

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.5731 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in CrI.M.P.No.961 of 2017 in M.C.No.143 of 2017 dated 11.03.2018 passed by the Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX AMSJ, Hyderabad.

The first respondent and the petitioner are legally wedded wife and husband, while the second respondent is the daughter born to them out of their wedlock. It is the case that, after the marriage, the petitioner and the first respondent led happy marital life for a short period, and suddenly the petitioner shifted family to Sanath Nagar without the knowledge of the first respondent. Further, due to the intervention of the family members of the respondent, disputes arose between them and subjected the first respondent to cruelty demanding additional dowry. Decree of divorce in O.P.No.329 of 2015 on 01.12.2015 by the II Additional Judge, Family Court, Ranga Reddy District and the marriage was dissolved. Thereafter, respondents 1 & 2 filed a petition under Section 125 Cr.P.C for grant of maintenance, alleging that they were neglected to maintain by the petitioner herein, though he is having sufficient means to maintain them and submitted that the respondents 1 & 2 did not possess sufficient means to maintain themselves.

A petition under Section 125(1) Cr.P.C is filed for grant of interim maintenance @ Rs.25,000/- & Rs.10,000/- to the respondents 1 & 2 respectively, during pendency of main petition, as they had no means to maintain themselves.

The petitioner herein/respondent filed counter in Crl.M.P.No.961 of 2017 disputing the allegations, while admitting the relationship between the parties. It is specifically alleged that, the petitioner stayed with the first respondent only for six months; that for about four months she has not attended the matrimonial home, hence, he shifted the residence from Balanagar to Sanath Nagar after intimating the same, that he never subjected the first respondent to cruelty. It is submitted in the counter that the first respondent is habituated to black mail the petitioner on one pretext or the other and threatened to commit suicide and that, inspite of intervention of the local MLA, she did not change her attitude and join him. On 14.12.2016, the first respondent's parents along with her henchmen attacked the parents of the petitioner and caused injuries. Thereupon, the father of the petitioner lodged a report with the Jubilee Hills Police Station, registered in Crime No.789 of 2016. As a counter blast of the crime, the first respondent filed D.V.C, which is pending.

Upon hearing arguments of both the counsel, the Trial Court granted interim maintenance of Rs.7,000/- to the first respondent and Rs.3,000/- to the second respondent, payable by the petitioner from the date of petition i.e. 17.03.2017. Further, the Trial Court directed the first respondent to open a Savings Bank Account in any Nationalized Bank of her choice and furnish the account number to the petitioner, enabling him to deposit the arrears

within 3 months and also to deposit monthly maintenance on or before 5th day of every succeeding month.

The present criminal petition is filed on the ground that the first respondent did not produce any material in support of the income of the petitioner. That apart, criminal cases are pending against the first respondent for causing grievous injuries on the body of her mother-in-law and mother of this petitioner and that this petitioner was not earning Rs.75,000/- as contended. Therefore, order passed by the Court below is erroneous on the face of record and prayed to set-aside the order.

During hearing, learned counsel for the petitioner Sri B. Shyam reiterated the contentions urged in the petition, while submitting that, the petitioner is ready to pay maintenance to the second respondent out of love and affection and that, he did not possess necessary income to provide maintenance to the first respondent, as she is working in a private company and earning sufficiently to maintain herself.

The marital relationship between the petitioner and second respondent is already dissolved vide orders in O.P.No.329 of 2015 on 01.12.2015 passed by the II Additional Judge, Family Court, Ranga Reddy District. It is the specific contention of the first respondent that, she is already divorced wife and entitled for maintenance. Therefore, the contention of the learned counsel for the petitioner that divorced wife is not entitled to claim maintenance is not a ground. Further, respondents 1 & 2 did not produce any evidence in proof of the petitioner who is stated to be working as a Software Engineer and earning Rs.75,000/- per

month, thereby, granting maintenance @ Rs.7,000/- & Rs.3,000/- to respondents 1 & 2 respectively is illegal and without any basis. No doubt, respondents 1 & 2 did not produce any documentary proof in support of the claim of the petitioner. However, the petitioner herein/respondent in the counter affidavit in Crl.M.P.No.961 of 2017 did not deny receiving Rs.75,000/- as salary while working as Software Engineer. When the respondents 1 & 2 asserted that this petitioner is working as Software Engineer, earning Rs.75,000/-, it is for the petitioner to prove that he is not earning Rs.75,000/-, in view of Section 106 of Indian Evidence Act and according to it, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

The employment of the petitioner and his earnings are within his exclusive knowledge and he has to prove that he is not earning Rs.75,000/- per month. More curiously, the petitioner did not produce any salary certificate to establish his case that he was not earning Rs.75,000/- and blaming respondents 1 & 2 that their failure to produce the documentary evidence is not a ground to set-aside the order passed by the Court below.

So far as the other contention that the criminal case is pending against this first respondent, for causing injuries on the body of mother-in-law of the petitioner, is no relevance at all to grant maintenance.

Coming to the quantum of maintenance, according to the allegations of respondents 1 & 2, the petitioner is earning Rs.75,000/-, but, he did not produce any certificate of salary to establish contra. When the petitioner did not deny the salary being

an employee, the first respondent being his divorced wife is entitled to claim interim maintenance @ 20% out of his salary being received by him, in view of the law declared by the Apex Court in “**Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**”¹ wherein, it was held as follows:

“Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in Sub-section (1) of Section 25. In exercising the power Under Section 25 (2), the court would have regard to the "change in the circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under Sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just.”

Coming to the maintenance awarded to the second respondent, the petitioner admittedly is an infant and taking into consideration of the rise in price index and standard of life she is expected to lead her life, the interim maintenance awarded to the second respondent is just and reasonable. Hence, I find no ground to reduce the interim maintenance to respondents 1 & 2.

The other contention raised during hearing is that the first respondent is a private employee. But, this contention is not substantiated by any material at this stage. Therefore, I find no force in the argument. Consequently, the criminal petition is liable to be dismissed.

¹ AIR 2017 SC 2383

In view of the interim maintenance awarded to the respondents 1 & 2, the Trial Court is directed to dispose of M.C.No.143 of 2017, as expeditiously as possible, in any event not later than six months from the date of receipt of copy of this order.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:11.06.2018
SP

