

HONOURABLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL PETITION No. 11709 of 2011

ORDER:

Heard the learned counsel for the parties.

The prayer sought in the present criminal petition is as follows:

“The Hon’ble Court may be pleased to call for the records pertaining to order in CrI.M.P.No.4644 of 2010 in M.C.No.8 of 2003 on the file of the J.F.C.M., Kurnool and orders passed in CrI.R.P.No.38 of 2011 in M.C.No.8 of 2003 by the I Additional Sessions Judge, Kurnool and quash the proceedings thereon and to grant such other order or orders as deem fit and proper in the circumstances of the case.”

The facts of the case are that the second respondent herein originally filed M.C.No.8 of 2003 on the file of the J.F.C.M., Kurnool against the petitioner claiming Rs.2,000/- per month as maintenance. It is her case that she was married to the petitioner about 30 years ago. During the wedlock, they were blessed with one daughter namely Renuka. The petitioner got a job at Food Corporation of India, but he did not put up family at the place of his employment making the second respondent to live at Nagalapuram along with her mother. Subsequently, the second respondent came to know that the petitioner was living with a woman viz. Yashodamma. In spite of conducting panchayats and even after the advice of the elders, the petitioner refused to disassociate with the said woman. However, on the pressure of the elders, the petitioner was sending Rs.250/- per month for maintenance and thereafter the same was enhanced to Rs.400/-

per month. As the second respondent was suffering from ailments and was unable to do any manual work, she filed M.C.No.8 of 2003.

The petitioner filed a counter contending that he has been paying maintenance @ Rs.400/- per month to the second respondent as settled by the Family Counselling Centre, Kurnool and the second respondent gave a receipt/undertaking to the effect that she will not proceed to Court of law in this matter. He also stated that the second respondent is having two acres of dry land and two acres of wet land in Nagalapuram village apart from two houses and she is earning lakhs of rupees and she is feeding her daughter and son-in-law and sought dismissal of the maintenance case.

After trial, the learned Magistrate, awarded a sum of Rs.1500/- per month towards maintenance to the second respondent by orders dated 02.12.2003. As the said maintenance amount was not sufficient in view of escalation of prices and the cost of living is also high, the second respondent filed a petition in Crl.M.No.4644 of 2010 in M.C.No.8 of 2003 under Section 127 Cr.P.C. seeking to enhance monthly maintenance from Rs.1500/- to Rs.5,000/-. In the said petition, the second respondent stated that the petitioner is getting salary of Rs.25,000/- per month, he had 7 acres of agricultural land and earning Rs.4 lakhs per annum from agriculture. The petitioner filed a counter stating that the second respondent entered into a compromise before the Lok Adalat and the said award has become final. Therefore, the monthly maintenance awarded cannot be enhanced against the said

award. After enquiry, the learned Magistrate enhanced the monthly maintenance from Rs.1500/- to Rs.3,500/- per month by orders dated 31.05.2011. Against the said orders, the petitioner filed revision in CrI.R.P.No.38 of 2011 on the file of the I Additional Sessions Judge, Kurnool. After hearing, the learned I Additional Sessions Judge was pleased to dismiss the revision petition on 26.09.2011 confirming the orders passed in CrI.M.P.No.4644 of 2010 in M.C.No.8 of 2003, dated 31.05.2011. Aggrieved by the said orders in criminal revision petition, the present criminal petition is filed.

Learned counsel appearing for the petitioner would contend that both the Courts below did not consider that the petitioner is Class-IV employee earning meager salary and he has to maintain his wife and seven children apart from meeting the educational expenses of his children who are prosecuting higher studies. The petitioner has got only two acres of land. However, he contended that the second respondent has got two acres of wet land and two acres of dry land apart from two houses and she is doing money lending business also. Therefore, the second respondent is not in need of enhancement of the monthly maintenance.

On the other hand, it is contended by the second respondent that she is suffering with different ailments and at this age, there is no one to support her and she does not have any house. Therefore, it is said that the orders passed by the revisional Court does not call for any interference.

From the perusal of the material on record and the contentions of the respective counsel, the undisputed facts are that

the second respondent is the wife of the petitioner and they were blessed with a daughter. However, the petitioner left the conjugal society of the second respondent and living with another woman by name Yashodamma and they were blessed with children. It is also an undisputed fact that during the subsistence of the first marriage with the second respondent, the petitioner developed illicit intimacy with another woman and is said to have married the said Yashodamma and living with her. As far as the second respondent is concerned, she is aged about 50 years when the criminal revision petition was filed and it is contended that she is suffering with different ailments and she does not have her own house. It is revealed from the orders in CrI.M.P.No.4644 of 2010 that the petitioner admitted that he is working as an employee in Food Corporation of India and that he is drawing salary of Rs.18,000/- per month. In the light of the said admission, the contention that the petitioner is only Class-IV employee, may not hold water. In the changed circumstances and due to passage of time, the monthly maintenance granted earlier, can be enhanced under Section 127 Cr.P.C. Section 127 Cr.P.C. contemplates that on proof of a change in the circumstances of any person, receiving, under Section 125 Cr.P.C. a monthly allowance for the maintenance of his wife, the Magistrate may make such alteration in the allowance as he thinks fit. In the case on hand, initially the maintenance was awarded @ Rs.1500/- per month in the month of December, 2003 vide M.C.No.8 of 2003. The same was enhanced after a long gap of eight years to Rs.3,500/- per month vide CrI.M.P.No.4644 of 2010 in M.C.No. 8 of 2003. As far as the enhancement of maintenance

under Section 127 Cr.P.C. is concerned, the present age of the second respondent is approximately 57 years. As the second respondent is suffering with different ailments, she requires expenses for her medical treatment. Further, taking into consideration of the standard of living of the petitioner and the cost of living and in view of escalation of the prices and the rate of inflation, the maintenance of Rs.1500/- per month granted in the year 2003, is not sufficient to the second respondent to lead her life on par with the standard of living of the petitioner. Though the petitioner contended that he is only working as Class-IV employee drawing a meager salary, he has not come forward with any evidence, more particularly, by producing the salary certificate to show as to how much salary he is getting per month. In fact, the petitioner is the best person to produce the evidence available in his custody in the said aspect. Therefore, an adverse inference can be drawn against him in this regard. However, he has admitted in his evidence that he is drawing salary of Rs.18,000/- per month. Taking the said amount into consideration, the monthly maintenance was enhanced to Rs.3,500/- per month by the J.F.C.M., Kurnool in CrI.M.P.No.4644 of 2010 and as confirmed by the I Additional Sessions Judge, Kurnool in the criminal revision. Therefore, the said orders do not call for any interference, more particularly, looking at the financial position of the petitioner and the present cost of living. Therefore, this Court feel that there is no irregularity or illegality in the order passed by the learned I Additional Sessions Judge, Kurnool in CrI.R.P.No.38 of 2011 confirming the orders passed by the learned J.F.C.M., Kurnool in CrI.M.P.No.4644 of 2010. As such, there are no

merits in the present criminal petition and the same is liable to be dismissed.

Accordingly, the criminal petition is dismissed.

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

Date:17.04.2018
ccm

P. KESHA RAO, J



HONOURABLE SRI JUSTICE P. KESHAVA RAO



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