

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6084 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., challenging the order dated 21.03.2018 in Crl.M.P.No.34 of 2018 in F.C.M.C.No.43 of 2017 passed by the Family Court-cum-III Additional District and Sessions Judge, Srikakulam granting interim maintenance @ Rs.6,000/- per month to the 1st petitioner and Rs.3,000/- per month to the 2nd petitioner.

Respondents 1 and 2 are wife and minor son of the petitioner and they filed petition under Section 125 Cr.P.C. claiming maintenance as the petitioner allegedly neglected and refused to maintain both respondents.

The interim maintenance petition is filed alleging that the petitioner did not take care of respondents 1 and 2 and the 1st respondent is subjected to cruelty for her failure to meet the illegal demand of the dowry. The 1st respondent lodged complaint and the same was registered as Crime No.36 of 2016 for the offences punishable under Section 498-A IPC and Section 4 of the Dowry Prohibition Act and that the petitioner is working as Cashier in SBI, drawing Rs.60,000/- per month as salary and failed to provide any thing to the respondents, the respondents have no independent source of income. Therefore, they are claiming interim maintenance of Rs.10,000/- to the 1st respondent and Rs.5,000/- to the 2nd respondent per month respectively.

The petitioner herein filed counter in the interim maintenance petition denying the material allegations, while admitting the relationship between him and the 1st respondent lived with him for a period of four months after the marriage and lead conjugal life. From the beginning the 1st respondent was reluctant to lead marital life and when the petitioner questioned the same, the 1st respondent told that she loved one boy during her college days and he is earning good and is in high position and

that she is not interested to lead conjugal life with the petitioner. The parents of the 1st petitioner suppressed the same. The petitioner further contended that the 1st respondent is not cooperative with him to lead marital life and that the 1st respondent habituated to talk to male persons by cell phone and this was informed by him to her parents also. Thus, the parents the 1st respondent stayed with them for 10 days and observed the same, scolded the 1st respondent and advised to lead marital life peacefully, but there is no change in the attitude of the 1st respondent. The petitioner contended that he is drawing only Rs.27,118/- per month as salary and used to invest some amount i.e. SBI life Rs.30,000/- per year, LIC Jeevan Anand Rs.4,407/- per year, LIC Jeevan Tarun Rs.6,896/- per year, LIC Jeevan Anand Rs.10,428/- per year, postal life Insurance Rs.12,888/- per year, SBI Blue Chip Mutual Fund Rs.1,000/- per month and provident fund Rs.6,000/- per year. Thus, the petitioner is only getting Rs.27,118/- per month as salary. Therefore, the claim of the respondents is excess and prayed to dismiss the petition.

Upon hearing both counsel, the Judge, Family Court awarded interim maintenance of Rs.6,000/- and Rs.3,000/- per month each to the respondents respectively. Aggrieved by the said order, the present petition is filed on the ground that the Judge, Family Court did not take into consideration of the net salary of the petitioner and the conduct of the 1st respondent in avoiding marital life and thus, the Judge, Family Court committed serious error in awarding interim maintenance to the respondents.

During hearing, learned counsel for the petitioner while reiterating the contentions urged in the main petition, furnished the pay slip for the month of January, 2018 to establish that his gross salary of Rs.37,366/- .35ps and net salary is Rs.27.118/- per month and awarding maintenance by the Judge, Family Court is excessive and prayed to set aside the same.

The relationship between the petitioner and respondents 1 and 2 is not in dispute and lodging report and registering crime No.36 of 2017 of Women Police Station, Srikakulam for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act is also not in dispute. The only ground urged before this Court is that the petitioner is only drawing Rs.27,118/- per month and to substantiate the same, no document is produced before the Judge, Family Court, but furnished pay slip for the month of January, 2018 before this Court. Even if the allegations made in the counter that the petitioner drawing Rs.27,118/- per month as net salary and meeting of various expenses like payment of premium under several insurance policies stated above are only savings of the petitioner. Moreover, the 1st respondent being a wife is entitled to claim 20% of salary of the husband as interim maintenance in view of law declared by the Apex Court in ***Dr.Kulbhushan Kumar v. Raj Kumari***¹. Even assuming for a moment that the 1st respondent is entitled to claim interim maintenance at 20% of the net salary, which will be approximately comes to Rs.5,500/- taken into consideration of the savings of the petitioner i.e., payment of premium to several insurance policies. Therefore, the amount awarded by the Judge, Family Court towards interim maintenance to the 1st respondent is just and reasonable in view of the present price index and standard of living as the 1st respondent is expected to lead the same standard of life, which the petitioner being cashier in the SBI leading.

The other contention raised by learned counsel for the petitioner is that the 1st respondent refused to lead marital life with the petitioner. On the other hand, registration of crime against the petitioner for the offence punishable under Section 498-A IPC and Section 4 of the Dowry Prohibition Act is sufficient to conclude that there is a reasonable cause for her separate living as she was allegedly subjected to cruelty for her

¹ (1970) 3 SCC 129

failure to meet the illegal demand of dowry by the petitioner and on that ground she refused to lead marital life with the petitioner. Therefore, the order under challenge cannot be set aside.

The Judge, Family Court ordered Rs.3,000/- as interim maintenance to the 2nd respondent, who is the son of the petitioner born during wedlock and that the paternity is not in dispute. The 2nd respondent being school going child requires maintenance @ Rs.3,000/- per month to meet the expenses of food, shelter, clothing, education etc. Hence, the interim maintenance awarded to the 2nd respondent is also just and reasonable and consequently, the order passed by the Judge, Family Court does not suffer any legal infirmity warranting interference of this Court in exercise of power under Section 482 Cr.P.C.

Accordingly, the criminal petition is dismissed at the stage of admission. However, the Judge Family Court is directed to dispose of the main case at the earliest uninfluenced by the observations made hereinabove.

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

M. SATYANARAYANA MURTHY, J

15.06.2018
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