

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL REVISION CASE NO.1949 OF 2018**

**ORDER:**

This Criminal Revision case is arising out of order, dated 31.08.2017, passed in CrI.M.P.No.541 of 2017 in M.C.No.453 of 2015 by the Addl. Metropolitan Sessions Judge for the trial of JHCBBC-cum-Addl. Family Court-cum-XXIII Addl. Chief Judge-cum-IX Addl. Metropolitan Sessions Judge, Hyderabad.

2. Heard the arguments of the learned counsel for the petitioner, learned counsel for the respondents 1 to 3 and perused the material available on record.

3. Learned counsel for the petitioner submits that the petitioner has suffered huge loss in his business and he is presently working as Travel Agent and he is also pursuing his Law Degree. He is unable to pay interim maintenance ordered by the trial Court in CrI.M.P.No.541 of 2017, directing him to pay Rs.5,000/- per month to the 1<sup>st</sup> respondent and Rs.2,000/- per month to each of the respondents 2 and 3. He further submits that the petitioner apart from pursuing LL.B., he has to look after his elder son, who is studying Degree and therefore, he is unable to pay interim maintenance ordered by the trial Court. He further submits that the 1<sup>st</sup> respondent left the matrimonial home on 06.04.2015 without any reasonable cause and therefore, she is not entitled to claim any maintenance as she herself deserted the petitioner without any justifiable reason. On these grounds, the petitioner sought for setting aside the grant of interim maintenance ordered by the trial Court.

4. On the other hand, learned counsel for the respondents 1 to 3 submits that the marriage of the 1<sup>st</sup> respondent was performed with the petitioner on 08.12.1998 as per Muslim rites and customs. At the time of marriage, her

parents have given dowry of Rs.50,000/-, 21 tulas of gold articles, 20 tulas of silver anklet and house hold articles and costly furniture and performed the marriage on a grand scale. It is the further case of the 1<sup>st</sup> respondent that her mother-in-law used to quarrel with her always and used to demand her to bring money from her parents and she does not provide proper food and medication to her and she was harassed by her son-in-law. On 06.04.2015, the petitioner and his mother quarreled with her and started demanding her to bring Rs.2,00,000/- as additional dowry, otherwise, they would not permit her to lead happy marital life and driven her out of the house. Therefore, the 1<sup>st</sup> respondent has filed M.C.453 of 2015 under Section 125 Cr.P.C. for grant of maintenance and Crl.M.P.No.541 of 2017 for grant of interim maintenance.

5. The trial Court on consideration of material on record has passed impugned order granting interim maintenance at the rate of Rs.5,000/- per month to the 1<sup>st</sup> respondent and Rs.2,000/- per month to each of the respondents 2 and 3. Aggrieved by the impugned order, the revision petitioner is before this Court.

6. The point for consideration in this revision is whether the interim maintenance granted by the trial Court is liable to be set aside?

7. On consideration of facts and circumstances of the case and the submissions made by the learned counsel for the petitioner and the respondents, it is obvious that the petitioner and the respondents, it is obvious that the petitioner and the 1<sup>st</sup> respondent were married and lived together for 17 years and thereafter, disputes arose between them and they are living separately. The case of the 1<sup>st</sup> respondent is that due to harassment made by the petitioner and his mother, she left the house of her husband and living with her parents. The petitioner and the 1<sup>st</sup> respondent were blessed with three

children and out of them, one son is in the custody of the petitioner and one son and one daughter are in her custody. It is her further case that she is unable to maintain her children and therefore, she filed M.C.No.453 of 2015 seeking maintenance and the Crl.M.P.No.541 of 2017 seeking interim maintenance and the trial Court granted interim maintenance as stated supra.

8. The contention of the petitioner that he is unable to pay interim maintenance as he is prosecuting LL.B., and bringing up his elder son, who is studying Degree cannot be accepted for the reason that the petitioner and the 1<sup>st</sup> respondent have lived together for about 17 years and thereafter, due to disputes between them, they were living separately. The wife is having custody of two children, whereas the husband is having custody of one son. Moreover, the petitioner is working as Travel Agent and earning some income. As far as proof of income of the petitioner is concerned, there is no material produced by the petitioner or the 1<sup>st</sup> respondent. It is pertinent to note that the 1<sup>st</sup> respondent being the wife is living separately from her husband and filed the petition for grant of maintenance. The trial Court is yet to pass an order in the main M.C. after recording the evidence of both parties.

9. This revision is arising out of interim order passed by the trial Court. Under Section 397 (2) Cr.P.C., no interim order is revisable. However, in view of the facts and circumstances of the case and since the petitioner is pursuing his studies and his elder son is also pursuing his studies and he has to maintain his son, it would meet the ends of justice if the amount of interim maintenance granted by the trial Court is reduced to Rs.6,000/- per month i.e., at the rate of Rs.3,000/- per month to the 1<sup>st</sup> respondent and Rs.1500/- per month to each of the respondents 2 and 3. The petitioner has to pay an amount of Rs.1,42,000/- towards arrears.

10. Learned counsel for the petitioner submits that an amount of Rs.50,000/- has already been deposited and therefore, after deducting the said amount, the petitioner would pay an amount of Rs.92,000/- and requested this Court to grant 6 months time for payment of the said amount.

11. In view of the fact that the trial Court granted interim maintenance and the wife and children have to depend on the maintenance for meeting their necessities, the petitioner is directed to deposit an amount of Rs.92,000/- in two instalments. The 1<sup>st</sup> instalment shall be payable on or before 01.01.2019 and the 2<sup>nd</sup> instalment shall be payable on or before 01.02.2019 and the petitioner shall continue to pay an amount of Rs.6,000/- per month towards interim maintenance during the pendency of main M.C. without fail. In the event of failure of payment of any one of the instalments or payment of arrears of amount as stipulated above, the trial Court may take steps for recovery of same. Therefore, the order passed by the trial Court is modified to that effect and it is subject to the result of the M.C.No.453 of 2015.

12. Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous petitions, if any pending in this revision shall stand closed.

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**GUDISEVA SHYAM PRASAD, J**

**DATED: 13-11-2018**

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