

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.92 OF 2012

ORDER:

Heard the learned counsel for the petitioners and the first respondent.

The present Criminal Revision Case is filed questioning the judgment passed in CrI.A.No.366 of 2009, dated 15.02.2010 on the file of the Court of the Metropolitan Sessions Judge, Hyderabad enhancing the amount of maintenance from Rs.2,000 to Rs.5,000/- per month in favour of the first respondent, modifying the judgment passed in D.V.C.No.29 of 2008 dated 14.10.2009 on the file of the VI Additional Chief Metropolitan Magistrate, Hyderabad.

The facts in brief are that the first respondent herein, who is the wife of the first petitioner herein, filed D.V.C.No.29 of 2008 on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad. The learned Magistrate, by judgment dated 14.10.2009 allowed the D.V.C. in part awarding a sum of Rs.2,000/- per month towards maintenance to the first respondent herein payable by the first petitioner herein. Not satisfied with the said maintenance amount, the first respondent filed CrI.A.No.366 of 2009 on the file of the Metropolitan Sessions Judge, Hyderabad seeking enhancement of the said amount. The lower appellate Court, after hearing, was pleased to enhance the maintenance amount from Rs.2,000/- to Rs.5,000/- per month from the date of filing of the petition in D.V.C.No.29 of 2008 by judgment dated 15.02.2010. Aggrieved by the same, the present Criminal Revision Case is filed.

Learned counsel appearing for the petitioners contended that the lower appellate Court grossly erred in enhancing the maintenance to Rs.5,000/- per month without there being any material on record. The first petitioner is working as a part time worker in a jewellery shop and earning a sum of Rs.2,000/- per month. Therefore, the grant of maintenance at Rs.5,000/- per month is excessive.

Per contra, the learned counsel appearing for the first respondent justified the impugned judgment.

In the present set of facts, the point to be considered is:- 'whether the first respondent is entitled for the enhanced maintenance as awarded by the lower appellate Court and whether the first petitioner does not have means to pay the said amount?'

Having heard both the counsel and from the perusal of the material on record, the first petitioner has not placed any evidence on record to show that his monthly income is only Rs.2,000/-. On the other hand, it is the specific case of the first respondent that the first petitioner is a goldsmith by profession and doing business in jewellery. It is specifically averred by the first respondent that the first petitioner is earning a sum of Rs.50,000/- per month from the jewellery business. The said fact is not denied by the first petitioner. When the first respondent has categorically pleaded with regard to the income of the first petitioner, it is incumbent upon him to prove by way of rebuttal evidence that he is not earning the amount as alleged by the first respondent. However, the first petitioner has not produced any evidence. Therefore, this Court holds that only for the purpose of avoiding the payment

of maintenance, the first petitioner withheld the best available evidence with him. Therefore, an adverse inference has to be drawn against the first petitioner in this regard. It is also established that the first respondent does not have any independent source of income to maintain herself. Looking at the present cost of living and the rate of inflation, it is very difficult for a single woman to sustain with the meagre amount of Rs.5,000/- per month. In these circumstances, this Court is of the opinion that there is no irregularity or illegality in the orders passed by the lower appellate Court.

Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand closed.

28th AUGUST 2018.
Tsr

P.KESHAHA RAO,J

