pay such amount as maintenance to the respondents 1 to 3.

Aggrieved by the order, the present petition under Section 482 Cr.P.C. is filed on the ground that the learned Magistrate did not consider the income of the petitioner to grant interim maintenance and that the first respondent herself left the company of the petitioner without any reasonable cause, he filed a petition in F.C.O.P. No.1579 of 2015 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, while the matter stood thus the first respondent herein filed Tr.C.M.P. No.784 of 2015 to withdraw the F.C.O.P. from the Court of Additional Family Judge, Visakhapatnam and transfer the same to the Court of Senior Civil Judge at Amalapuram, the said petition was allowed, now it is pending before the Senior Civil Judge, Amalapuram, for enquiry.

The petitioner herein already issued Talaq-U-Hassan notice to the first respondent thrice on 14.08.2017, 14.09.2017 and 14.10.2017 and when the first respondent has not issued any reply to the notices, the Government Additional District Qazi, Visakhapatnam, issued Divorce Certificate dated 25.10.2017 cancelling Nikha performed on 04.07.2014 at Amalapuram. Thus the first respondent is a divorcee as on today, thus she is disentitled to interim maintenance, and therefore, the order passed

by the court below is erroneous on the face of it and prayed to quash the order dated 29.11.2017 in CrI.M.P.No.1544 of 2017 in M.C. No.10 of 2017.

During hearing, learned counsel for the petitioner would contend that the learned Magistrate totally ignored the earning capacity of the petitioner and awarded maintenance as stated above and the petitioner has no source of income except daily wage, therefore, granting interim maintenance at such rate is illegal and prayed to set aside the order passed by the court below at this stage of admission itself.

Undisputedly, the marriage between the petitioner and the first respondent was performed. The main contention of the petitioner is that he gave divorce to the first respondent, but in view of the Judgment of the Hon'ble Supreme Court validity of the divorce by Talaq-U-Hasan is a question to be decided, even if the first respondent is a divorced wife, she is entitled to claim maintenance and that to, filing of a petition H.M.O.P.No.35 of 2016, which is pending on the file of Senior Civil Judge, Amalapuram, is another strange circumstance to disbelieve the divorce, *prima facie*. Therefore, on that ground the petitioner cannot avoid payment of interim maintenance to the first respondent.

It is the case of the petitioner that he is a daily wage worker in shipyard, earning Rs.150/- to Rs.200/- per day depending upon work available in the shipyard. He did not produce any piece of paper before the court to substantiate his contention that he is a daily wage worker, but produced a bank statement, which does not

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disclose the exact amount he was earning either by way of daily wage or as a salary. Therefore, based on the bank statement, it is difficult to accept the income of the petitioner.

Even assuming for a moment, the petitioner is earning Rs.8,000/- per month, without considering the bank statement, the first respondent being the wife is entitled to claim maintenance 20% of the income of the petitioner towards maintenance in view of the judgment of the Apex Court in **Dr. Kulbhushan Kumar v. Raj Kumari and another**¹ and the same was reiterated in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**². Therefore, the interim maintenance awarded @ Rs.2,000/- to the first respondent and Rs.1,000/- each to the respondents 2 and 3 is not excessive in terms of the Judgment of the Apex Court.

Respondents 2 and 3 are minor children. The petitioner being the father of respondents 2 and 3 is under legal obligation to maintain them, as they are school going children, the amount @ Rs.1,000/- each is hardly not sufficient to meet both the ends i.e. food, shelter, clothing and medical etc. Therefore, taking into consideration of the present cost of living and price index, the amount awarded by the court below cannot be held to be excessive, warranting interference of this court.

The main contention of the counsel for the petitioner is that the petitioner is only a daily wage worker, but he did not produce any material to substantiate his contention that he is earning any amount as contended by respondents 1 to 3, that to the income being earned is within the exclusive knowledge of the petitioner or

¹ (1970) 3 SCC 129

² 2017 (5) SCALE 5

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his employee or contractor, where he is working. For the best reasons known to him, he did not produce any material in support of his income. Even otherwise, it is the legal obligation of the husband to maintain wife and children either by doing hard work or by begging or borrowing, and he cannot deny his legal obligation to meet the necessities of the respondents as they are expected to maintain the same standard of life which the petitioner leading. Hence, I find no ground to set aside order in total or to reduce the interim maintenance awarded by the court below, consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the stage of admission. However the Additional Judicial First Class Magistrate, Amalapuram is directed to dispose of the M.C.No.10 of 2017 as expeditiously as possible, but not later than 6 months, from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:06.06.2018
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